2014
FLORIDA
LAW ENFORCEMENT HANDBOOK

Miami-Dade County Edition

MIAMI-DADE
POLICE DEPARTMENT

J.D. PATTERSON
DIRECTOR

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Fallen Officer Tribute

Honoring Florida Law Enforcement Officers Killed in 2013

It was their duty to serve. It's ours to remember.

Sergeant Gary Morales
St. Lucie County Sheriff's Office, FL
EOW: Thursday, February 28, 2013
Cause of Death: Gunfire

Master Deputy Sheriff Joseph "Shane" Robbins
Polk County Sheriff's Office, FL
EOW: Friday, April 26, 2013
Cause of Death: Automobile accident

Sergeant Mike Wilson
Charlotte County Sheriff's Office, FL
EOW: Monday, August 5, 2013
Cause of Death: Gunfire

Deputy Sheriff Daniel Rivera
Broward County Sheriff's Office, FL
EOW: Saturday, September 21, 2013
Cause of Death: Automobile accident

K9 Koda
Leon County Sheriff's Office, FL
EOW: Thursday, January 31, 2013
Cause of Death: Gunfire

K9 Gus
Florida Fish and Wildlife Conservation Commission, FL
EOW: Thursday, August 1, 2013
Cause of Death: Duty related illness

K9 Max
Miami Gardens Police Department, FL
EOW: Friday, September 13, 2013
Cause of Death: Accidental

Read more: http://www.odmp.org/search?state=Florida&from=2013&to=2013#ixzz2hcGqtPte

Introduction

On behalf of Miami-Dade County and the Miami-Dade Police Department. I am proud to introduce the 2014 edition of the Florida Law Enforcement Handbook. It is a compilation of the most frequently used laws. This handbook was first developed in 1975 by the Police Legal Bureau as a reference text for all law enforcement officers in the Department. In 1979, the handbook received a New County Achievement Award from the National Association of Counties and upon the publication of the 39th annual edition, it remains a great source of pride for the Miami-Dade Police Department.

It is truly a pleasure to share this invaluable law enforcement tool with other Florida law enforcement agencies.

Wishing you a safe and productive year.

J.D. Patterson, Director
Miami-Dade Police Department
October 2013

Foreword

The 2014 Florida Law Enforcement Handbook contains a selection of procedural, substantive and traffic laws compiled and edited for Florida law enforcement officers, as well as a section of legal guidelines, written by police legal advisors. Included with your handbook is a CD containing the exact text of the handbook for electronic reference, and a 2014 Florida Traffic Reference Guide for use by officers enforcing Florida's traffic laws.

Please recognize that this book contains only selected statutes. It is not an exhaustive compilation of all the law. Although every effort has been made to ensure the accuracy and completeness of the law and guidelines contained herein, no express or implied guarantees, or warranties are made. The full text of the Florida Statutes can be viewed on the official website of the Florida Legislature at *www.leg.state.fl.us*. Similarly, the legal guidelines are just that – guidelines – based upon principles of statutory interpretation and case law. Whenever a procedural question arises regarding the application of a statute or the guidelines, officers are encouraged and reminded to reference their agencies' policies and procedures, and seek supervisory assistance and legal guidance when appropriate.

To further assist law enforcement officers, refer to the following new topics that have been added to the Legal Guidelines Section of this 2014 edition of the Florida Law Enforcement Handbook:

- Arrests – general
- Court Orders
- DNA Samples Taken from Arrestees
- Dog Alerts
- Law Enforcement Officers' Personal Information
- Public Records
- Warrantless Search of Cell Phones Seized Incident to Arrest
- Sovereign Citizens

The following Miami-Dade County Ordinance Sections are added to the 2014 edition of the Florida Law Enforcement Handbook:

- Chapter 25 – Aviation Department Rules and Regulations
- Article III. The Shannon Melendi Act:
  - Sec. 26-37. Definitions
  - Sec. 26-38. Background checks required for child event workers, park vendors, and programming partner or community-based organization (CBO) employees and volunteers.
  - Sec. 26-39. Miami-Dade Park and Recreation Department employees and volunteers.
- Chapter 28A – Seaport Security and Operations

Since the publication of the 2013 Florida Law Enforcement Handbook, there have been some significant changes made to the law. Please reference the list below for the new laws and those that have been amended.

NEW LAWS

§ 316.305	Wireless communications devices; prohibition
§ 817.535	Unlawful filing of false documents or records against real or personal property
§ 817.5685	Unlawful possession of the personal identification information of another person
§ 828.1615	Prohibiting artificial coloring and sale of certain animals
§ 871.015	Unlawful protests
§ 934.50	Searches and seizure using a drone

AMENDED LAWS

AMENDED LAWS
(continued)

§ 790.22	Use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties
§ 791.013	Testing and approval of sparklers; penalties
§ 810.0975	School safety zones; definition; trespass prohibited; penalty
§ 812.14	Trespass and larceny with relation to utility fixtures; theft of utility services
§ 817.034	Florida Communications Fraud Act
§ 817.234	False and fraudulent insurance claims
§ 828.12	Cruelty to animals
§ 837.05	False reports to law enforcement authorities
§ 847.012	Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty
§ 849.04	Permitting minors and persons under guardianship to gamble
§ 849.16	Machines or devices which come within provisions of law defined
§ 849.161	Amusement games or machines; when chapter inapplicable
§ 874.05	Causing, encouraging, soliciting, or recruiting criminal gang membership
§ 877.08	Coin-operated vending machines and parking meters; defined; prohibited acts, penalties
§ 893.02	Definitions
§ 893.03	Standards and schedules
§ 893.05	Practitioners and persons administering controlled substances in their absence
§ 893.13	Prohibited acts; penalties
§ 893.135	Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking
§ 893.147	Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia
§ 895.02	Definitions
§ 896.101	Florida Money Laundering Act; definitions; penalties; injunctions; seizure warrants; immunity
§ 901.02	Issuance of arrest warrants
§ 918.16	Sex offenses; testimony of person under age 16 or who has an intellectual disability; testimony of victim; courtroom cleared; exceptions
§ 932.7055	Disposition of liens and forfeited property
§ 933.07	Issuance of search warrants
§ 934.03	Interception and disclosure of wire, oral, or electronic communications prohibited
§ 937.021	Missing child and missing adult reports
§ 937.028	Fingerprints; missing persons
§ 985.11	Fingerprinting and photographing

Ivonne Duran
Miami-Dade Police Department
Contributing Editor – 2014 Edition

Contents of the Handbook

The Handbook is divided into eight sections as listed below.

Each section is printed on a different color stock and is preceded by a table of contents. The statutes and ordinances are arranged numerically within each section; the Handbook is paginated at the bottom of the page. A comprehensive index appears in Section VIII.

See detailed Table of Contents preceding each section, or the alphabetical index in Section VIII, for further reference.

Contents

ARREST

GENERAL

All arrests must be predicated upon a probable cause belief that a crime has been committed and that the subject in custody is the person who committed the crime. The arresting officer must be able to clearly articulate the facts that led him/her to believe a crime was committed. The Arrest Affidavit must contain facts and details about the crime; specifically it must contain the elements of the crime charged. The laws of arrest are governed by Chapter 901.

There are two forms of arrest in Florida: arrest with a warrant and without a warrant.

Arrest with a warrant – pursuant to § 901.02, § 901.16 and Rules of Criminal Procedure: Rule 3.121

There are two categories of arrest warrants:

a. Criminal Warrant: A warrant for arrest issued pursuant to a sworn affidavit and signed by a judge.
b. Warrant for failure to appear in court. A warrant for arrest issued by a judge for failure by the defendant to appear in court. In misdemeanor cases, these warrants are referred to as **Bench Warrants**. In felony cases, these warrants are referred to as **Alias Capias (AC) Warrants**. In juvenile cases, these warrants are referred to as **Pick-Up Orders**.

Arrest without a warrant – pursuant to § 901.15.

There are two types of arrests without a warrant:

(1) Arrest by Notice to Appear – only used for some misdemeanor offenses. The subject is not taken to jail, but instead is allowed to sign the bottom right hand section of the Arrest Affidavit stating that he/she promises to appear in court when noticed for a court date. *Refer to, Rules of Criminal Procedure: Rule 3.125 in the State Procedural Laws section.*
(2) Custodial Arrest – subject taken to jail.

BONDSMEN

Bondsman Authority to Arrest

In Florida, bondsmen are licensed and regulated under Florida Statute § 648 and have arrest powers pursuant to Florida Statutes § 903.22. A bondsman (also referred to as a "surety") is legally considered to have custody of a defendant (also referred to as a "principal") who has been released from law enforcement/corrections custody on bail. As such, the bondsman has statutory authority to "recapture" a defendant whose bail has been forfeited or when the bondsman surrenders the defendant to law enforcement authorities. A bondsman may arrest a principal before or after the forfeiture of the bond. Florida Statutes § 903.22 – § 903.29. A bondsman may authorize a peace officer to make the arrest of a principal, by endorsing the authorization on a certified copy of the bond. Prior to making an arrest predicated on an endorsed authorization on a certified copy of a bond, officers should verify the validity of the certified copy, as well the licensure and authority of the bondsman.

Authority of Out-of-State Bondsman to Arrest

An out-of-state bondsman has the authority to recapture a principal in Florida, if he/she holds an equivalent license (to that which is issued in Florida) by the state where the bond was written. Florida Statutes § 648.30(3). Additionally, the power of an out-of-state bondsman is derived from federal case law and recognized by the Florida Supreme Court. **Register v. Barton**, 75 So. 2d 187 (Fla.1954). If a person arresting a principal is not licensed under Florida law or by a foreign state, the arrest may be in violation of Florida law. Officers confronted with an arrest of a principal effected by an out-of-state bondsman, should make inquires as to the licensure and authority of the out-of-state bondsman.

Use of Force by Bondsman

A bondsman may only use reasonable force in apprehending a fugitive (principal). Reasonable force has been described as "…only that force that an ordinary, prudent, and intelligent person with the surety's (bondsman's) knowledge would have believed necessary in the circumstances to capture and surrender the principal". Bondsmen have no statutory, common law or case law authority to use deadly force

in effecting a capture. However, the use of deadly force will usually be considered "reasonable" when used "…to overcome declared, open and armed resistance…" to an arrest. **Buchanan v. State**, 927 So. 2d 209 (Fla. 5th DCA 2006).

Bondsmen have no authority under § 903 or § 648 to be armed. Accordingly, a bondsman must possess a valid license under § 790.06 to carry a concealed weapon or firearm. In situations where an officer encounters a bondsman who is armed and has a license to carry a concealed weapon or firearm, he/she should follow the routine procedure to verify that the concealed weapon or firearm license is valid.

Diplomatic and Consular Officials

The following information comes from the Special Agent in Charge of the Miami branch, Office of Security, U.S. Department of State. It is published verbatim for the information and guidance of all law enforcement officers:

General Policy

Diplomatic and Consular Officers should be accorded their respective privileges, rights and immunities as directed by international law and federal statutes. These officials should be treated with the courtesy and respect that befit their distinguished positions. At the same time, it is well established principal of international law that, without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect laws and regulations.

Consular Officers

Consular Officers are Consuls-General, Deputy Consuls-General, Consuls and Vice-Consuls. They are also official representatives of foreign governments. Consular Officers are required to be treated with due respect, and all appropriate steps are to be taken to prevent any attack on their person, freedom or dignity. They are entitled to limited immunities as described below.

Immunities Accorded to Career Consular Officers

Under prevailing international law and agreement, a foreign career Consular Officer is not liable for arrest or detention pending trial except in the case of a grave crime (felony offense that would endanger the public safety) and pursuant to a decision by the competent judicial authority. His immunity from criminal jurisdiction is limited to acts performed in the exercise of consular functions and is subject to court determination.

Identification of Accredited Consular Officers

Career Consular Officers can be identified by credentials issued by the State Department and by other locally issued official identification papers.

The State Department credential bears its seal, the name of the officer, his title and the signature of State Department officials.

Honorary Consuls

Often nationals or permanent residents of the receiving state are appointed and received as honorary consular officers to perform the functions generally performed by career Consular Officers. Such officers may possess identification cards from the State Department, or they may exhibit reduced-size copies of the diplomatic note evidencing recognition by the United States Government. These individuals are not immune from arrest or detention; they are also not entitled to personal immunity from the civil and criminal jurisdiction of the receiving state except as to official acts performed in the exercise of their consular functions. However, appropriate steps must be provided to accord to such officers the protection required by virtue of their official position. In addition, the consular archives and documents of a consular post headed by an honorary consular are inviolable at all times and wherever they may be, provided they are kept from other papers and documents of a private or commercial nature relating to the other activities of an honorary consul and persons working with him.

Families of Consular Officers

Family members of Consular Officers do not enjoy the same privileges and immunities with respect to the civil and criminal jurisdiction of the receiving state as do Consular Officers. However, they should be accorded appropriate courtesy and respect. See further comment below regarding offenses involving family members of a Consular Officer.

Consular Premises

Consular premises used exclusively for the work of the consular post cannot be entered without explicit permission of the head of the consular post or his designee or by the head of the diplomatic mission. This permission may be assumed in the case of fire or other disaster requiring prompt protective action.

Consular Archives, Documents, Records, and Correspondence

The consular archives and documents are sacred at all times. The official correspondence of the consular post, which means all correspondence relating to the consular post and its functions, is likewise sacred.

Methods of Handling Selected Incidents, Criminal Violations or Minor Offenses by Consular Officers

It is the policy of the U.S. Department of State with respect to alleged criminal violations by persons with immunity from criminal jurisdiction to encourage law enforcement authorities to pursue investigations vigorously, to prepare cases carefully and completely, and to document properly each incident so that charges may be pursued as far as possible in the U.S. judicial system.

Whatever the offense or circumstances of contact law enforcement officers should keep in mind that such persons are official representatives of foreign governments who are to be accorded the maximum degree of respect possible under the circumstances. It is not an exaggeration to say that police handling of incidents in this country may have a direct effect on the treatment of U.S. diplomatic or consular personnel abroad.

When a law enforcement officer is called to the scene of a criminal incident involving a person who claims diplomatic or consular immunity, the first step should be to verify the status of the suspect. Should the person be unable to produce satisfactory identification and the situation be one that would normally warrant arrest or detention, the officer should inform the individual that he or she will be detained until his or her identify can be confirmed. **In all cases, including those in which the suspect provides a State Department issued identification card, the law enforcement officer should verify the status with the U.S. Department of State or in the case of the U.N. community, with the U.S. Mission to the United Nations.** Once the status is verified, the officer should prepare his or her report, fully describing the details and circumstances of the incident in accordance with normal police procedures. If the suspect enjoys personal immunity, he or she may not be handcuffed, except when that individual poses an immediate threat to safety, and may be arrested or detained. Once all pertinent information is obtained, that person must be released. A copy of the incident report should be faxed or mailed to U.S. Department of State in Washington, D.C., or to the U.S. Mission to the U.N. in New York in cases involving the U.N. community, as soon as possible. Detailed documentation of incidents is essential to enable the U.S. Department of State to carry out its policies.

Moving Traffic Violations

When a Consular Officer is stopped for a moving traffic violation, the officer on the scene, upon being advised by the driver that he or she is a Consular Officer and ascertaining that he or she possesses the proper credentials, should exercise discretion based on the nature of the violation and either let him or her go with a warning of the danger of his or her actions or proceed with issuance of appropriate citation. **Mere issuance of a traffic citation does not constitute arrest or detention in the sense referred to above.**

Driving While Under the Influence

The primary consideration in this type of incident should be to see that the Consular Officer is not a danger to himself or herself or the public. Based upon a determination of the circumstances, the following options are available:

1. Take him or her to the station or a location where he or she can recover sufficiently to enable him to drive safely.
2. Take him or her to a telephone so that he or she can call a relative or a friend to come for him or her.
3. Call a taxi for him or her.
4. Take him or her home.

Unless a Consular Officer is considered serious danger to himself or herself or others, he or she should not be physically restrained or subjected to a sobriety test.

At best, this is a sensitive situation. The Officer should be treated with respect and courtesy. It should be impressed upon him or her that the police officer's primary

responsibility is to care for his or her safety and the safety of others.

Offenses Involving Family Members of a Consular Officer

Family members of a Consular Officer cannot claim immunity. However, consideration should be given to the special nature of this type of a case. A violation should be handled, when possible, through the seeking of a complaint. The individual should be released once positive identification is made and the relationship with the Consular Official is verified. If the relative is a juvenile, as in juvenile cases, the subject should be released to the parent Consular Officer.

If any question arises as to the authenticity of credentials, the Office of Security of the Department of State may be contacted at 305-536-5781.

Foreign Nationals

In 1967, the United States ratified the Vienna Convention on Consular Relations. Vienna Convention on Consular Relations, April 24, 1963, art. 36, 21 U.S.T. 77, T.I.A.S. No. 6820. This treaty mandates that foreign nationals who are arrested or detained be advised of their right to consult with members of their consulate or consular officials. In some instances it is mandatory that the arresting or detaining authority notify the nearest consular officials of the arrest or detention of the foreign national, regardless of the national's wishes. The provisions of this treaty must be applied to the arrest or detention of foreign nationals who are signatories to the treaty regardless of whether the United States extends diplomatic recognition to that nation, *e.g.*, Cuba.

For purposes of consular notification, a foreign national is defined as any person who is not a United States citizen. This includes resident aliens and foreign nationals illegally in the United States. When a foreign national is arrested, officers should take the following steps:

1. Determine the foreign national's country. Normally, this is the country on whose passport or other travel document the foreign national travels.

2. If the foreign national is from one of the countries with which the United States has a bilateral agreement requiring mandatory notification in the event of an arrest, the officer must immediately notify the consulate or representative of the foreign national's government.

3. If the foreign national is from a country with which the United States does not have a bilateral agreement requiring mandatory notification, the officer must still offer the arrestee the opportunity to have their consulate or interest section notified.

4. All foreign national arrestees must be afforded the option of consular notification, regardless of whether the United States maintains diplomatic relations with their countries. For example, if an Iraqi, Iranian or Cuban national is arrested, that arrestee must be given the opportunity to have their respective interest sections in Washington, D.C. notified.

5. Officers shall make written documentation of the notification of a consular official if the foreign national is from a mandatory notification country. If the foreign national is not from a mandatory notification country, the officer should document that the foreign national was advised of his or her right to have a consular official notified, and whether or not notification was made or refused by the foreign national.

6. Officers must realize that subjects still have to be advised of their Miranda rights where appropriate. Advising foreign nationals of the right to have a consular official notified of their arrest or detention, or the mandatory notification of a consular official, must be done in addition to, and not as a substitute for, Miranda warnings.

Loitering or Prowling

General

Florida Statutes § 856.021

The crime of loitering and prowling requires proof of two elements, **both of which must be committed in the officer's presence prior to arrest**. The accused was (1) loitering and prowling in a manner not usual for law-abiding citizens, and (2) such loitering and prowling were under circumstances that warranted a justifiable and reasonable alarm or immediate concern for the safety of persons or property located in the vicinity. Florida Statutes § 856.021.

Guidelines

Both elements must be committed in the officer's presence prior to arrest. For the first element, an officer must observe the accused loitering and prowling in a manner

not usual for law-abiding citizens (example: officer observes the accused behind a closed business in the early morning hours). The suspicious criminal conduct observed comes close to, but falls short of, the actual commission or attempted commission of a substantive crime. For the second element, the arresting officer must articulate specific facts which when taken together with rational inferences from those facts, reasonably warrant a finding that a breach of the peace is imminent or the public safety is threatened. Courts have described this activity as "incipient criminal behavior" (beginning to exist or appear; in an initial stage). Some of the circumstances which courts have considered cause for alarm are whether the person takes flight, refuses to identify himself, or attempts to conceal himself, or an object. Florida Statutes § 856.021(2); **G.C. v. State**, 903 So. 2d 1031 (Fla. 4th DCA 2005); **D.S.D. v. State**, 997 So. 2d 1191 (Fla. 5th DCA 2008).

It is important to note that an officer may still legally detain an individual based on the observations and inferences articulated above, even if not making an arrest based on Florida Statute § 856.021. A temporary detention based on reasonable suspicion does not necessarily have to be predicated on a violation of Florida Statutes § 856.021, although many of the probable cause factors may overlap.

Before you make an arrest, you must:

1. Afford the subject an opportunity to dispel any alarm or immediate concern caused by the particular circumstances encountered. As established by case law, Miranda warnings must be given prior to any questions being asked which would dispel the officer's alarm, as the questioning would be considered custodial. **Driscoll v. State**, 458 So. 2d 1188 (Fla. 4th DCA 1984).

2. Ask the subject to identify himself or herself and explain his or her presence and conduct. The statute expressly provides, "No person shall be convicted of an offense under this section if the arresting officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern." Florida Statutes § 856.021(2).

"Any sheriff, police officer, or other law enforcement officer may arrest any suspected loiterer or prowler without a warrant in case delay in procuring one would probably enable such suspected loiterer or prowler to escape arrest." Florida Statutes § 856.031.

When a police officer observes or determines factors which he or she reasonably believes establish probable cause that a violation of § 856.021 has occurred, an arrest may be effected without a warrant where the delay in making the arrest would probably allow the subject to escape. However, a temporary detention of the subject can be made pursuant § 901.151, the "Stop and Frisk Law," "under circumstances which would reasonably indicate that such a person has committed, is committing or is about to commit a violation of the criminal laws of the state or a criminal ordinance of any municipality or county." Florida Statutes § 901.151.

Before making an arrest for loitering and prowling, consider the following:

1. If the information was received from a citizen, is it reliable (did the citizen identify himself/herself; can the individual be contacted for additional details, etc...)?

2. Were both elements of the offense committed in your presence?

3. Did you advise the subject of his/her Miranda rights prior to questioning?

4. Did you afford the subject the opportunity to dispel any alarm or immediate concern caused by the particular circumstances encountered?

§ 856.031 Warrantless Arrest — reads as follows:

"Arrest without warrant.–Any sheriff, police officer, or other law enforcement officer may arrest any **suspected loiterer or prowler** without a warrant in case delay in procuring one would probably enable such **suspected** loiterer or prowler to escape arrest."

When you observe any conduct or activity which you reasonably believe comes within the ambit of this statute, or you have probable cause based upon credible hearsay from a citizen or informant, you may arrest without a warrant where delay in making the arrest would probably allow the perpetrator to escape. The standard is one of reasonableness. Unless what you observe is an obvious case of loitering or prowling and such conduct gives rise to alarm or immediate concern, your initial approach should

be pursuant to the provisions of **§ 901.151**–Stop and Frisk.

Before you make a decision ask yourself some questions:

1. Is the complainant or informant a "reliable" and "prudent" citizen?

2. Are there other factors supporting the complainant's statement, *e.g.*, the clothes match Mrs. Jones' description, subject is sweating from recent exertion, etc.

3. What are the probabilities that the subject is available and has correctly identified himself or herself for a later pickup pursuant to an arrest warrant?

4. Are there other bases for arrest or questioning, *e.g.*, concealed weapons, attempting to conceal some object?

5. If you did not observe the subject "prowling," are you now observing "loitering" within the meaning of § 856.021?

6. If you do not arrest the subject and he is not a local resident, are you left with a "justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity?"

7. Can the complainant/informant make a positive identification?

PROBABLE CAUSE

General

An arrest by a police officer pursuant to a warrant or a warrant exception must always be based on "probable cause." The officer must have probable cause to believe that a particular statute has been violated by the subject, and that all the elements enumerated in the statute are present, based on the totality of the circumstances. Probable cause to make an arrest is a lesser standard than that required for a conviction, which is "proof beyond a reasonable doubt."

The determination of probable cause for an arrest is a layered concept, wherein the officer can use all the factors and circumstances available at the time, "the totality of the circumstances." In Florida, probable cause for an arrest exists "…where the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." **Jenkins v. State**, 978 So. 2d 116 (Fla. 2008).

Pre-arrest factors establishing probable cause may include the officer's observations (as well as those of fellow officers), information received from citizens (witness, informants, victims, etc.) and physical evidence. The pre-arrest factors establishing probable cause are the most important because these factors must establish probable cause prior to making the formal arrest. While post-arrest factors may be used in the subsequent determination of "proof beyond a reasonable doubt," probable cause for the initial arrest must exist at the time of the arrest.

Guidelines

Once an officer has determined that probable cause exists and an arrest has been made, it is equally important that the documentation of the incident and circumstances be as complete and accurate as possible. The initial evaluation of whether probable cause for the arrest exists will be made by a judge or an assistant state attorney based on a review of the arrest affidavit. Therefore, it is critical that this document contain all the necessary elements to establish probable cause. Officers should document all facts and evidence that will lead the reviewer to the conclusion that probable cause exists for the arrest. Avoid using broad conclusory statements. Additionally, a detailed arrest affidavit and accompanying police report may serve to refresh an officer's memory if court proceedings take place after an extended period of time.

There can be serious consequences for both the officer and the department if it is determined that there was no probable cause for an arrest. Charges against the defendant would be dismissed, evidence may be suppressed (which may affect other defendants), the officer and department may be the target of civil lawsuits and the officer may face criminal charges.

Release of Arrestee

During the course of an investigation information may come to light subsequent to the arrest that affects the probable cause determination. Probable cause to believe that the defendant committed the crime may "evaporate" in light of new information uncovered in the subsequent investigation. This may occur shortly after the arrest, or after an extended period of time. Upon making a determination that probable cause for an arrest no longer exists (which, depending on the circumstances, may require consultation with the prosecutor or in-house coun-

sel), the arrestee should be immediately released. The officer(s) should make every effort to return the individual to his/her pre arrest state by transporting the arrestee to the original place of detention, releasing all personal property impounded, etc. Accordingly, the arrestee should be given an explanation regarding the circumstances relating to his/her release. Caution should be exercised in the release of information if the investigation is continuing so as not to divulge any active criminal investigative information. Individuals should be assisted in recovering their vehicle (if one has been towed) and given any other reasonable assistance.

The subsequent release of an arrestee based on new information which negates probable cause does not mean that the original arrest was without probable cause or was illegal. The initial arrest still retains its legal validity based on the facts known to the officer at the time of the arrest. In all such cases, a detailed report must be prepared containing all pertinent information. Miami-Dade Police Department officers should refer to the Miami-Dade Police Department Manual, Chapter 18, Part 2, Prisoner Related Activities, III.,B., Safeguarding Against False Arrest.

WARRANTLESS ARREST

A police officer may make a warrantless arrest if there is probable cause to believe that a felony has been committed and the individual is the perpetrator of the crime. If the crime involved is a misdemeanor, the officer may not ordinarily make a warrantless arrest unless the crime was committed in his or her presence. Any complaining witness or victim may file a complaint at any office of the State Attorney. See Legal Guidelines, Court Procedures, Complaints, and Misdemeanors.

Upon evaluation, the State Attorney may file a direct information. If he or she does, the Clerk of the Court will then issue an arrest warrant. However, the complaint will probably be forwarded to the Clerk who will take the affidavit and administer the oath. The Clerk will then issue a summons. The complainant is now entitled to a hearing before a magistrate. The magistrate may issue a capias (warrant) if the party complained against fails to appear.

There are a number of statutory exceptions to the above provisions concerning misdemeanors. Some instances where a police officer may arrest without a warrant (provided that there is probable cause) are:

1. **Airport:** Actions of trespass in a secure area of an airport when signs are posted in conspicuous area of airport which notify that unauthorized entry into such areas constitutes a trespass and specify the methods for gaining authorized access to such areas. (Misdemeanor exception source § 901.15(14)).
2. **Assault:** An assault upon a law enforcement officer, a firefighter, an emergency medical care provider, public transit employees or agents, or other specified officers as set forth in § 784.07 or an assault or battery upon any employee of a receiving facility as defined in § 394.455 who is engaged in the lawful performance of their duties. (Misdemeanor exception source § 901.15(15)).
3. **Battery:** Any battery upon another person, as defined in § 784.03. (Misdemeanor exception source § 901.15(9)(a)).
4. **Child Abuse:** An act of child abuse, as defined in § 827.03, *Abuse, aggravated abuse, and neglect of a child or has violated* § 787.025*, Luring or enticing a child.* (Misdemeanor exception source § 901.15(8)).
5. **Criminal Mischief:** An act of Criminal mischief as described in § 806.13. (Misdemeanor exception source § 901.15(9)(b)).
6. **Concealed Weapon:** A criminal act according to § 790.01, *Carrying concealed weapons*. (Misdemeanor exception source § 790.02).
7. **Disorderly Conduct:** Any acts of a breach of the peace or disorderly conduct as defined in § 877.03 on the premises of a licensed public lodging establishment as defined in § 509.013(4)(a). (Misdemeanor exception source § 509.143(2)).

Domestic Violence:

8. An act of domestic violence, as defined in § 741.28. (Misdemeanor exception source § 901.15(7)).
9. A criminal act according to § 741.31, *Violation of a domestic violence in-*

junction. (Misdemeanor exception source § 901.15(6)).

10. An act that violates a condition of pretrial release provided in § 903.047 when the original arrest was for an act of domestic violence as defined in § 741.28. (Misdemeanor exception source § 901.15(13)).
11. A criminal act according to § 790.235, *Possession of firearm or ammunition prohibited when person is subject to a domestic violence injunction*. (Misdemeanor exception source § 901.15(6)).
12. A criminal act according to § 784.047, *Penalties for violating protective injunctions***, which violates**: an injunction for protection entered pursuant to § 741.30. (Misdemeanor exception source § 901.15(6)).
13. A criminal act according to § 784.046, *Action by victim of repeat violence, sexual violence, or dating violence for protective injunction*. (Misdemeanor exception source § 901.15(6)).
14. **Drugs:** Possession of not more than 20 grams of cannabis according to § 893.13(6)(b). (Misdemeanor exception source § 893.13(6)(d)).
15. **Graffiti:** A Graffiti-related offense as described in § 806.13. (Misdemeanor exception source § 901.15(9)(b)).
16. **Loitering and Prowling:** A criminal act according to § 856.021, *Loitering and Prowling*. (Misdemeanor exception source § 856.031).
17. **Protection Order:** A foreign protection order accorded full faith and credit pursuant to § 741.315, *Recognition of foreign protection orders*. (Misdemeanor exception source § 901.15(6)).
18. **Stalking:** Any violation of § 748.048, *Stalking*. (Misdemeanor exception source § 784.048(6)).
19. **Theft:** An act of retail theft, farm theft, or transit fair evasion as defined in § 812.015. (Misdemeanor exception source § 812.015).
20. **Traffic:** Any offense committed under the provision of Chapter 316, *State Uniform Traffic Control*, or Chapter 322, *Drivers'* Licenses, in connection with a crash after investigation at the scene. (Misdemeanor exception source § 316.645).
21. **Trespass:** Any act of trespass on a campus or other facility of a school as defined in § 810.097. (Misdemeanor exception source § 810.097(4)).
22. **Vessel Safety:** A violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as described in § 327.461. (Misdemeanor exception source § 901.15(9)(c)).

ARREST AFFIDAVIT GUIDELINES

The following guidelines were designed to assist police officers in the preparation of arrest affidavits. It is recommended that officers read the guidelines as they write each affidavit.

The object of this section is to assure the legal sufficiency of each affidavit before the case reaches arraignment. If an affidavit is determined to be insufficient for any reason, the arresting officer or lead investigator will be advised of the defect by interoffice memorandum, and be given a chance to correct it, if possible. Questions or comments should be directed to the legal assistant who screened the case.

To avoid a "no information," there must be a narrative of the offense stating facts sufficient to show probable cause as to all elements of the charged offense.

GUIDELINES

(1) **Correct Florida State Statute Number**

For all State Penal violations.

OR

Correct County Ordinance Number

For all County Ordinance violations.

OR

Correct City Ordinance Number

For All City Ordinance violations.

(2) **County or City Enabling Code Number**

For all State Penal Misdemeanor violations.

(3) **Signature by Arresting Officer**

(4) **Signature by a Deputy Clerk or Notary Public**

(5) **Essential Witnesses Listed if Applicable**

BAKER ACT (THE FLORIDA MENTAL HEALTH ACT)

FLORIDA STATUTES § 394.463(2)(a)2. provides a law enforcement officer with the ability to take a person who meets the criteria for involuntary examination (more commonly referred to as a "Baker Act") into custody and deliver him or her to the nearest receiving facility. A "Baker Act" is a person whose behavior, when seen by an officer leads that officer to believe the person is mentally ill and will be a danger to himself or herself or the community if he or she does not receive any care or treatment. **See § 394.463(1) for the complete definition of involuntary examination criteria**. An officer who takes a person fitting Baker Act criteria (see § 493.463(1)) into custody must deliver him or her to the nearest DCF-designated receiving facility. Such facilities provide examinations and emergency short-term treatment. The officer must then write a report detailing the circumstances under which the person was taken into custody. Officers should note that the taking of persons into custody pursuant to Baker Act criteria does not constitute arrest.

CHILD CUSTODY DISPUTES

Several scenarios present themselves to officers who are called to the scene of a child custody dispute. Many factors must be taken into consideration by an officer prior to making a decision in such a matter. The following is a synopsis of some of the more frequently encountered situations when responding to a child custody dispute and suggested courses of action for the officer.

No Court Ordered Custody / Married or Unmarried Parents—Officers may be called to the scene where one parent is alleging that the other parent is attempting to conceal the child from him or her, or flee the jurisdiction with the child. Even though there is no court order determining rights to custody, § 787.03, Interference with Custody, makes such an action a third degree felony.

If there is no court order determining custody, and one parent is attempting to leave with the child, but not flee the jurisdiction, the responding officer should attempt to maintain the status quo. That is, whoever has the child upon the officer's arrival should keep the child. When investigating such a case, the officer should ascertain the destination of the parent who is leaving with the child so as to ensure that there is no intended concealment of the child from the other parent which would violate § 787.03. It is important to note that this statute does not apply to a parent who is the victim of any act of domestic violence, believes that he or she is about to become a victim of an act of domestic violence, or believes that his or her action was necessary to preserve the child from danger to his or her welfare and thereby seeks shelter from such acts or possible acts.

Court Ordered Custody / Married or Unmarried Parents—If one of the parents has been awarded custody by a court order and the other parent is attempting to conceal the child from the custodial parent or flee the jurisdiction with the child, such concealing or removal contrary to the court order is a felony of the third degree pursuant to § 787.04, Removing Minors from State or Concealing Minors Contrary to State Agency Order or Court Order.

Child Custody Court Orders From Other States—An officer may not enforce a court order issued by another state or jurisdiction unless the court order has been domesticated, and a break order issued by a court in a Miami-Dade County jurisdiction. A domesticated order is evidenced by a signature of a Miami-Dade County judge.

Conflicting Child Custody Court Orders From Different States—If one parent has a court order from one state and the other parent has a conflicting order issued from a local Florida court, the local order does not necessarily take precedence over the other state's order. Only one of the states can have jurisdiction and the responding officer should maintain the status quo and contact the Police Legal Bureau for assistance.

"Break Orders"—If a respondent is refusing to release custody of a child pursuant to a court order, the officer must have a break order to enter a structure to enforce the court order. There can be no police enforcement unless there is a specific court order directing the Department to take action coupled with a "break order" which contains

verbiage permitting law enforcement to use whatever force necessary to gain access to the child(ren). Additionally, these orders do not authorize a party in the custody dispute to commit any crimes, such as criminal mischief or trespass, to obtain the child(ren). If a valid break order is presented and is to be executed by the officer, the officer may seek the assistance of the Miami-Dade Fire Department only for the use of fire department equipment. Miami-Dade Fire Department personnel may not assist in executing the break order. Officers should contact the Police Legal Bureau when presented with orders requesting police assistance in child custody matters.

Leaving State With Child—It is a violation of § 787.04, Removing Minors From State or Concealing Minors Contrary to State Agency Order or Court Order, for a parent, whether custodial or non-custodial, to conceal the child from the other parent or flee the state with the child in violation of a court order. However, if the court order is silent as to whether a parent may take the child out of the state and a parent leaves Florida with the child, it is probably a civil matter. The situation would become a criminal offense only if investigation revealed that the circumstances and destination indicated that parent and child would not be returning to the state and their whereabouts were intended to remain unknown. Where a parent has been awarded sole custody of a child and the other parent has no rights to the child, including no visitation rights, the custodial parent is free to leave and travel or relocate wherever he or she pleases.

Fleeing Jurisdiction With Child Via Ship Under United States or Foreign Flag—Where the parent is fleeing the jurisdiction with the child via a ship docked at the Port of Miami, regardless of whether the ship is under a United States flag or foreign flag, a police officer has the authority to board the ship to enforce a violation of state law. Additionally, the ship's departure may be delayed long enough to complete the investigation. This jurisdiction also extends to acts or omissions occurring on a ship outside the jurisdiction of waters of the state under special circumstances provided for in § 910.006, State Special Maritime Criminal Jurisdiction. This section also provides that enforcement action be administered in a manner consistent with all other federal laws and treaties, and with the cooperation of the master of the ship, if feasible. If a crime occurs on the high seas, and the state chooses to exercise jurisdiction under § 910.006, the Federal Bureau of Investigation should be contacted and advised of the circumstances of the crime, as concurrent jurisdiction may possibly exist.

Fleeing Jurisdiction With Child Via Aircraft—A police officer has police authority on an aircraft that is docked with the aircraft's passenger door open. However, the aircraft's captain has superseding authority on an aircraft once the aircraft door is sealed. On a domestic or international flight where a fleeing parent boards the aircraft with the child, the officer should seek the assistance of the F.A.A. and/or flight crew by explaining the state law violation and asking permission to board the aircraft. This assistance should be sought even though the aircraft door is open. If the aircraft door is sealed, the police officer must seek the assistance of the F.A.A. in delaying the aircraft's departure.

Court Orders From Foreign Countries—United States Code, Title 42 § 11603, requires that full faith and credit be accorded by the courts of the States and the courts of the United States to the judgment of any foreign court ordering or denying the return of the child. "Full Faith and Credit," which is provided for in Article IV, Section 1 of the United States Constitution, means that a state must accord the judgment of the court of another state the same credit that the judgment is entitled to in the courts of that state. It is recommended, in order to comply with the full faith and credit requirement, that the officer who is presented such an order review it with the same scrutiny as would be given an order issued by a Florida judge, *i.e.*, only the original or a certified copy of the order should be accepted as valid. Absent such an order, the officer should treat the situation according to the guidelines suggested in the above paragraphs.

Domestic Violence Injunction—All provisions of a domestic violence injunction are civil in nature except for those acts which violate § 741.31. The violation by the respondent of a custody arrangement outlined in the injunction will generally remain a civil matter unless one of the provisions in § 741.31 is violated in the process. If the officer determines that the circumstances of the custody dispute are civil in nature, the officer should maintain the status quo and

document the incident on the appropriate report.

It is recommended that officers contact their agency legal advisor when presented with a child custody order from a foreign country or with court orders from different jurisdictions which are in apparent conflict with each other. Also, it is important that officers closely review §§ 787.03-787.04 prior to making an arrest pursuant to either section because both contain knowledge and intent as elements of the crime. There are exemptions from prosecution under these laws, some of which are briefly noted in the paragraphs above.

CIVIL RIGHTS-FEDERAL LAW

POLICE LIABILITY UNDER FEDERAL LAW

General

Whenever any individual interferes with another's rights there is a possibility of civil or criminal sanctions. The nature and extent of the protection that either the State or Federal governments give to an individual's rights is determined by statute and case law of the particular jurisdiction.

The Federal law in this area has been termed "the Civil Rights Acts" but is actually divided into two areas, civil and criminal, each with its own unique definitions.

CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Section 1983 of Title 42, U.S. Code

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

A plaintiff who can prove actual damages in a Section 1983 suit is entitled to recover such damages from a defendant who deprived him or her of his or her civil rights.

"The only elements which need to be present in order to establish a claim for damages under the Civil Rights Act are that the conduct complained of was engaged in under color of state law, and that such conduct subjected the plaintiff to the deprivation of rights, privileges, or immunities secured by the Constitution of the United States." **Marshall v. Sawyer**, 301 F.2d 639 (9th Cir. 1962).

If you act in your official capacity you are acting under color of state (or local) law, and if your conduct results in the deprivation of any constitutionally guaranteed rights, you could be liable not only for actual damages, but for punitive damages if the element of malice is shown. Not only are improper acts committed under the color of law actionable, but also any act pursuant to local custom or usage that deprives a person of their federal constitutional rights.

You are not liable for those acts which are purely ministerial in nature, such as the serving of warrants (search or arrest) pursuant to a court order unless you exceeded your authority. If you arrest without probable cause, you could be liable. However, you will not be held liable for enforcing any law that is later declared unconstitutional. Even if the complainant was convicted in state court in connection with a transgression (*e.g.*, resisting arrest, burglary, or any crime incidental), this is not an available defense which shields you from liability; defenses available are a matter of Federal law and policy. States cannot create defenses to the Federal Civil Rights Act. Good faith and probable cause are defenses under a charge of false arrest brought under § 1983 and prevalent tort law.

The act complained of need not have been willfully committed for liability to attach, nor is it necessary to prove specific intent to deprive the plaintiff of a federal right.

All causes of action arising out of § 1983 must be for those acts committed by the officer under color of law, regulation, custom, or usage.

CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS–DEPRIVING PERSONS OF RIGHTS OR PRIVILEGES

Section 1985 of Title 42, USC

(3) "If two or more persons in any State or Territory conspire…for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges

and immunities under the laws...in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

This sanction deals with conspiracies to interfere with constitutionally guaranteed rights. It differs from § 1983 in that it sanctions conspiracies of either public officials or private persons. Conspiracy necessarily involves two or more persons and a successful completion of the conspiracy is not essential, but rather an overt act in furtherance of the conspiracy injuring a person or depriving him or her of property or the exercise of any rights or privileges of a citizen of the United States is compensable. There must also be an intentional or purposeful design to deprive the citizen of any of his or her secured rights.

CRIMINAL LIABILITY

Section 242 of Title 18, USC

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death."

The Civil Rights Act of 1871 is civil in nature and the remedies include money damages (nominal, compensatory, and punitive), injunctions and declaratory judgments. Title 18 deals with criminal sanctions for some of these same types of illegal activities, and the courts read this section in conjunction with civil sanctions.

There are two ways you can be liable when your actions deprive a person of a right, privilege, or immunity protected by the Constitution or laws of the United States:

(1) If your actions are willful, *i.e.*, you intentionally deprive somebody of his rights; or

(2) By willfully subjecting any person to a different punishment or penalty because such person is an alien, or because of their race or color, other than is prescribed for the punishment of citizens.

A violation of § 242 may subject the offender to a sentence of death, imprisonment, a fine, or both imprisonment and a fine.

Examples of actionable deprivations under (1) above:

(a) Arrest made without probable cause or an arrest warrant.

(b) Illegal search and seizure.

(c) Unlawful assault or battery.

(d) Wrongful homicides.

In all of the above actions there must be an element of willfulness on the part of the officer, but the fact that the defendant officer may not have been thinking in constitutional terms is not material where his aim was not to enforce local law, but to deprive a citizen of a right and that right was protected by the Constitution.

Section 241 pertains to police officers acting under color of law, as well as to private citizens, but it differs from § 242 in two major respects. First, § 241 is applicable only to a conspiracy involving two or more persons. Secondly, § 241 pertains only to citizens of the United States, whereas § 242 pertains to any person within federal jurisdiction.

A violation of § 241 is a felony which may subject the offender to a sentence of death, imprisonment, a fine, or both imprisonment and a fine.

The county may assume responsibility for compensatory damages, but it is highly unlikely that any local government would

be authorized to pay any part of a judgment or claim which is punitive.

COURT ORDERS

Recently officers in the field have been presented with legal documents upon arrival at the scenes of landlord/tenant or child custody disputes. Officers have been asked to take enforcement action with respect to these documents. These documents are usually agreements drawn up between a landlord and tenant to delineate their rental agreement or between parents delineating their custodial rights. Such documents are not court orders. **They are civil agreements which cannot be enforced by police officers.**

Officers are reminded that they can only enforce court orders that have been properly executed by Florida courts. However, this does not apply to injunctions for protection from domestic violence. Domestic violence injunctions issued by a foreign state must be accorded full faith and credit by the courts of this State as is required by federal law. *See* Section 741.315(2), Fla. Stat.

Additionally, officers are reminded that even when presented with a valid Florida court order for child custody matters, the order must contain "break order" language and/or other language specifically authorizing law enforcement officers to take particular action with respect to the matter. Typically, sample "break order" language may read as follows: "Law enforcement officers are authorized to use all necessary force to include breaking and entering the residence located at [specific address is necessary here] to remove the minor child and deliver said minor [minor's name stated here] to the custody of the Petitioner." Additional information regarding break orders can be found in this index under the topic of "Child Custody Disputes."

COURT PROCEDURES

COMPLAINTS–MISDEMEANORS

How a Citizen Can File a Misdemeanor Complaint

The complainant must appear in person at one of the offices of the State Attorney and be prepared to give a statement and sign a complaint under oath. If a police report was made, the report number should be given to the person taking the complaint at the State Attorney's Office at the time that the complaint is made.

DEPOSITIONS

General

Department members should realize that when the department and/or individual members are being sued, our attorneys must depose the officers concerned or any witnesses involved in the action. When the officers are defendants, no subpoena is necessary for their appearance at a deposition being conducted by our own attorneys. It is in the interest of the officer to appear and render whatever assistance may be required to the attorney representing the department.

If department personnel are subpoenaed by the plaintiff's attorney, failure to appear can result in the court imposing sanctions, such as striking any affirmative defenses, a contempt of court charge and mandatory payment of expenses (attorney fees, cost of court reporter, etc.). Failure to attend a deposition may subject departmental personnel to disciplinary action by the department.

If a deposition will be inconvenient it can easily be postponed by phoning the attorney asking for the deposition and arranging for a later time and date. Notice of change is the police officer's responsibility and must be given as far in advance as possible.

At the Deposition

Officers who are giving a deposition should wait until they have been asked to identify themselves for the reporter and, after giving their name and other pertinent information, should state:

"I do not waive my right to read and sign this deposition."

The court reporter will have the transcript made of the deposition. The transcript will later be submitted to the officer for reading, necessary corrections, and the officer's signature. If convenient, the officer may go to the office of the court reporter and sign the deposition. Otherwise, it is the responsibility of the court reporter to submit the deposition to the officer for his or her

signature. Cooperation by all persons involved is desirable.

Pre-trial Briefings

At present, cases in County Court are assigned to prosecutors 10 days before the scheduled trial. Therefore, if a police officer feels that in his or her judgment a particular case warrants extensive preparation, the police officer should call the State Attorney's Office, County Court Division the week before the trial and ask to speak to the prosecutor who is handling his or her case. If the prosecutor is not available, leave your name and telephone number so he or she can return your call.

Check-In

Prior to a trial, police officers should check-in with the prosecutor in the courtroom. Cases have been dismissed by the presiding judge when, for example, the case was announced and the police officer was in the hallway or testifying in another courtroom and the prosecutor did not know where the police officer was. All prosecutors are told to report to their courtroom fifteen (15) to thirty (30) minutes before the calendar is called.

Drug Cases

In order to successfully prosecute anyone charged with possession of a controlled substance, it is necessary to establish the existence of the corpus delicti. Corpus delicti is the objective proof that a crime has been committed. It is necessary that a Crime Lab Technician testify in court as to the chemical composition of the contraband seized. Therefore, police officers should ensure that the Crime Lab number or the name of the Crime Lab technician who ran the chemical analysis is reported to the State Attorney's Office prior to trial. This will allow the State Attorney's Office the opportunity to subpoena the lab technician. Always bring marijuana to court for trial. Specifically, when you are subpoenaed to attend a trial for possession of marijuana, you should have the evidence in your possession prior to entering the courtroom.

Court Appearances

Many cases are dismissed because police officers do not appear in court. If an officer is unable to appear as scheduled, he or she should make sure the State Attorney's Office is notified in sufficient time to seek a continuance.

Jury Duty

Pursuant to Florida Statutes § 40.013(2)(b), a sheriff or deputy sheriff is not eligible to be a juror. Accordingly, all members of the department who are deputy sheriffs are exempt from jury duty. Federal Court proceedings are different and law enforcement officers are not automatically exempted from serving as Federal jurors.

In order to establish a uniform procedure for returning jury notices which have been served on deputy sheriffs, any deputy sheriff who receives a juror notice should promptly forward the same to Court Liaison. It will be returned with an appropriate letter to the Clerk of Court indicating that the person receiving the notice is a deputy sheriff and therefore, not eligible to serve as a juror.

This procedure will apply in both civil and criminal cases in Florida courts.

Subpoena Duces Tecum

Department members are advised that whenever they appear at depositions involving a matter where either the State of Florida or Miami-Dade County is a party and have with them departmental records, said records shall not ordinarily be relinquished to opposing counsel for inspection or copying. The use of such records should be limited to refreshing the memory of the deponent.

The assistant state attorney, assistant county attorney, or other attorney appearing on behalf of the State of Florida or Miami-Dade County may consent to the production and/or copying of departmental records. Under no circumstances are homicide reports or reports pertaining to Internal Review investigations to be given to opposing counsel without prior consultation with the Police Legal Bureau or other attorneys appearing on behalf of Miami-Dade County.

Opposing counsel should be advised to file appropriate motions for discovery and production with the court having trial jurisdiction to obtain the original or copies of departmental records.

Summons

Officers may be sued personally for damages arising out of the performance of their duties. If the lawsuit is not answered properly within the required time, a default

judgment may be entered against the officer involved.

When a default judgment is entered as a result of the officer's inaction to give notice regarding the lawsuit, the County is not required to indemnify the officers concerned. This is because it was the officer's negligence which prevented the County from providing an Answer to the Summons and Complaint resulting in the default.

In order to be personally protected against civil suits arising out of the performance of their duties, department members must forward any papers served upon them to the Police Legal Bureau immediately for appropriate action. In addition, whenever there is a follow-up of any kind, the Police Legal Bureau should be consulted.

DISCOVERY OBLIGATIONS

Once criminal charges have been filed against an individual, the State Attorney (and, by extension, the police agency who brought the charges to the State Attorney's Office) is obligated to provide certain information to the defendant. Failure to comply with discovery requirements may subject the State to a number of sanctions by the Court, from the exclusion of evidence or testimony to the dismissal of charges.

The State's first obligation in discovery is to provide the names and addresses of *all* witnesses who have *any* information about the case. This includes witnesses who will testify for the state and witnesses who will testify favorably for the defendant (sometimes referred to as *Brady* material). In an auto theft case this includes the owner of the vehicle and the person last in possession of the vehicle, if not the owner. In a credit card fraud case, this includes the credit card holder. In a case involving criminal use of personal identification information, this includes the person whose personal information was used. In a check forgery case, it includes the bank account holder, not just the bank teller who dealt with the defendant. All of these witnesses and their contact information should be listed on the back of the pink copy of the arrest affidavit, in addition to being included in the police report.

The State must also provide any written statements made by any witnesses on the case. The term "statement" is specifically intended, by Rule 3.220 of the Florida Rules of Criminal Procedure, to include all police and investigative reports of any kind prepared for and in conjunction with the case. The State must advise the defense of any tangible papers or objects that were obtained from or belonged to the defendant. If any information has been provided by a confidential informant, we must disclose this. The actual disclosure of the identity of the CI is something that would be decided by the court at a later hearing; this is just an initial indication that a CI provided some information in the case. If there has been electronic surveillance of the conversations or premises of the defendant, the State must notify the defendant and provide any documents relating to the surveillance. The State must also provide any documents relating to search and seizure (e.g., search warrants, consent to search forms) and reports or statements of any experts. The defense must be notified if the State intends to use any tangible papers or objects that were *not* obtained from the defendant at trial or in a hearing. Likewise, if there are any papers, objects or substances in the possession of law enforcement that could be tested for DNA, the defense must be notified.

A critical aspect of discovery is the prosecution's obligation to advise the defense of any statements made by a defendant or co-defendant, whether oral, written or recorded. This requirement is not limited only to inculpatory statements made by a defendant (admissions or confessions), but includes *any and all* statements. "Statements" could be the defendant's explanation of what he or she says happened, their involvement or lack of involvement in events that occurred, or perhaps a blanket denial of any involvement in the crime. If a defendant's statement is only oral and hasn't been recorded in any way, the State must provide a summary of the statement and provide the name of the person or persons in whose presence the statement was made.

The State Attorney's Office cannot turn over any of these required materials if they are in the possession of the police agency and have not been provided . However, the prosecution *will* be deemed to be in possession of (and know about), anything in the police agency's possession that is required to be turned over in discovery, and will be held to account for anything that is not turned over. Therefore, it is imperative that all of the required information be provided

to the State Attorney's Office at the time the case is presented for prosecution or when the item is created or discovered, whichever occurs first.

Testifying in Court

In a case tried by a jury, the jury is the trier of fact and decides the weight and credibility of the evidence. At a bench trial, the judge performs these functions. A jury's or a judge's decision as to the weight to be given to any particular evidence or the credibility of any witness is controlled in large part by the demeanor of the witness testifying. Absolute professionalism is the key and the following are some hints which may affect the weight which the trier of fact will give your testimony:

1. Know your case. Complete familiarity with the facts of the case on which you are testifying is a prime prerequisite. If you have read all your reports and are familiar with the facts contained therein, defense counsel will be unable to confuse you on the facts in your case. When an officer is unfamiliar with the case about which he is testifying, it is usually apparent to the jury and the weight given to the officer's testimony is thereby diminished. If a question is asked by the defense attorney which you do not understand, ask the attorney to repeat it or inform the court that you do not understand the question. If you do not know the answer to the question, say so; do not try to bluff your way through the question.

2. Personal appearance and attitude are very important and will affect the weight given to your testimony by the jury. Employees should wear their police uniform, or nonuniform attire of conservative color and design. When testifying do not chew gum or fidget in your seat. Never be sarcastic or hostile when asked questions by the defense attorney. You are impartial and are testifying as a disinterested witness whose sole purpose is to help the trier of fact (jury) ascertain the truth. Always speak and act with respect to the defense attorney and the court.

3. Never lose self control or allow yourself to be badgered by the defense attorney. Badgering is a common tactic used by defense lawyers to make the officer appear aggressive and antagonistic. This takes the jury's mind off the issues of the case. If the defense attorney starts to scream at you, always maintain normal modulation in your voice. The jury will be very quick to recognize the aggressor and their sympathy will be with you.

4. Always direct your attention to the person asking the question. When answering, speak loudly and clearly and direct your answers back toward the jurors in a jury trial, or toward the judge in a bench trial. When an objection is made, stop talking and wait until the court rules on the objection. Never try to slip an answer in before the court has made its ruling.

5. Never volunteer information outside or beyond the answer to the question that is asked of you. All you would be doing is providing the defense attorney with additional material with which he can cross- examine you. Do not use slang or jargon which the jury may not understand. Remember, you are a professional who is merely trying to assist in finding the truth.

CRIMINAL LIABILITY

Special Exceptions

There is no legal exception for officers or citizens who commit unlawful acts. The statutory description of each crime lists the elements of the crime, the acts and mental state required for conviction. No violation occurs unless the defendant has acted in a manner and with the mental state that constitutes all the enumerated elements. A majority of the felonies listed in the Florida State Statutes require criminal intent as one of the elements. When the necessary intent is lacking, there is no violation. For example, the statutory crime of burglary is not committed unless the person who enters has the intent to commit some crime inside the premises.

However, some felonies and a majority of misdemeanors do not have intent as an element. Merely doing the stated act or series of acts constitute a violation of the law. In the above example, the crime of burglary would not have been committed absent intent, however, without legal authority, the crime of trespass occurred.

There are a number of special legal exceptions, exemptions, and defenses available in specific cases. One example is a legally issued court order directing a law enforcement officer to search a designated

premise. Without permission or the authority of a judge, the entry of the premises, without the permission of the owner, would constitute criminal trespass. The court order, therefore, is a legal exception in this example.

The controlled substance act is another special exception to the rule. There is a statutory provision exempting law enforcement officers from prosecution for possession of a controlled substance when the possession is part of a supervised investigation.

Therefore, any person or law enforcement officer who commits a prohibited act without a legal exception, exemption or defense is subject to criminal prosecution.

If, in the course of an ongoing investigation, department members feel that activities that constitute criminal violations are likely to occur, they should check with their supervisors and the Police Legal Bureau for advice.

DNA SAMPLES TAKEN FROM ARRESTEES

The Supreme Court of the United States recently held in **Maryland v. King**, No. 12-207 (June 3, 2013) that officers making an arrest, supported by probable cause to hold an arrestee for a violent or serious offense, may take DNA "buccal" (inside cheek) swabs from an arrestee under the Fourth Amendment.

In **King**, the defendant was arrested on first and second-degree assault charges. After arrest, the defendant was placed in a Maryland facility and all routine booking procedures associated with arrestees involved in violent crimes were completed. This procedure also included taking a DNA mouth swab. The results of the DNA swab were found to match DNA taken from a rape victim. The defendant filed a motion to suppress, arguing that the Maryland DNA collection law violated the Fourth Amendment. The Maryland Court of Appeals held that DNA identification of arrestees is impermissible and the U.S. Supreme Court granted certiorari. In a 5-4 decision, the Supreme Court of the United States reversed the ruling and held that DNA taken from the defendant was a lawful seizure, in compliance with the Fourth Amendment.

The Court listed four reasons supporting reversal: First, the Court considered DNA testing a critical element in identifying an arrestee. The Court found DNA testing was unmatched in identifying arrestees. "It is a common occurrence that people detained for minor offenses can turn out to be the most devious and dangerous criminals." King, p. 12. Accordingly, the Court found that DNA is similar to fingerprinting or photographing an arrestee, which are all used for the identification of an arrestee. Second, the Court also found DNA testing to be a useful resource for law enforcement to "know the type of person who they are detaining." *Id.*, p. 14. Such knowledge allows law enforcement the ability to identify arrestees with prior violent or serious offenses, and act accordingly. Third, the Court considered DNA testing as a future way to prevent risks to law enforcement, and society. Fourth, the Court considered DNA testing crucial for arrestees with past history for committing violent or serious offenses. DNA testing may allow courts, and law enforcement to easily make an assessment of the dangerousness of an arrestee, and determine what legal actions need to be taken from there. For example, denying bond to arrestees that have proven to be dangerous in the past.

The ruling in **King**, however, does not change current Florida DNA collection laws. **King**, approved, but did not mandate, the taking of DNA samples from those arrested for serious or violent crimes.

DOG ALERTS

The United States Supreme Court ruled in **Florida v. Jardines**, that although a police officer may enter the curtilage of a house and knock on a front door like any private citizen, the officer must first obtain a warrant to use a drug sniffing dog on the front porch or curtilage of a home.

In **Jardines**, 133 S.Ct. 1409 (2013) the Miami-Dade Police Department received a Crime Stoppers tip that the home of Jardines was being used to grow marijuana. One month later, a police detective went to the residence and observed for approximately fifteen minutes, noting that there were no vehicles in the driveway; that the window blinds were closed with no activity

inside the house; and that the air conditioning unit had been running constantly, without switching off. According to the detective in the case, in a hydroponics lab for growing marijuana, high intensity light bulbs are used which create heat. This causes the air conditioning unit to run continuously without cycling off. Based on the aforementioned circumstances, a drug detection dog was called to the scene to sniff the front door of the residence. The dog alerted positively to the odor of narcotics. The detective then went up to the front door for the first time and smelled marijuana. Consequently, the detective prepared an affidavit and applied for a search warrant, which was issued by a magistrate. A subsequent search confirmed that marijuana was being grown inside the home and the defendant, Jardines, was arrested.

The United States Supreme Court based its decision in **Jardines** on the fact that a police officer entered the curtilage, and thus entered the private property of the defendant, with a drug sniffing dog. The Court observed that while license, invitation, or permission traditionally exists for wanted or unwanted visitors to enter the curtilage of a home to knock on the front door, to see a visitor "exploring the front path with a metal detector or marching his bloodhound into the garden …, would inspire most of us to- well, call the police."

Jardines follows the reliance on the traditional notion of property rights recently delineated in **U.S. v. Jones** during the last term of the United States Supreme Court, in which the Supreme Court found that law enforcement could not trespass on the property of a vehicle to place a GPS without getting a [timely] warrant. The Court also discussed **Kyllo v. United States**, in which the government, while committing no physical trespass, used a thermal-imaging device to detect heat emanating from a private home. **Kyllo v. United States**, 533 U.S. 27, 121 S. Ct. 2038, 150 L.Ed.2d 94 (2001). In that case, the Court held that the surveillance of a home is a search where "the Government uses a device that is not in the general public use" to "explore details of the home that would previously have been unknowable without physical intrusion," even when the government agent utilizes the device from a location the agent could lawfully be. Likewise, in the **Jardines** case, although the government agent could enter the curtilage like any private citizen, the use of a drug detection dog is akin to an instrument not available to the general public and therefore could not be used to explore details of the home otherwise unknowable.

In another dog alert case, on February 19, 2013, the United States Supreme Court reversed the Florida Supreme Court's holding in **Florida v. Harris**, ruling that the reliability of a drug detection dog is based on whether all the facts surrounding the dog's alert, viewed through the "lens of common sense," would make a reasonably prudent person think that the search would reveal contraband or evidence of a crime. **Florida v. Harris**, 133 S.Ct. 1050, 1058. A court must make this evaluation based on the totality of circumstances, rather than on rigid rules or bright line tests.

The facts of **Harris** are as follows: during a routine traffic stop for an expired license plate, defendant Harris appeared nervous, was shaking, unable to sit still, breathing rapidly, and had an open beer can. When Harris refused consent for a search of his truck, the law enforcement officer retrieved his trained drug detection dog for a "free air sniff." The dog alerted to the driver's side door handle. Although a subsequent search of the truck did not reveal the drugs for which the dog alerted, a significant amount of methamphetamine ingredients were found. Harris was arrested.

While on bail, Harris was again stopped by the same officer, for a broken tail light. Once again, the dog alerted to the driver's side door handle. This time, the search revealed nothing.

At a motion to suppress the evidence found during the first stop, the training of the dog and officer was not an issue. Instead, defense counsel focused on the dog's certification and field performance, particularly in light of the dog's alert during the second stop prior to a search which revealed no drugs.

The trial court found that there was probable cause for the search and denied the motion to suppress. Although the District Court of Appeals affirmed the trial court, the Florida Supreme Court reversed, holding that the alert of a trained and certified drug detection dog "is simply not enough" to constitute probable cause to search. The Florida Supreme Court further required

significantly more specific evidence, including particularly the dog's performance history, in order to establish the reliability of the dog's alert as the basis for a probable cause search.

The United States Supreme Court found that the Florida Supreme Court's opinion had created a strict evidentiary checklist which was inconsistent with the "flexible, common sense standard" of probable cause. **Harris**, at 1053, citing **Illinois v. Gates**, 462 U.S. 213,239, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). In reversing the Florida Supreme Court, the United States Supreme Court stressed that in order to determine whether all the facts regarding the dog's alert would make a reasonably prudent person believe that contraband or evidence of a crime was present, a court must simply consider the totality of the circumstances.

Therefore, a dog's certification or successful completion in a training program that evaluates its proficiency in locating drugs can be, subject to any conflicting evidence, sufficient to consider the dog's alert as probable cause to search. Courts should evaluate all proffered evidence to determine the circumstances constituting the basis of the alert's reliability. As the Court also noted, "[A] sniff is up to snuff when it meets that test." *Id.*, at 1058.

Thus, to facilitate determination of the "totality of circumstances," it is imperative to document all circumstances surrounding a search, as well as maintain all records regarding a drug detection dog in accordance with department policy.

DOMESTIC VIOLENCE

Enforcement of Injunctions

Florida Statutes allow warrantless arrests when a police officer has probable cause to believe that a person has committed an act of domestic violence in violation of an injunction for protection against domestic violence. "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit. **§ 741.28(2), Fla. Stat.**

In order for an arrest to be made, the police officer must ensure that the respondent was properly served with the domestic violence injunction. In Miami-Dade County, officers can verify the validity and service of an injunction by calling the Miami-Dade Police Department Warrants Bureau after business hours and on weekends and holidays. Since § 741.30 and § 901.15(6) and (7) are the enabling statutes, the statute number to be used on the arrest affidavit is § 741.31, a first degree misdemeanor. If no arrest is made, the officer must still advise any victim of alleged domestic violence of the existence of a domestic violence center, provide a copy of the F.D.L.E. notice of rights and remedies, and must make a written police report. **See also § 901.15(6); § 901.15(7), Fla. Stat.**

Recognition of Foreign Protection Orders–§ 741.315, Fla. Stat.

Federal law requires that injunctions for protection from domestic violence issued by a foreign state must be accorded full faith and credit by the courts of this state. Law enforcement officers in the State of Florida must enforce the injunctions as if they were issued by a Florida court. A law enforcement officer who receives a valid injunction for protection from domestic violence from another state must serve that order on the respondent if the respondent has not yet been served, and once it has been served, enforce all of its terms, except those relating to child custody, visitation and support. In order for the provisions regarding child custody, visitation and support to be enforced by the law enforcement officer, the petitioner must have the foreign order domesticated. A "pick-up order" or "order of bodily attachment" may be enforced without domesticating the foreign order.

Before enforcing a foreign protection order, the law enforcement officer should confirm the identities of the parties and review the order on its face to ensure that the order has not expired. Full faith and credit does not condition enforcement of the foreign protection order upon presenting the law enforcement officer with a certified or true copy of the foreign protection order.

Prior to enforcing the foreign order for protection, the law enforcement officer must

use reasonable efforts to verify that the respondent has been served. Ways that service may be verified include:

1. The petitioner states under oath that to the best of the petitioner's knowledge, the respondent was served with the order of protection because the petitioner was present at the time of service; the respondent told the petitioner that he or she was served; another named person told the petitioner that the respondent was served; or the respondent told the petitioner that he or she knows of the content of the order and the date of the return hearing.

2. The respondent states under oath that he or she was or was not served with the order.

Foreign orders for protection are valid for the period stated on the face of the order. The absence of an expiration date is understood to mean that the order is valid and enforceable until modified by the court.

It is a misdemeanor of the first degree for a person acting under § 741.315 to intentionally provide to a law enforcement officer a foreign order for protection knowing that such order is false or invalid, or to deny having been served with such an order when that person has in fact been served.

ELECTIONS ISSUES

Can a Police Officer Be in a Polling Place During Voting Hours?

Police officers cannot be in a polling place except to vote or with the permission of the precinct clerk. §102.101, Fla. Stat.

Can the Media Be in a Polling Place During Voting Hours?

The media cannot be inside the polling place during voting hours. Members of the media, along with their cameras, are permitted to be inside the polls to observe before the polls open and again after they close. It is also an Elections Department policy to allow media to stand in the doorway of a precinct and film voters voting, as long as ingress and egress is not being obstructed by their presence and they don't try to interview voters.

How Far From the Polling Place Must People Who Are Soliciting (e.g. Media Conducting Exit Polls, Campaign Supporters Carrying Signs or Handing Out Leaflets) Remain?

Florida Statutes Section 102.031(4)(a) mandates that voters may not be solicited inside the polling place or within 100 feet of the polling place. The clerk or supervisor shall designate the no-solicitation zone and mark the boundaries. **NOTE: Exit-polling activities are EXEMPT from this rule pursuant to the ruling in CBS Broadcasting, Inc. v. Cobb, 470 F.Supp.2d 1365 (S.D. Fla., 2006)**. Exit-polling activities are permitted outside of the polling place. The term "exit poll" refers to the collecting of data from a random sample of voters at a sample of polling places on election day. Id at 1367.

Is Photography Permitted in the Polling Room or Early Voting Area?

No, photography is prohibited in the polling room or early voting area. §102.031(5), Fla. Stat.

Who is in Charge of a Precinct?

By statute, the Precinct Clerk is in charge over the Assistant Clerk, Poll workers, Poll Inspectors, and Poll Deputy. Further, the Precinct Clerk is the person who makes decisions regarding the precinct operations.

Can There Be Observers or Monitors in the Polling Place During the Time the Polls Are Open?

Official poll watchers may be inside a polling room during voting hours. §101.131, Fla. Stat. Poll watchers may not interact with voters. A political committee formed for the specific purpose of expressly advocating the passage or defeat of an issue on the ballot, each political party, and each candidate may have one watcher in each polling room or early voting area at one time during the election. To become an official poll watcher, each political committee, each party and each candidate requesting poll watchers must designate in writing two weeks before the election the names of their poll watchers. The Supervisor of Elections must approve all poll watchers 7 days be-

fore early voting begins and each precinct receives a list of the designated and approved poll watchers for that precinct. Police officers, even when off-duty, cannot be designated as poll watchers.

CAN OFFICERS WHO ORDINARILY WORK IN A BUILDING (E.G. STEPHEN P. CLARK GOVERNMENT CENTER) REMAIN THERE DURING VOTING HOURS WHEN THE BUILDING IS ALSO BEING USED AS A VOTING PRECINCT?

Officers can still work in the building but should not be anywhere near the area where the voting is taking place.

DOES A POLL DEPUTY HAVE ARREST POWERS?

A Poll Deputy is appointed as a special deputy sheriff on election day for the purpose of maintaining order at the polls. However, a Poll Deputy has no arrest powers.

IN CASE OF AN EMERGENCY WHERE THE POLLING PLACE BECOMES UNAVAILABLE (E.G. THERE IS A BUILDING FIRE DURING THE TIME THE POLLS ARE OPEN), CAN THE POLLING FLACE BE MOVED?

The Elections Supervisor must designate a new polling place and shall post a notice at the old polling place advising the voters of the new location. §101.71(3), Fla. Stat.

ARE DOCUMENTS REGARDING THE ELECTION AND ELECTION PROCEDURES PUBLIC RECORD?

Officers are reminded that any documents, reports, memorandums, etc. regarding the elections are all public record.

ELEMENTS OF OFFENSES

The following section includes outlines which list elements of various state offenses. These outlines were developed from those elements listed in the Florida Standard Jury Instructions for Criminal Cases. Facts establishing each of these elements must be included in the arrest affidavit and proven later in court during the prosecution of the defendant.

In the sections in the outlines with the parentheses ( ), the name of the defendant, victim, alleged crime, property description, controlled substance, etc., should be entered or used as applicable. Venue, the fact that the criminal offense occurred in a specified county in order to prove jurisdiction, must always be alleged and proven. Because venue is a required element for every offense, it is not separately listed in the outlines.

ASSAULT, § 784.011

1. (Defendant) intentionally and unlawfully threatened, either by word or act, to do violence to (victim).

2. At the time (defendant) appeared to have the ability to carry out the threat.

3. The act of (defendant) created in the mind of (victim) a well-founded fear that the violence was about to take place.

ASSAULT OF LAW ENFORCEMENT OFFICER, ETC., § 784.07

1. (Defendant) intentionally and unlawfully threatened, either by word or act, to do violence to (victim).

2. At the time, (defendant) appeared to have the ability to carry out the threat.

3. The act of (defendant) created in the mind of (victim) a well-founded fear that the violence was about to take place.

4. (Victim) was at the time a (law enforcement officer, etc.)

5. (Defendant) knew (victim) was a (law enforcement officer, etc.)

6. At the time of the assault (victim) was engaged in the lawful performance of his or her duties.

AGGRAVATED ASSAULT, § 784.021

1. (Defendant) intentionally and unlawfully threatened, either by word or act, to do violence to (victim).

2. At the time (defendant) appeared to have the ability to carry out the threat.

3. The act of (defendant) created in the mind of (victim) a well-founded fear that the violence was about to take place.

4.a. The assault was made with a deadly weapon.

b. The assault was made with a fully formed, conscious intent to commit (charged crime) upon (victim).

If 4.a. is alleged, it is not necessary for the State to prove that the defendant had an intent to kill.

If 4.b. is alleged, define the crime charged.

A weapon is a “deadly weapon” if it is used or threatened to be used in a way likely to produce death or great bodily harm.

AGGRAVATED BATTERY, § 784.045

1.a. (Defendant) intentionally touched or struck (victim) against his will; or

b. (Defendant) intentionally caused bodily harm to (victim).

2.a. (Defendant) in committing the battery knowingly or intentionally

(1) caused great bodily harm to (victim); or

(2) caused permanent disability to (victim); or

(3) cause permanent disfigurement to (victim); or

b.(Defendant) in committing the battery used a deadly weapon.

3. The battery victim was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.

A weapon is a "deadly weapon" if it is used or threatened to be used in a way likely to produce death or great bodily harm.

BATTERY, § 784.03

1.a. (Defendant) intentionally touched or struck (victim) against his or her will; or

b. (Defendant) intentionally caused bodily harm to (victim).

BATTERY OF LAW ENFORCEMENT OFFICER, ETC., § 784.07

1. (Defendant) intentionally

a. touched or struck (victim) against his or her will; or

b. caused bodily harm to (victim)

2. (Victim) was a (law enforcement officer, etc.)

3. (Defendant) knew (victim) was a (law enforcement officer, etc.)

4. (Victim) was engaged in the lawful performance of his or her duties when the battery was committed against him or her.

BURGLARY, § 810.02

l. (Defendant) (entered/remained in) a (structure/conveyance) owned by or in the possession of (victim).

2. (Defendant) did not have the permission or consent of (victim), or anyone authorized to act for him or her, to (enter/remain in) the (structure/conveyance) at the time.

3. At the time of (entering/remaining in) the (structure/conveyance) (defendant) had a fully-formed, conscious intent to commit the offense of (allege crime) in that (structure/conveyance).

NOTE: The entry necessary need not be the whole body of the defendant. It is sufficient if the defendant extends any part of the body far enough into the [structure] [conveyance] to commit (crime alleged).

NOTE: Allege any aggravating factors, as applicable, such as the defendant committed an assault or battery upon a person, that the defendant was armed, or that someone was in the structure or conveyance at the time of the offense. (This section is for enhanced penalties, depending on the case.)

CARRYING CONCEALED WEAPON OR FIREARM, § 790.01

1. (Defendant) knowingly carried on or about his or her person (weapon alleged).

2. The (weapon alleged) was concealed from the ordinary sight of another person.

CRIMINAL MISCHIEF, § 806.13

1. (Defendant) injured or damaged (property description).

2. The property injured or damaged belonging to (person).

3. The injury or damage was done willfully and maliciously.

NOTE: Among the means by which property can be injured or damaged under the law is the placement of graffiti on it or other acts of vandalism to it.

DEALING IN STOLEN PROPERTY (FENCING), § 812.019(1)

1. (Defendant) (trafficked in/endeavored to traffic in) (property alleged).

2. (Defendant) knew or should have known that (property alleged) was stolen.

DEALING IN STOLEN PROPERTY (ORGANIZING), § 812.019(2)

1. (Defendant) (initiated/ organized/ planned/ financed/ directed/ supervised/ managed) the theft of (property alleged).

2. (Defendant) trafficked in the (property alleged).

NOTE: The term "traffic" means to sell transfer, distribute, dispense, or otherwise dispose of property. It also means to buy, receive, obtain control of, or use property with the intent to sell, transfer, distribute, dispense or otherwise dispose of that property.

DRUG ABUSE–DELIVERY, POSSESSION WITH INTENT TO DELIVER, OR MANUFACTURE WITH INTENT TO DELIVER DRUG PARAPHERNALIA, § 893.147(2)

1. (Defendant) (delivered/ possessed with intent to deliver/ manufactured with

intent to deliver) drug paraphernalia (describe paraphernalia).

2. (Defendant) had knowledge of the presence of the drug paraphernalia.

3. (Defendant) knew or reasonably should have known that the drug paraphernalia would be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, in inject, ingest, inhale or otherwise introduce into the human body (allege specific substance).

DRUG ABUSE–POSSESSION, § 893.13(1)(f)

1. (Defendant) possessed a certain substance.

2. The substance was (allege specific controlled substance).

3. (Defendant) had knowledge of the presence of the substance. Note: this issue is currently in litigation. Upon resolution, the Police Legal Bureau will prepare and distribute a Legal Bulletin on the subject.

NOTE: With all drug abuse offenses, it is necessary to determine from the schedules in § 893.03 the identity of the applicable controlled substance as the penalties vary depending on the identity of the controlled substance.

DRUG ABUSE–POSSESSION OF DRUG PARAPHERNALIA, § 893.147(1)

1. (Defendant) used or had in his or her possession with intent to use drug paraphernalia (describe alleged paraphernalia).

2. (Defendant) had knowledge of the presence of the drug paraphernalia.

DRUG ABUSE–SALE, MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT, § 893.13(1)(a)

1. (Defendant) (sold/purchased/manufactured/delivered/possessed with intent to sell/ possessed with intent to purchase/ possessed with intent to manufacture/possessed with intent to deliver) a certain substance.

2. The substance was (name of controlled substance).

3. (Defendant) had knowledge of the presence of the substance. Note: this issue is currently in litigation. Upon resolution, the Police Legal Bureau will prepare and distribute a Legal Bulletin on the subject.

ESCAPE, § 944.40

1. (Defendant) was

a. under arrest and in the lawful custody of a law enforcement officer; or

b. convicted of a crime and sentenced to a term of imprisonment and committed to (institution alleged) by a court.

2. While a prisoner, (defendant) was

a. confined at (institution name); or

b. being transported to or from a place of confinement; or

c. working on a public road.

3. (Defendant) escaped or attempted to escape by (describe actions of defendant), intending to avoid lawful confinement.

POSSESSION OF BURGLARY TOOLS, § 810.06

1. (Defendant) has in his or her possession a (tool/machine/ implement) .

2. (Defendant) intended to use the (tool/ machine/implement) in the commission of a burglary or trespass.

3. (Defendant) intended to commit a burglary or trespass.

4. (Defendant) did some overt act toward the commission of a burglary or trespass.

RESISTING OFFICER WITH VIOLENCE, § 843.01

1. (Defendant) knowingly and willfully (resisted/obstructed/opposed) (victim) by (offering to do him or her violence/doing violence to him or her).

2. At the time (victim) was engaged in the (execution of legal process/lawful execution of a legal duty).

3. At the time (victim) was an officer.

RESISTING OFFICER WITHOUT VIOLENCE, § 843.02

1. (Defendant) (resisted/obstructed/opposed) (victim).

2. At the time (victim) was engaged in the (execution of legal process/lawful execution of a legal duty).

3. At the time (victim) was an officer.

4. Without offering or doing violence to the officer.

NOTE: It is recommended that the officer when charging someone for either of the two "Resisting Officer" offenses to describe what he or she was doing and how the defendant's actions hindered him or her.

RETAIL THEFT, § 812.015(1)

1. (Defendant) **knowingly**:

Give a, b, c, or d as applicable.

a. (took possession of, or carried away merchandise).

b. (altered or removed a label or price tag from merchandise).

c. (transferred merchandise from one container to another).

d. (removed a shopping cart from a merchant's premises).

2. He or she intended to deprive the merchant of possession, use, benefit, or full retail value of the (merchandise) (shopping cart).

ROBBERY, § 812.13

1. (Defendant) took the (money or other applicable property) from the person or custody of (name of victim).

2. The taking was by force, violence or assault, or by putting (name of victim) in fear. The force or fear can occur either prior to, contemporaneous with, or subsequent to the taking of the property.

3. The property taken was of some value.

4. (Defendant) took the (money or other applicable property) from the person or custody of (name of victim) and at the time of the taking intended to permanently or temporarily deprive (name of victim) of the (money or applicable property).

NOTE: List any aggravating circumstances such as use of weapon, etc., as applicable.

THEFT, § 812.014

1. (Defendant) knowingly and unlawfully (obtained/used/endeavored to obtain/ endeavored to use) the (description of property) of (victim).

2. He or she did so with intent to

a. deprive (victim) of his or her right to the property or any benefit from it; or

b. appropriate the property of (victim) to his or her own use or to the use of any person not entitled to it.

NOTE: The value or type of property, as designated in the statute determines the degree of the offense.

TRESPASS–IN STRUCTURE OR CONVEYANCE, § 810.08

1.a. (Defendant) willfully (entered/ remained in) a (structure/conveyance); or

b. (Defendant), having been (authorized/ licensed/invited) to (enter/ remain in) the (structure/ conveyance), willfully refused to depart after having been warned by (owner/lessee/person authorized by owner or lessee) to depart.

2. The (structure/conveyance) was in the lawful possession of (owner/lessee/authorized person).

3. (Defendant's) act of (entering/remaining in) the property was without the permission, express or implied, of the (owner, etc.) or any other person authorized to give that permission.

TRESPASS–PROPERTY OTHER THAN STRUCTURE OR CONVEYANCE, § 810.09

1. (Defendant) willfully (entered/ remained in) the (alleged property).

2. The property was (owned by/in the lawful possession of) (name of owner, etc.)

3. Notice not to (enter upon/remain in) that property had been given by (actual communication to defendant/posting or fencing or cultivation of the property).

4. (Defendant's) (entering/remaining in) the property was without the permission, express or implied, of (owner, etc.) or any other person authorized to give that permission.

ENFORCEMENT OF TRAFFIC LAWS ON PRIVATE PROPERTY

Officers are often called upon to investigate motor vehicle crashes or take enforcement action relating to traffic offenses or parking violations on property that is privately owned. In general, officers may conduct traffic enforcement on all roads on which the public has the right to travel. This includes public roads and highways, as well as on quasi-public property (property that is privately owned but "used" by the public). Rarely can traffic enforcement occur on purely private property. A few exceptions exist (*i.e.*, DUI and handicap parking). **Goldstein v. State**, 223 So. 2d. 354 (Fla. Ed DCA 1969); § 316.1959, Fla. Stat. (2208).

In Florida, the sheriff's office shall enforce all of the traffic laws of the state on all the streets, highways and elsewhere throughout the county wherever "the public has the right to travel by motor vehicle." Florida Statutes § 316.640(2)(a). The plain language of the statute makes no distinction between public and private property. In fact, private property owners who own property on which the public is invited to travel ("quasi-public" property) are required to install and maintain uniform

traffic control devices at appropriate locations in accordance with the Department of Transportation standards. Florida Statutes § 316.0747(2). Accordingly, officers may enforce traffic laws at such locations, including enforcement of violations related to official traffic control devices (*i.e.*, stop signs, posted speed limits, etc.).

The determination of whether "the public has a right to travel by motor vehicle" on private property must be factually assessed by the officer after consideration of factors such as, but not limited to: (1) if there is limited access to the area; (2) if entry can only be made after contacting a resident; or (3) by the specific use of the location (*i.e.*, business, residential), etc. AGO 75-123; AGO 83-84. For example, the public does not have the right to travel through gated communities where guests are admitted only after receiving authority from a property owner or resident. These properties are considered purely private and officers may not enforce traffic laws therein.

A county, however, may exercise jurisdiction over any private road or roads controlled by private entities if a written agreement has been entered into between the county and the entity (*i.e.*, homeowners association). Florida Statutes § 316.0747(2). Prior to enforcing traffic laws within a gated community, officers must confirm that such an agreement exists and is current.

EVICTION OF TENANTS AND GUESTS: WHEN POLICE ACTION MAY BE TAKEN

Police officers frequently are called to disturbances arising out of landlord and tenant disputes. Landlords usually take a strong position regarding their legal rights in these disputes, and may often demand that the responding officers take some action, usually eviction of the tenant. It is important that officers faced with these situations have a general knowledge of what action, if any, officers can take.

The Florida Residential Landlord and Tenant Act governs most of the traditionally recognized rental arrangements for dwellings, such as those for apartments, town homes, duplexes, and single family housing units. §§ 83.40-83.682, Fla. Stat. In tenancy situations covered by the Act, the only means by which a landlord can legally recover possession of the dwelling unit without the consent of the tenant (evict the tenant) is to maintain an action for possession in the county court of the county where the premises is located. § 83.59, Fla. Stat. If this action is successful, a writ of possession will be issued to the sheriff, who is authorized to put the landlord in possession after a prescribed notice period. § 83.62, Fla. Stat. A lawful eviction can be accomplished only by a law enforcement officer acting pursuant to a civil writ of possession. Any other action by law enforcement that causes the ouster of a tenant, whether it involves physical removal or causing the tenant to leave out of fear of arrest, is likely to be considered wrongful eviction.

There are three categories of residential or sleeping accommodations from which per-sons may be removed by law enforcement officers after they have been told to leave by the operator of the premises. The first class involves hotels and motels. § 509.141, Fla. Stat. The initial determination that a law enforcement officer should make is whether the premises concerned qualify as the type of premises to which the laws authorizing arrest under Florida Statutes § 509.141 apply. If a landlord claims that the premises qualify as a "public lodging establishment" (hotel or motel), the premises must consist of "any unit, group of units, dwelling, building or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests." § 509.013(4)(a), Fla. Stat. This definition of "public lodging establishment" specifically excludes dormitories, hospitals, nursing homes, sanitariums, or places renting four units or less, unless advertised as regularly rented to guests. Other exclusions apply as well. § 509.013(4)(b), Fla. Stat.

If the premises clearly qualifies under the applicable law, a law enforcement officer should next consider the relationship between owner/operator and the person whose arrest and removal is sought. If the guest is in "transient occupancy", both parties (the owner/operator and the guest) must intend that the occupancy was to be temporary.

§ 509.013(12), Fla. Stat. There is a rebuttable presumption that a tenancy is a "transient occupancy" if the dwelling unit occupied by the guest is not the sole residence of the guest.

Conversely, there is a presumption that a guest is not in "transient occupancy" if the dwelling unit is the sole residence of the guest. For example, even if an establishment qualifies as a "public lodging establishment," if the dwelling unit is the sole residence of the guest, as evidenced by lack of a permanent address elsewhere, receipt of mail at the address of the dwelling unit, or identification such as a driver license reflecting the address of the dwelling unit, the guest is not in "transient occupancy," and the provisions authorizing the arrest and removal of undesirable guests from such establishments do not apply. Such facts indicate a landlord/tenant situation, which must be resolved with a civil action for eviction.

When the tenancy of the guest meets the "transience" requirements, an arrest can be made for refusing to vacate the premises after properly being directed to do so by the owner. There must be probable cause that the premises involved and the particular guest's status both qualify under the applicable provisions, and that the guest refused to depart after being notified by the owner/operator. If an officer cannot determine and articulate facts that establish that all of the foregoing factors are satisfied, no probable cause for an arrest pursuant to Florida Statutes § 509.141 exists.

The second type of living arrangement from where law enforcement officers may remove persons are residency facilities, whether public or private, when the occupancy is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services. § 83.42(1), Fla. Stat. When making an arrest, the appropriate charge at such locations is § 810.08, Trespass After Warning. If the situation is resolved with no arrest (*i.e.*, the person leaves the premises after the officer gives a warning), a police report should still be completed. The report should not be titled "Eviction."

Recreational vehicle parks are the third and final type of residential or sleeping ac-commodations from which persons may be removed by law enforcement officers. § 513.13, Fla. Stat. For a premises to qualify as a recreational vehicle park, it must be set aside and offered for the parking of five or more recreational vehicles or tents. § 513.01(10), Fla. Stat. If the premises qualifies, a similar analysis to that described above must be conducted to determine whether an arrest is authorized under Florida Statutes § 513.13.

Remember, the point at which a "guest" ceases to be a transient visitor and becomes a resident, requiring the management to utilize the eviction process, is not clearly defined. Therefore, a careful examination of the particular lodging establishment and the living arrangement in question should be made to determine whether any action should be taken by law enforcement or whether the situation must be handled in civil court with an action for eviction. Before taking action, be sure that enough articulable facts exist to justify a probable cause arrest. It may be advisable, instead, to write a police report and advise the complainant to ask the State Attorney's Office to file the case rather than to risk a bad arrest.

Law enforcement officers are also encouraged to consult a Legal Advisor if in doubt as to whether an arrest is appropriate since the specific facts in each situation can result in a complicated analysis. Officers must be aware that potential liability exists when an arrest is made in what should be a civil matter governed by the Florida Residential Landlord and Tenant Act.

EVIDENCE

Intent—The Burden of Proof

When we speak of "intent" we are talking about a state of mind, something that is rarely subject to direct proof but which may be inferred from the facts surrounding the events.

"Intent," as associated with criminal statutes, is usually broken down into three categories.

1. Specific intent–This element is embodied within the language of a statute delineating a particular crime. Specific intent in such cases is an essential element of the crime which must be alleged and proved, *e.g.*, entering with intent to commit a felo-

ny; assault with intent to rape. In order to convict, the trier of fact (judge or jury) must find such specific intent beyond a reasonable doubt.

2. General intent–General intent crimes are characterized by the doing of a particular act which is prohibited by law. In such cases the perpetrator intends to do this particular act and the evidence must show beyond a reasonable doubt that the act was committed. No specific intent need be alleged or proved by the state. Robbery is an example of a general intent crime. Aggravated assault is another good example. The mere doing of the act (except in self-defense) is the offense.

3. No intent–It is this kind of offense that is most familiar to the average citizen. A citizen may commit this kind of offense without being aware that he or she has done any particular act. Many examples are found in the everyday type of traffic offense, *e.g.*, disobeying a red light; stop sign; speeding, etc. Lack of intent to do the act is no defense, and the state need not prove any intent whatsoever. Categorically, "intent" is immaterial.

A great deal could be written on the law of intent, but generally the observant police officer can develop the element of intent from relatively insignificant bits and pieces when, in fact, the criminal intent is present. Example: Possession of a clean hash pipe leaves much to be desired in the way of proof that is possessed with the intent to smoke contraband substances. But, a trace of hash residue in the pipe is evidence of intent.

To convict a defendant of possession of burglary tools, the state must prove not only that the defendant intended to commit burglary or trespass while those tools were in his possession, but that the defendant actually intended to use those tools to perpetrate the crime. **Burke v. State**, 672 So. 2d 829 (Fla. 1st DCA 1995). An overt act toward the commission of the crime is necessary to prove intent, mere possession of a tool is not enough.

The Florida appellate courts have set out the rule that where a statute describes the doing of an act as criminal without specifically requiring criminal intent, it is not necessary for the State to prove that the commission of such act was accompanied by criminal intent. It is only when the criminal intent is **required as an element** of the offense that the question of "guilty knowledge" may become pertinent in the State's case.

FIREWORKS

It is unlawful for any person, firm, copartnership or corporation to offer for sale, expose for sale, sell at retail, use, or explode any fireworks without first obtaining a permit from the Board of County Commissioners. §791.02, Fla. Stat. Such a violation is a misdemeanor of the first degree. §791.06, Fla. Stat. However, mere possession of fireworks is not a criminal offense.

Fireworks are defined to include any combustible or explosive composition or substance or combination of substances prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation. Fireworks include blank cartridges and toy cannons in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, skyrockets, roman candles, dago bombs, and any fireworks containing any explosives or flammable compound or any tablets or other device containing any explosive substance. §791.01(4)(a), Fla. Stat. The term "Fireworks" does not include sparklers approved by the Division of the State Fire Marshal, toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for the explosion; and toy pistol paper caps which contain less than twenty hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times. §791.01(4)(b), Fla. Stat. Furthermore, "Fireworks" does not include the following novelties and trick noisemakers: snakes or glow worms, smoke devices, and trick noisemakers. §791.01(4)(c), Fla. Stat. Before taking any enforcement action, refer to the complete statutory definitions of these novelties and trick noisemakers in §791.01, Florida Statutes at http://www.flsenate.gov/Statutes.

The law requires police officers to seize, take, remove or cause to be removed at the

expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of Chapter 791. 791.05, Fla. Stat. However, "[i]t may not be necessary, or legal, to seize all products in one location observed to engage in instances of unlawful retail sales of fireworks or illegal sparklers. Enforcement personnel may choose to only seize those items involved in an illegal transaction or exposed for sale in an illegal manner. Seizing an entire stock of product may be improper as an enforcement procedure if there are lawful wholesale transactions that may be occurring at an enforcement site." See the Division of State Fire Marshal's helpful pamphlet titled, "Fireworks and Sparkler Enforcement Law Enforcement and Inspections Guide," at http://www.myfloridacfo.com/sfm/pdf/Fireworks_Enforcement_Guide_2004_text.pdf.

The regulatory staff of the Division of State Fire Marshal is available to render guidance and assistance if necessary. Officers having any questions regarding fireworks may contact the Regulatory Licensing Section at (850) 413-3172.

FREEDOM OF RELIGION AND ANIMAL SACRIFICES

The Free Exercise Clause of the First Amendment to the United States Constitution provides that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Florida Constitution prohibits the Florida Legislature from doing the same as well. In the case of ***Lukumi Babalu Aye Inc. v. Hialeah***, 508 U.S. 520 (1993), the U.S. Supreme Court found that the City of Hialeah ordinances aimed at stopping the practice of animal sacrifices were contrary to the constitutional principles of the Free Exercise Clause. In that case, the City of Hialeah enacted ordinances that specifically banned certain practices of the Santeria religion. The Court stated that legislators may not devise mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices. The Court found that the laws enacted by the City of Hialeah were contrary to constitutional principles and were therefore void.

The Florida Legislature codified this principal creating the Humane Slaughter Act, which specifically states that the handling, preparation, and ritual slaughter of livestock is not a crime. § 828.22, Fla. Stat.

When an officer arrives on the scene and determines that animals were killed during a religious ritual, the following actions may be taken, if probable cause exists:

1. The officer could determine whether the crime of unnecessary and excessive noise has been violated. This crime is a misdemeanor and must occur in the officer's presence.
   Miami-Dade County Ordinance Section 21-28 states in part: It shall be unlawful for any person to make, continue, or cause to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise. The following acts, among others, are declared to be unreasonably loud, excessive, unnecessary or unusual noises in violation of this section, but this enumeration shall not be deemed to be exclusive, namely:
   - *Animals, birds, etc.* The owning, harboring, possessing or keeping of any dog, animal or bird which causes frequent, habitual or long continued noise which is plainly audible at a distance of one hundred (100) feet from the building, structure or yard in which the dog, animal or bird is located.
   - *Noises to attract attention.* The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of any unreasonably loud or unnecessary noise to any performance, show, sale, display or advertisement of merchandise.
   - *Shouting.* Any unreasonably loud, boisterous or raucous shouting in any residential area.
2. The officer could determine whether parking violations due to a large gathering have been violated.
   Miami-Dade County Ordinance Section 30-388.10 states: No person shall park any vehicle upon a street, in such a manner or under such conditions as to leave available less than 10 feet of the width of the roadway for free movement of vehicular traffic.

In order to protect religious freedom, officers must be mindful of the religious rights of all individuals, including practices involving the humane slaughter of animals, prior to effecting arrests pursuant to Florida Statutes § 828.12, *Cruelty to animals*.

HANDICAPPED PARKING VIOLATIONS

When conducting an investigation or responding to a complaint of a motor vehicle unlawfully stopping, standing, or parked in a space legally designated and marked as a handicapped parking space, officers **shall** have the vehicle in violation removed to a lawful parking space, garage, storage lot, or other safe place. If the operator of the vehicle is present, the officer may require the person to remove the unauthorized vehicle from the parking space. Additionally, the officer **shall** charge the operator or other person in charge of the vehicle in violation with a noncriminal traffic infraction. § 316.1955, Fla. Stat. The unusual language contained in this statute requires that law enforcement officers or parking enforcement specialists take this enforcement action. In 1977, the Florida Legislature amended the statute, substituting "shall" for "is authorized to," evidencing their intent that enforcing these violations is mandatory.

A law enforcement officer additionally has the right to demand to be shown the person's disabled parking permit and driver's license or state identification card when investigating the possibility of a violation of this section. If such a request is refused, the person in charge of the vehicle may be charged with resisting an officer without violence, as provided in Florida Statutes § 843.02.

IDENTIFICATION AND LINEUPS

LINEUPS AND CONFRONTATIONS

NOTE: The Florida Department of Law Enforcement, the Florida Sheriffs Association and the Florida Prosecuting Attorneys Association have developed and endorsed standards for Florida state and local law enforcement agencies in dealing with photographic or live lineups in eyewitness identification. (Issued June 15, 2011) Consequently, law enforcement agencies in Florida are currently developing their own policies based upon these standards which must be filed with the state attorney's office in the circuit in which the agency is located. The discussion below remains current and is intended to supplement agency policy.

A properly conducted witness-suspect confrontation is a valuable investigative technique which "is consistent with good police work." **U.S. v. Sanchez**, 422 F.2d 1198 (2nd Cir. 1970). The Courts permit this type of identification, which generally occurs within a few hours after the offense, based on the rationale that an immediate confrontation permits the police to determine whether they have the actual offender and, if not, to continue their search for him and promptly release the innocent person. **U.S. ex rel. Cummings v. Zelker**, 455 F.2d 714 (2nd Cir. 1972), cert. denied, 406 U.S. 927 (1972). Thus, if a suspect is apprehended shortly after a crime has been committed, it is proper to return the suspect to the crime scene and allow the witnesses or victim an opportunity to make an identification or, where it is more convenient to do so, the suspect may be brought to the police station where the confrontation can be conducted.

Returning a suspect to the crime scene or bringing him or her to the police station presupposes the officer has probable cause to arrest the suspect. If an officer only has a reasonable suspicion that a suspect is the offender, the suspect may not be removed from the location where he or she was stopped. Florida's "Stop and Frisk" Statute does not permit an expanded detention on less than probable cause. § 901.151, Fla. Stat. However, the police may arrange to have the witnesses brought to the suspect for a confrontation provided this can be done in a reasonably brief time.

If a witness or victim has been seriously injured and is hospitalized, an arrested subject may be brought to the hospital for identification purposes. **Stovall v. Denno**, 388 U.S. 293 (1967). Similarly, if the suspect is found at a hospital where he or she is being treated, the witness or victim may be taken there for a confrontation.

CONDUCTING AN IDENTIFICATION CONFRONTATION

1. Suggestiveness of Police Conduct

When conducting an identification confrontation, the officer must take care not to make any comments to a witness concerning the police opinion of the guilt or innocence of the subject. Additionally, the circumstances surrounding the witness observation must not be overly suggestive of the suspect's guilt. The central issue is whether the procedure is so "unnecessarily suggestive and conducive to irreparable mistaken identification" that the Due Process rights of the suspect are denied. **Stovall v. Denno, 388 U.S. at 302**.

2. Time Constraint

There is no hard and fast rule that specifies the maximum time allowed after the offense to conduct a confrontation. There is authority in Florida for allowing up to four days. See **Ashford v. State**, 274 So. 2d 517 (Fla. 1973). However, absent some great need or unusual circumstances, it is suggested that, in the vast majority of cases, the observation of the suspect should not be conducted more than four hours after the crime occurred.

3. Right to Have Counsel Present

The requirements that a suspect be allowed to have counsel present during an identification proceeding apply only to situations where the subject has been formally charged with a crime. Prior to the time that an information or indictment is filed, a suspect may be required to submit to a confrontation without the assistance of counsel. **Ashford v. State**, 274 So. 2d 517 (Fla. 1973)

Factors to Consider

When considering whether an identification should be conducted, the officer must remember that the key consideration is the likelihood of a misidentification by the witness or victim. Consider the following factors in evaluating the situation.

1. The opportunity of the witness to view the criminal at the time of the crime.

2. The accuracy of the witness' prior description of the suspect.

3. The length of time between the crime and the identification confrontation.

Once the decision is made to conduct the confrontation, the officer should consider the following additional factors when evaluating the reliability of any identification.

1. The witness' degree of attention during the viewing.

2. The certainty demonstrated by the witness.

Additional Guidelines

1. Do not allow several witnesses to observe a suspect at the same time. Separate them and do not allow them to discuss the suspect or overhear another witness' comments during identification.

2. Take good notes at the confrontation. Record any statement made by the witness at the time of the observation.

3. If relevant, engage the suspect in conversation so the witness may hear him speak. If the suspect refuses, make a note of the refusal.

4. Nothing in this section is intended to suggest that the officer may not escort the victim or witness around the area where the crime occurred in an effort to locate the offender.

PHOTOGRAPHIC DISPLAYS

"Despite the hazards of initial identification by photograph, this procedure has been used widely and effectively in criminal law enforcement…We are unwilling to prohibit its employment, either in the exercise of our supervisory power or, still less, as a matter of constitutional requirement." **Simmons v. United States**, 390 U.S. 377, 384 (1968). As with the witness-suspect identification confrontation, this procedure allows the police to determine if a suspect is the offender and, if not, to continue their search and release the innocent subject.

Any challenge to the use of a photo display will be evaluated in the light of all attendant circumstances. The photo-identification procedures will only be considered impermissibly suggestive where all circumstances indicate the identification is unreliable. **M.J.S. v. State**, 386 So. 2d 323 (Fla. 2d DCA 1980).

1. Procedure
   a. Conduct of the display
      i. Note the conditions of the crime scene at the time when the witness viewed the suspect. Include length of observation, lighting, distance from the suspect, alertness of witness, etc.;

ii. Show the photos to the witness by himself or herself and away from other witnesses;
iii. Say or do nothing which might indicate who the suspect is;
iv. Have the witness initial the photograph that he or she identifies; and
v. Preserve the display for possible use at trial.

There is no mandatory minimum number of photos to be used in a display, but at least six should be considered. Ensure the photos used are of similar appearing subjects.

b. Relevant factors

When evaluating the reliability of an identification, consider the following:

i. Manner in which the identification was conducted;
ii. Opportunity of the witness to observe the offense;
iii. Any previous identification by the witness of another person;
iv. Any previous identification by the witness of the suspect;
v. Previous failure of the witness to identify suspect, and
vi. Lapse of time between the offense and the identification.

2. Right to counsel

A suspect has no right to counsel at a photographic display regardless of whether the display is conducted prior to indictment, **Kirby v. Illinois**, 406 U.S. 682 (1972), or post-indictment, **United States v. Ash**, 413 U.S. 300 (1973).

LINEUPS

The Supreme Court has recognized that the lineup is an integral part of the police effort to correctly identify an offender and has said, "We have no doubt that compelling the accused merely to exhibit his person for observation by a prosecution witness prior to trial involves no compulsion of the accused to give evidence having testimonial significance." **United States v. Wade**, 388 U.S. 218, 222 (1967).

Further, a suspect in custody may be presented in lineups concerning other crimes for which he has not been charged. **United States v. Thomas**, 543 F.2d 1226 (8th Cir. 1976); cert. denied 97 S.Ct. 764.

1. Conducting the lineup

When conducting the lineup, the following procedure should be employed:

a. Advise the suspect of his right to counsel, if necessary. (see #2, infra). Do not proceed until the suspect has either intelligently waived his right to counsel or has counsel present.

b. Photograph the lineup for possible use at trial. If feasible, videotape or record the proceedings.

c. Ensure nothing is said by police officials which would indicate who the suspect is.

d. Ensure nothing in the lineup obviously points to the suspect as the person to be identified.

e. Keep witnesses separated and do not allow them to converse or overhear one another.

f. Advise the witness that he or she is under no obligation to answer defense counsel's questions.

2. Right to Counsel

The Supreme Court has ruled that a post-indictment lineup is a "critical stage" in criminal proceedings which necessitates the presence of counsel on the defendant's behalf. **U.S. v. Wade, 388 U.S. at 236.** The rationale is fairly obvious. A defendant without counsel, who believes his lineup was unduly prejudicial, may not wish to take the stand for other defense reasons. "Moreover, any protestations by the suspect of the fairness of the lineup, made at trial, are likely to be in vain; the jury's choice is between the accused's unsupported version and that of the police officers present." **U.S. v. Wade**, **388 U.S. at** 231.

Pre-indictment lineups are not a critical stage and thus there is no right to counsel. **Ashford v. State**, 274 So. 2d 517 (Fla. 1973)

The common ideal which links the landmark pre-trial identification cases is that the jury should be allowed to exercise its duty to weigh the evidence, taking into consideration the suggestiveness of the procedure.

Due process will only intervene to exclude the identification when there is a high danger of misidentification. **Baxter v. State**, 355 So. 2d 1234, 1237 (Fla. 2d DCA 1978); cert denied 365 So. 2d 709. Further, where an out-of-court identification was the result of undue police influence, an in-court identification may be excluded because the independent ability of the witness to remember the defendant is fatally tainted.

U.S. v. Wade, 388 U.S. at 231**; Smith v. State**, 362 So. 2d 417 (Fla. 1st DCA 1978).

The police officer must ensure that any identification proceeding is conducted in as neutral an atmosphere as possible. By doing so, not only are the rights of the defendant protected, but also the case will not be jeopardized by a fatally deficient identification.

INTERROGATION

FIFTH AMENDMENT RIGHTS

General

"…the prosecution may not use statements whether exculpatory or inculpatory, stemming from **custodial interrogation** of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." **Miranda v. Arizona**, 384 U.S. 436, 444 (1966).

Police officers of all ranks should make an effort to understand what the Miranda decision really means in terms of its application to police procedures.

First consider what is "custodial interrogation."

(1) "Custodial" means in custody of law enforcement officers or otherwise deprived of freedom of action in any significant way.

(2) "Interrogation" is express questioning and also any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect.

There are two notable exceptions to this proposition:

(1) When a "police dominated atmosphere" exists.

(2) When a law enforcement officer uses a harsh "accusatorial" tone when speaking to, or in the presence of, an accused.

The U.S. Supreme Court held that the "police dominated atmosphere" prevailed when Reyes Orozco was questioned in his own bedroom reference a shooting. While Orozco's bedroom was not "the isolated setting of the police station," the atmosphere was nonetheless coercive in nature, and Miranda warnings should have been given. **Orozco v. Texas** 394 U.S. 324 (1969).

Where the officer is very accusatory, persistently confronts the suspect with evidence of his guilt, the argument that "custody" existed is strengthened.

When an accused has invoked his right to have counsel present during custodial interrogation, questioning by police must be terminated until counsel has been made available or until the accused initiates further communication. Coming back to the accused the following day after he has invoked his right to counsel and giving him his Miranda rights again cannot validate a confession if the accused has neither initiated the communication nor spoken to counsel in the time between the first meeting and the second. **Edwards v. Arizona**, 451 U.S. 477, 482 (1981).

When Miranda warnings are NOT required:

1. During the typical traffic stop, including DUI, *i.e.*, until "custodial interrogation" commences.

2. During a typical "stop and frisk."

3. During ordinary field or "on the scene" investigations, *e.g.*, for questions like: "What happened here?" or "Did anyone see what happened to the gun?"

4. During street encounters when the subject has reason to believe that he or she is free to leave.

5. During voluntary appearances at police headquarters where the subject has no reason to believe that he or she is not free to leave.

6. During interviews at the subject's home or office when the subject has no reason to believe that he or she is not free to terminate the interview and dismiss the officers.

7. During interviews in stores, restaurants, or other places of public accommodations when the subject has no reason to believe he or she is not free to leave.

8. Generally, when a subject is confined in a hospital but not under arrest– exception: suspect in pain and under sedation.

9. When the interrogator is not a law enforcement officer, *e.g.*, department store security officer.

10. When the questions are routine in nature, *e.g.*, name, address, etc., and not calculated to elicit incriminating evidence.

ALWAYS:

1. Read the full Miranda warning–from a prepared text or card–no matter how familiar the defendant claims he or she is

with the rights. The card or prepared text will ensure that you forget nothing and will make for better courtroom presentation.

2. If possible, obtain the waiver and statement in writing.

3. Be prepared to carry the burden of proof that the waiver was voluntary, knowing, intelligent, and free of coercion. Fortunately, this is a judicial determination and the standard is that of preponderance of the evidence and not that of proof beyond reasonable doubt.

DO NOT:

Offer the subject any inducement to cooperate in the interview. Despite your good intentions, most defense attorneys know how to exploit this and the court will resolve the issue of voluntariness against you.

Offer the subject assurances as to what will happen during any phase of the case.

Special Exception

If a statement is made that was voluntary and not coerced, but the Miranda warning was not read, it may be used at trial under special circumstances.

Harris v. New York, 401 U.S. 222 (1971) held that when a defendant takes the stand to testify in his or her own defense, he or she may be **impeached** by prior statements even if the statement had been ruled inadmissible (on technical grounds) when originally offered by the prosecutor.

JUVENILES
Juvenile Procedures

Procedures for Taking a Child Into Custody

A law enforcement officer may take a delinquent child into custody pursuant to a court order or for committing a violation of law.

A law enforcement officer has authority to take a child into custody under the same circumstances and in the same manner as if the child were an adult.

A child can be taken into custody for a **misdemeanor** only if committed in the presence of the officer. The same exceptions apply as for an adult; *e.g.*, retail theft.

The officer can take a child into custody for a felony offense if he or she has reason to believe that a felony was committed and that the child is the offender. A copy of the arrest report of any child 15 years of age or younger who is taken into custody for committing a delinquent act or any violation of law shall be forwarded to the local service district office of the Department of Juvenile Justice. **§ 985.305(3), Fla. Stat.**

If the child's life or health is in such danger that he or she must be removed from his or her surroundings, the officer may take him or her into custody. Likewise, if an officer reasonably believes a child to have been abandoned, abused, or neglected, the officer may take that child into custody. In such situations, the child will normally be alleged to be dependent rather than delinquent.

A child may be taken into custody by a law enforcement officer who has probable cause to believe that the child is in violation of the conditions of the child's community control, home detention, or aftercare supervision, or has absconded from commitment. **§ 985.101(1)(d), Fla. Stat**.

A child may also be taken into custody for failing to appear at a court hearing after being properly noticed. **§ 985.101(1)(c), Fla. Stat.**

Truancy

The Florida Legislature has clearly stated that truancy and poor school performance have a direct relationship to juvenile delinquency and destructive behavior and that a disproportionate percentage of juvenile crime occurs when juveniles should be in school. However, truancy is NOT a crime. Florida law requires all children to attend school, unless a child attains the age of 16 and files a formal declaration of intent to terminate enrollment with the school board.

Florida Statutes § 984.13 authorizes a law enforcement officer to take a child into custody when the officer has reasonable grounds to believe that the child is absent from school without authorization or is suspended or expelled and is not in the presence of his or her parent or legal guardian for the purpose of delivering the child without unreasonable delay to the appropriate school system site. A "school system site" includes, but is not limited to, a center approved by the superintendent of schools for the purpose of counseling students and referring them back to the school system or an approved alternative to a suspension or expulsion program. If a student is suspended

or expelled from school without assignment to an alternative school placement, the law enforcement officer shall deliver the child to the parent or legal guardian, to a location determined by the parent or guardian, or to a designated truancy interdiction site until the parent or guardian can be located.

Since the legislative intent of this statute is to keep children in school, police enforcement necessitates the identification of children strictly by age. If an officer has reasonable suspicion to believe a child is of school age and is truant from school, the officer may stop and question the child. Accordingly, it is necessary that an officer observe that a child appears to be of school age, that it is a school day, and that the observation occurs at a time when schools are in session.

The search incident to arrest exception to the warrant requirement does not apply to taking a truant child into custody because truancy is not a crime and is not an arrest. **L.C. v. State**, 23 So. 3d 1215 (Fla. 3d DCA 2009). However, if there is reasonable suspicion that the truant is carrying a dangerous weapon, the truant should be frisked for weapons prior to being delivered to the appropriate school system site. If the frisk produces evidence leading to a conclusion that there is probable cause for arrest, then the procedures for juvenile arrests should be followed. Officers shall document incidents of truancy on the Juvenile Truancy Violation Form and forward copies of the form as indicated on the form.

Juvenile Traffic Offenders

A juvenile traffic offender is a child who violates a provision of chapter 316, Florida Statutes, or a local ordinance that supplements chapter 316.

The court of original traffic jurisdiction (the County court) must transfer to the Juvenile Division, Circuit Court, a juvenile charged with any felony traffic offense.

The traffic summons procedure should be followed in routine offenses if there are no serious circumstances involved.

In any of the above situations, the same procedures that apply to adults are to be utilized **except** that a child is not to be placed in any vehicle with an arrested adult unless the adult is involved in the same offense or transaction with the child.

A bond can be required in the same manner as if the child was an adult.

Other Juvenile Offenders – Delinquency

If it is determined that the child taken into custody will not be placed into detention care, the child may be released to:

1. A parent, guardian, or legal custodian; or

2. Any responsible adult.

An officer may conduct a criminal history check on such an individual. If the person has a prior felony, drug trafficking, child abuse, or prostitution conviction, that person is not considered a "responsible adult." **§ 985.211, Fla. Stat.**

The person accepting custody from the officer must agree to bring the child to court upon direction of the court. If possible, obtain consent from a person representing the best interest of the juvenile (*e.g.*, parent, guardian, legal custodian, adult relative, or attorney) before the taking of a statement from a child. Prior to any questioning, the juvenile will be requested to sign an MDPD Miranda Warning form, and if persons representing the best interest of the juvenile are present, they shall be requested to cosign as witnesses, indicating that the waiver of the child's rights has been free and voluntary.

If the matter is serious enough that the child may be taken into custody, the parents or attorney should be involved at every step of the process, if possible.

As with juvenile traffic offenders, the child may not be placed in any vehicle with an arrested adult unless the adult is involved in the same offense or transaction with the child. **§ 985.212(3), Fla. Stat.**

All juveniles charged with committing felonies as well as those charged with the 13 enumerated offenses in § 985.212 must be fingerprinted. Police may also fingerprint for crimes not listed in § 985.212.

Interrogation of a juvenile may be conducted at a police facility, but the atmosphere must be non-intimidating; *e.g.*, uniform officers, weapons, holding cells, police radios, and excessive numbers of police personnel should not be visible. Consent of the person representing the best interests of the child, *e.g.*, parent, guardian, legal custodian, or attorney, is desirable, but not essential if the child is capable of understanding his rights and the significance of waiving his rights. Factors to be considered in this regard include age, marital status, education, and intellectual level.

Interrogations must be for a reasonable length of time. Consideration should be given to, and notation made of, the length of time held before interrogation, reasons for delay, breaks, and rest periods.

DETENTION OF JUVENILES

A. **Juvenile Traffic Offenders**.

After notice is given to the parents, guardian, or responsible adult relation, the child may be given a notice to appear and (1) released into the custody of the parent, etc.; (2) released on bond; (3) referred to a medical facility if necessary; or, (4) if a felony has been committed and the child cannot be released on bail, delivered to a Department of Juvenile Justice intake officer.

B. **Other Juvenile Offenders**.

Factors enumerated in § 985.215 that a law enforcement officer should consider in deciding whether to detain a child include whether the child has been charged with a capital, life, first degree, or second degree felony, or a felony of the third degree which is a crime of violence; an offense involving the use of a firearm; any violation of chapter 893 that is a second or third degree felony; or any third degree felony that is not a crime of violence, and the child has a record of law violations prior to court hearings as well as a record of failure to appear at court hearings.

If the officer makes the determination that the child should be held in custody and not released, the officer should then deliver the child to the county Juvenile Assessment Center.

Under no circumstances will a juvenile be initially detained in an adult facility.

A report will be filed by the officer taking custody of the child, within 24 hours if the child was detained or within one week if the child was released, with the intake officer. The report will state the reasons for taking the child into custody.

Regardless of the above procedures, if there is a circuit court order to take the child into custody and to detain him or her, the order must be followed and executed as provided by law. The child should be taken to the county Juvenile Assessment Center which will arrange for placement in detention. If a certain detention home is specified in the order, the child should be taken directly to the counselor at the detention home. A written report regarding the authority to apprehend the child is still required.

If the intake counselor at the Juvenile Assessment Center decides to detain the child, the court is required to have a detention hearing within twenty-four hours, excluding Sunday and holidays. The officer's report will probably be admissible in evidence at the hearing. His or her presence, therefore, would not be required as a general rule.

C. **Dependent Children**.

A law enforcement officer may take a child into custody if he or she has reasonable grounds to believe the child has been abandoned, abused, or neglected or is in immediate danger. The officer should deliver the child to a protective investigator, who shall then determine if the child needs to be placed in a shelter or released.

LAW ENFORCEMENT OFFICERS' PERSONAL INFORMATION

In the case of **Brayshaw v. City of Tallahassee**, (N.D.Fla. April 30, 2010), the court found that Florida Statute § 843.17 was unconstitutional. Under § 843.17, any person who maliciously publishes a law enforcement officer's residence address or telephone number without authorization from the officer's employing agency, with intent to obstruct, intimidate, hinder or interrupt said law enforcement officer's official duties, could be charged with a first degree misdemeanor. The court found that § 843.17 impeded free speech because simply publishing an officer's phone number or address, even with intent to intimidate, did not constitute a true threat against the officer.

The **Brayshaw** decision does not however, affect the confidentiality aspects of an officer's personal information under § 119.07(4), Fla. Stat. Public records laws in the State of Florida impose a duty on public records custodians to permit the inspection and copying of records that are in their custody. § 119.07, Fla. Stat. The list of persons whose information is exempt from public review includes law enforcement officers, certain other public officials (active or former), and their spouses and children.

Although law enforcement information can be exempted, there is nothing in the Florida Statutes that specifically authorizes

police officers to use their departmental or station address for their personal driver's licenses. Therefore, eligible law enforcement personnel who wish to make their personal information contained in their driver license, vehicle, and vessel records exempt from public disclosure must make a written request to the Department of Highway Safety and Motor Vehicles (DHSMV) utilizing Public Official's Request to Suppress Records Information, Form HSMV 96020. The form must be submitted with a letter or other documentation on employer letterhead indicating the eligibility for privacy protection. Additionally, some Property Appraiser's Offices offer address blocking services for sworn personnel.

Lastly, the internet is a widely utilized vehicle for public information gathering and sharing. Consequently, personal information is often available for public access via a plethora of sources on the internet. Examples of websites where such personal information can be obtained are: www.people.yahoo.com; www.ussearch.com; www.spokeo.com and www.123people.com. Officers should routinely check these websites and others to ascertain whether their personal information is available for public access. If the information is accessible, most websites have privacy policies that explain how a person may request to have their personal information removed from that particular website.

Officers are encouraged to avail themselves of the aforementioned information in order to help safeguard their personal data from public access and disclosure.

Police Officer's Personal Cellular Phones

Today almost everyone has a personal cellular (cell) phone that they carry around all day, both on and off duty. Accordingly, an attorney can issue a subpoena for an officer's personal cell phone records if there exists reason to believe the device might contain information relevant to the case (public records).

In a case that was decided in New Mexico, the court held that "an officer was an arm of the State and the officer's private phone records were within the possession, custody and control of the State, making them subject to disclosure." **State of New Mexico v. Marty Ortiz**, 215 P.3d 811 (N.M. Ct. App. 2009). In the **Ortiz** case, the defense's theory was that the officer was working with a confidential informant and spoke to the informant on his personal cell phone prior to initiating a traffic stop of the defendant's vehicle. The defense was alleging that the stop was pretextual and lacked probable cause. The attorney needed the officer's cell phone information, GPS, etc. to show proof that the officer made the stop because he and the informant were "out to get" his client. The defense attorney further argued that the officer did not have an expectation of privacy concerning his cell phone records while on duty, on patrol, in a marked unit, during an emergency or arrest situation. The appellate court agreed with the defense and found that the officer's personal phone records were relevant and ordered the officer to turn over his phone. Although this case only affects officers in New Mexico, it can be considered persuasive authority in any state where there is currently no case law on this subject, such as Florida.

Recently, in Miami-Dade County, defense attorneys have been asking police officers questions during testimony regarding the use or nonuse of personal cell phones on duty. During cross examination, the officers are being asked questions such as: Do you own a cell phone? Do you carry it with you at all times? Does your cell phone have the capability of recording video and/or audio? Does your cell phone have a camera? When the officer responds in the affirmative to these questions, the follow-up line of questioning becomes: Why didn't you videotape the incident that you are testifying about today? Why didn't you take any pictures to use as evidence? Wouldn't your case be stronger had you taken a video or photographs? Why didn't you tape my client's statements? How does the jury know what really happened that day? In response to these questions, remember to remain professional and emphasize your training, experience and written reports.

Officers who choose to carry a personal cell phone while on duty are encouraged to familiarize themselves with their Department's standard operating procedures.

In addition, officers should be aware that the public can access their personal information via social media sites. It is very easy to search the internet and view a Facebook page, Twitter account, etc. Officers should ensure that their accounts are pri-

vate and take the necessary steps to protect their personal information.

PERSONS ON PROPERTY WITHOUT LEGAL CLAIM OR TITLE

Increasingly, officers are responding to calls where owners of residences discover persons occupying a dwelling that is vacant, and who claim to be legitimate lessees. The persons occupying the property may have evidence that indicates that they actually leased the property (a signed lease, payment receipts, etc.). However, the facts may reveal that the person that leased them the property is not the owner or his/her agent, and had no right or authority to lease the property. This is a criminal matter. A fraud report must be prepared for the people who were fraudulently leased the property, who typically have lost the money they put down for the usual first and last month rent and a security deposit. A fraud and/or burglary report must be prepared for the true homeowner, who may have suffered property damage and was deprived the use and income from the property. In this scenario, the Economic Crimes Bureau (ECB) should be immediately advised to conduct further investigation and to preserve evidence.

Depending upon the facts of each case, it may or may not be appropriate to use the trespass after warning statute to remove the persons that leased the property, as no legitimate landlord tenant relationship exists. Officers must remain mindful that the warning to depart must be given by the actual owner, the true lessee, or by a person authorized by the actual owner or true lessee of the premises, in the presence of the officer, and that the party so warned refuses to depart.

The final scenario is outright criminal when there is probable cause to believe that the occupants of the property are trespassing on the property, or have committed a burglary, i.e. broke the lock box containing the keys, changed the locks and moved in. They may even be using the residence to commit other crimes, such as dealing narcotics, prostitution, etc. In this type of instance, additional investigation may be prudent prior to making an arrest.

As the scenarios described above are usually very complicated and fact dependent, officers are encouraged to consult with their legal advisors for additional guidance as needed.

PUBLIC RECORDS

It is the policy of the State of Florida 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. § 119.01(1), Fla. Stat. Furthermore, the law provides that every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records. § 119.07(1), Fla. Stat. A person who requests copies of records or asks to inspect records must be acknowledged promptly and the request must be responded to in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the Department whether such a record exists and, if so, the location at which the record can be accessed. § 119.07(1)(c), Fla. Stat. "Public records" means 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. § 119.011(12), Fla. Stat.

All public records should be open for personal inspection and copying by any person unless there is a specific statutory provision making a particular record, or portion of a record, exempt from public disclosure or confidential. "Exemption" or "exempt" means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of § 119.07(1), Fla. Stat, § 286.011, Fla. Stat., or Art. I, § 24, Fla. Const. § 119.011(8), Fla. Stat.

A person who has custody of a public record (records custodian) who asserts that an exemption applies to a part of such re-

cord must redact that portion of the record to which an exemption has been asserted and validly applies, and must provide the remainder of the record for inspection and copying. § 119.07(1)(d), Fla. Stat. "Redact" means to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information. § 119.011(13), Fla. Stat. If the records custodian contends that all or part of the record is exempt from inspection and copying, the records custodian must state the basis of the exemption, including the statutory citation to an exemption created by statute. § 119.07(1)(e), Fla. Stat. If requested by the person seeking to inspect or copy the record, the records custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential. § 119.07(1)(f), Fla. Stat.

A person who requests copies of records or asks to inspect records should not be required to provide identification nor should that person be asked why he or she needs the records. Curry v. State, 811 So. 2d 736, 742 (Fla. 4th DCA 2002). Furthermore, a person who only requests copies of records or asks to inspect records should not be required to sign a visitor log or required to sign or complete any type of public records request form. However, if a person seeks entry beyond a front desk into an access controlled law enforcement facility, the Departmental entity's Standard Operating Procedures should apply.

For example, should someone approach a front desk and only request to view the visitor log, front desk personnel must acknowledge the request and allow the person to see the log after it has been reviewed for any exempt or confidential information and the corresponding redactions are made. Again, this person should not be required to sign a visitor log or be required to sign or complete any type of public records request form. Most of the time, the information in the visitor log would be open for personal inspection and copying unless the log includes social security numbers (§ 119.071(5)(a), Fla. Stat. or a notation that a visitor was a sexual battery victim (§ 119.071(2)(h), Fla. Stat etc. In that case, such information must be redacted before the record is presented to the requestor. Also, if redactions are made all specific statutory exemptions claimed should be noted on the copy of the visitor log shown to or provided to the requestor.

Occasionally, front desk personnel may note someone's driver's license number on a visitor log. The Office of the Attorney General for Florida has published an opinion stating that, "A driver's license number is "personal information" within the scope of section 119.0712(2), Fla. Stat. and is confidential as it is held and maintained in a "motor vehicle record" by the Florida Department of Highway Safety and Motor Vehicles. This information continues to be confidential in the hands of local law enforcement for permissible uses within the scope of the statute and federal provisions. However, the statute does not reach to records created by local law enforcement which may contain such personal information." Op. Att'y Gen. Fla. 10-10 (2010). For these reasons, a driver's license number included in agency's report or log is not confidential or exempt from disclosure and copying.

The Office of the Attorney General for Florida has published a very helpful booklet to provide guidance on public records issues. It is titled: *Public Records: A Guide for Law Enforcement Agencies, 2012 Edition* and available at myfloridalegal.com.

RECORDING POLICE OFFICERS

Law enforcement officers are seeing an increased frequency of citizens using various recording devices, such as traditional cameras and video cameras or cellular telephones with camera and video capabilities, to openly record and document police in the performance of their duties. Recordings are made of traffic stops, arrests, public events or any citizen encounter, whether on a sidewalk, roadway or public park. Many of these recordings and encounters with police are published on social medial sites or even sold to news outlets.

The First Amendment to the United States Constitution, provides the basis for the public's right to record law enforcement officers while performing their duties. It protects the right to gather information about what government officials do on pub-

lic property, in a form that can readily be disseminated and to record matters of public interest. See, **Smith v. City of Cumming**, 212 F.3d 1332 (11th Cir. 2000) and **Glik v. Cunniffe**, 655 F.3d 78 (1st Cir. 2011). Therefore, peaceful recording by citizens in a public space that **does not interfere with the officer's performance of their duties**, is lawful and permitted.

Florida Statutes § 934.03, commonly known as the Florida Wiretap Statute, only applies to a recording situation where the person being recorded 1) has an actual expectation of privacy and 2) where society recognizes that the expectation is reasonable. Consent to record a conversation is not required, if there is no expectation of privacy. Furthermore, where there is no expectation of privacy, Florida Statutes § 934.03 does not apply.

REMOVAL OF MOTOR VEHICLES FROM PRIVATE PROPERTY

Except in rare instances, law enforcement agencies have no jurisdiction relating to unwanted vehicles on private property. The complainant should be advised that if he or she wants the offending vehicle removed, the complainant must summon the wrecker and that the department has no authority or jurisdiction in such cases.

However, law enforcement officers may tow away vehicles that are in violation of Miami-Dade County Code Sections 30-388.31.1, Parking prohibited for display for sale, and 33-19.1, Display of vehicles for sale. **A violation of these sections is not an arrestable offense**. Essentially, unless the property is properly zoned for that type of business and the vendor is duly licensed to transact such business, officers may have a vehicle towed if it is parked on a public or private street, public right-of-way, parking lot, vacant lot or private property for the principal purpose of displaying the vehicle or other personal property thereon for sale. Section 33-19.1 allows for the display of a vehicle for sale in a residential district if the vehicle is on private property, has a valid state license plate displayed or a valid registration affixed to the rear window. In a residential district, no more than one vehicle may be displayed for sale on private property at any given time on the premises and no more than two vehicles may be displayed for sale on the premises in one calendar year.

Section 30-388.15 of the Miami-Dade County Code prohibits the parking of a vehicle upon any public street or public right-of-way for the principle purpose of: (1) displaying the vehicle for sale; (2) washing, greasing or repairing such vehicle, except repairs necessary in an emergency; (3) displaying advertising; (4) selling merchandise from such vehicle except in a duly established market place, or when so authorized or licensed under the ordinances of this County; or (5) storage, or as junkage or dead storage for more than twenty-four hours.

Section 30-202 of the Miami-Dade County Code defines a vehicle as "every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. The term shall include, but is not limited to, boats mounted on trailers, recreational vehicles and motor homes."

Any vehicle in violation of sections 30-388.31.1 and 30-388.15 shall be towed if not removed by the owner. The owner of the vehicle cannot be arrested for the violation, however, all violations of these sections shall be punishable by a fine of one hundred dollars for the first vehicle on the first offense and five hundred dollars per vehicle for each additional vehicle and any repeat violation.

REPOSSESSION

CREDITOR SELF-HELP

Can the creditor lawfully resort to self-help in reclaiming property that is the subject of a "retain title" sales contract before the entry of judgment requiring the return of the property by the buyer?

The controlling statute on this point is from the Uniform Commercial Code and is codified under Florida law as § 679.609. This statute gives a secured party after a default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace. Without removal, a secured party may render equipment

unusable, and may dispose of collateral on the debtor's premises under § 679.610.

Self-help repossessions are lawful if they can be accomplished without a breach of the peace. **Northside Motors of Florida, Inc. v. Brinkley**, 282 So. 2d 617 (Fla. 1973). In **Northside Motors**, the Florida Supreme Court discussed what constituted a breach of the peace. The great majority of courts find unauthorized entries into the debtor's residence to be breaches of the peace, and many find entry into his or her place of business or garage to be such a breach. As one moves from the residential threshold to the yard, the driveway, and finally the public street, however, the debtor's argument becomes more tenuous. We have found no case which holds that the repossession of an automobile from a driveway or a public street (absent other circumstances, such as the debtor's objection) constitutes a breach of the peace. In **Quest v. Barnett Bank of Pensacola**, 397 So. 2d 1020 (Fla. 1st DCA 1981), the Court specifically stated that the debtor's physical objection bars repossession even from a public street.

Repossessors are required to carry both their repossessor's license and an identification card issued by their employer when on duty. § 493.6111, Fla. Stat. Violation of this law is a first degree misdemeanor. As a practical matter, most professional repossessors make it a point to advise the police departments having jurisdiction of their intention to repossess a certain automobile (or other property). However, prior notice of a repossession is not required by law. The only legal requirement is that the police or sheriff's department, having jurisdiction over the location from which the property was repossessed, be notified within two hours of the repossession. § 493.6118(1)(u)5., Fla. Stat. Failure to do so is a first degree misdemeanor. As earlier stated, absent a writ of replevin or other court order entitling the creditor to the assistance of the sheriff, there can be no repossession over the express objection of the debtor, even where it might involve taking or removing an automobile from a public street. If the debtor is not present and the creditor can remove the vehicle either from the street or from the driveway without incident, he may lawfully do so. Police officers who observe such an operation would be entitled to demand strict proof of identity and purported authority. In the case of a dispute or confrontation regarding a repossession occurring on public property, if the vehicle has already been attached to the towing vehicle, is on the repossession vehicle, or is driven (or about to be driven) by an employee of the recovery agency, the repossession is lawful and the police officer should leave the vehicle in the possession of the repossesser. However, if there is a dispute or confrontation regarding a repossession from private property, and the vehicle is still physically located on private property, this constitutes a breach of the peace and the repossesser cannot lawfully take the vehicle.

SEARCH AND SEIZURE

The Fourth Amendment to the U.S. Constitution and Article I Section 12, of the Florida Constitution govern the law of search and seizure in the State of Florida. The penalty for an unlawful seizure is "suppression of the evidence," and in addition, under the "fruit of the poisonous tree doctrine," **Wong Sun v. United States,** 371 U.S. 471 (1963), evidence which is discovered as a result of information gained by the unlawful seizure will also be suppressed. Any search or seizure not based upon a warrant is considered unreasonable unless an exception exists, *e.g.*, consent, exigent circumstances, vehicle search, stop and frisk, etc. The burden of proving any such warrantless search and seizure is always on the government. Therefore, a warrant is recommended when practicable, and a detailed report should always be written whenever a warrantless search or seizure is effectuated.

Warrantless Search of Cell Phones Seized Incident to Arrest

The Florida Supreme Court recently held in **Smallwood v. Florida**, No. SC11-1130 (May 2, 2013) that although a cell phone can be seized as part of a search incident to arrest, the information contained in the cell phone, absent exigent circumstances, cannot be viewed or accessed in any way without a warrant.

In **Smallwood**, the defendant was arrested pursuant to a warrant for armed robbery. The defendant's phone was seized by the arresting officer during a search incident to arrest. After placing the defendant

securely in a police vehicle, the arresting officer accessed data on the phone. Just before trial, the officer told the prosecutor about the evidence he had seen on the phone, and the prosecutor obtained a warrant to view those images. Those images included pictures of a gun matching the description of the gun used in the robbery and money bundled the same way as the stolen money. The defendant filed a motion to suppress, arguing that cell phones mandated a higher level of privacy interests and could not be accessed even during a search incident to arrest without a warrant prior to the initial search.

Applying the reasoning in **Arizona v. Gant**, 556 U.S. 332 (2009), the Florida Supreme Court held that "while the search-incident-to-arrest warrant exception is still clearly valid, once an arrestee is physically separated from any possible weapon or destructible evidence, this exception no longer applies. **Smallwood**, p. 21. Accordingly, it is unconstitutional to search a cell phone as part of a search incident to arrest when the search is not needed for officer safety and there are no exigent circumstances. Such a warrantless search constitutes a violation of the Fourth Amendment prohibition against unreasonable searches and seizures.

ENTRY OF PREMISES TO EFFECT AN ARREST

"Entering one's home without legal authority and neglect to give the occupants notice have been condemned by the law and the common custom of this country and England from time immemorial," **Benefield v. State**, 160 So. 2d 706 (Fla. 1964).

The police officer who is required in the course of duty to enter upon the premises of another for the purpose of executing a search warrant or effecting an arrest with or without warrant is, in most instances, required to give notice of his office and the purpose of his presence.

Florida Statutes § 901.19(1) provides:

"If a peace officer fails to gain admittance **after he or she has announced his or her authority and purpose** in order to make an arrest either by warrant or when authorized to make an arrest for a felony without a warrant, the officer may use all necessary and reasonable force to enter any building or property where the person to be arrested is or is reasonably believed to be."

Florida courts recognize several exceptions to this announcement requirement, including instances where officers believe that persons within are in imminent peril of bodily harm, or where officers believe that persons within are engaged in activities which indicate that an escape or destruction of evidence is being attempted or would be attempted. **Benefield v. State**, 160 So. 2d 706 (Fla. 1964).

The preceding statute is only applicable for arrests with a warrant and for warrantless arrests due to exigent circumstances or in hot pursuit. The ruling in **Payton v. New York**, 445 U.S. 573 (1980) **prohibits warrantless and non-consensual entries into a suspect's home in order to make a routine felony arrest**. An arrest warrant for the person coupled with reasonable grounds to believe the person is in the residence is necessary to effect an arrest of the person in his residence. If the suspect to be arrested is believed to be located at a third party's residence, an arrest warrant as well as a search warrant is required. **Steagald v. United States**, 451 U.S. 204 (1981).

Generally, Florida case law prohibits an officer from forcibly entering a private residence to effect an arrest for a misdemeanor, even if the crime is committed in the officer's presence. **Ortiz v. State**, 600 So. 2d 530 (Fla. 3d DCA 1992).

There is no single definition describing all situations that may constitute "exigent circumstances." However, any situation in which articulable facts exist which indicate that the safety of officers or other persons will be jeopardized, or that escape or flight will be likely if an arrest is not made without delay, may constitute exigent circumstances. On the other hand, inconvenience, manpower shortages, or administrative obstacles to procuring a warrant would not be recognized as exigent circumstances.

Entry of Premises to Execute Search Warrant

Florida Statutes **§ 933.09** provides:

"The officer may break open any outer door, inner door or window of a house, or any part of a house or anything therein, to execute the warrant, **if after due notice of the officer's authority and purpose he or she is refused admittance to said house or access to anything therein**."

The officer should note that exceeding his or her authority or exercising it with un-

necessary severity in the execution of the search warrant is a misdemeanor. **§ 933.17, Fla. Stat.**

No-knock warrants are without legal effect in Florida. **State v. Bamber**, 630 So. 2d 1048 (Fla. 1994). The determination of whether or not it is reasonable for police to enter without knocking and announcing their authority must be evaluated at the time of entry. Florida recognized four exceptions to the knock and announce rule; (1) where the person within already knows of the officer's purpose and authority; (2) where officers are justified in the belief that the persons within are in imminent peril of bodily harm; (3) where an officer's peril would have been increased had the officer demanded entrance and stated purpose; (4) where officers believe that persons within are engaged in activities which indicate that an escape or destruction of evidence is being attempted or would be attempted.

Search of Person/Premises Incident to Lawful Arrest

When a lawful arrest is made without a warrant, an officer may search the person arrested and the area within his or her immediate control, which means the area immediately surrounding the person where the person might gain possession of a weapon or evidence which can be destroyed. **Chimel v. California**, 395 U.S. 752 (1969).

Any containers carried by the person arrested may also be searched contemporaneous to the person's arrest. After an in-house arrest, officers may "look into" closets or other places immediately adjoining the place of arrest from where an attack could be launched, without probable cause or reasonable suspicion.

Officers may also conduct a protective sweep of the rest of the premises after an in-home arrest if there is reasonable suspicion based on articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene, but in no event no longer than is necessary to dispel the suspicion or complete the arrest and depart the premises. **Maryland v. Buie**, 494 U.S. 325 (1990). Such a protective sweep is not a full search of the premises, but only a cursory inspection of those spaces where a person may be found. However, officers may still seize items of evidence during the sweep pursuant to the plain view doctrine.

If the suspect is arrested outside his or her premises, you **may not** take him or her inside the premises in order to search the inside of the premises. A protective sweep of a home, incident to an arrest occurring just outside that home requires that the officers have articulable facts, not a mere hunch, that would warrant a reasonable belief that the rooms they intended to search harbored a dangerous individual posing a threat to those on the arrest scene. **Mestral v. State**, 16 So. 3d 1015 (Fla. 3d DCA 2009). In **Mestral**, a warrantless protective sweep of the defendant's home following his detention in his front yard was found to be impermissible because the officers entered the home as part of a routine procedure and not based on any articulable facts which would warrant a reasonable belief that there was a dangerous person in the home.

It is still possible to obtain a **valid consent** to search the premises. The **better practice** is to secure the premises, obtain a search warrant, return to the scene, execute the search warrant, and conduct the search.

If you anticipate making an arrest at a subject's home, office, or other premises and you want to conduct a complete search of the **entire premises** after the arrest, **you should first obtain a valid search warrant**.

Motor Vehicles Search Incident to Lawful Arrest

The passenger compartment of a motor vehicle and any open, closed, or locked containers found therein may be searched incident to a lawful arrest of an occupant. **New York v. Belton**, 453 U.S. 454 (1981). Similarly, an officer may search the vehicle's passenger compartment incident to arrest even when the officer does not make contact with the subject until he or she has already left the vehicle. **Thornton v. U.S.**, 541 U.S. 615 (2004). This premise was expounded upon in 2009 when the Supreme Court of the United States imposed new limitations on a police officer's ability to search a vehicle incident to arrest. **Arizona v. Gant**, 556 U.S. 332 (2009).

In **Gant**, the Court held that police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains

evidence related to the arrest. In the case, police officers who had prior knowledge that Gant had an outstanding warrant for driving with a suspended license observed him be-hind the wheel of a motor vehicle. Officers watched Gant park at the end of the drive-way, get out of his car, and shut the door. He was then arrested and handcuffed 10-to-12 feet away from his car. After placing Gant in the back of a patrol car, two officers searched his car and discovered a bag of cocaine in the pocket of a jacket on the backseat. Officers charged Gant with drug related offenses.

The trial court held that the search was permissible as a search incident to arrest, and Gant was convicted. The Arizona Supreme Court reversed, finding that the search of Gant's car was unreasonable because the justifications permitting a search incident to arrest (protection of officers and preservation of evidence) no longer exist when the arrestee is handcuffed, secured in the back of a patrol car and under the supervision of an officer. The United States Supreme Court granted certiorari (review) and agreed with the decision of the Arizona Supreme Court finding the search unreasonable.

In reaching its decision, the Supreme Court considered well established case law regarding searches incident to arrest and vehicle searches. **Chimel v. California**, 395 U.S. 752 (1969); **New York v. Belton**, 453 U.S. 454 (1981). Under **Chimel**, police may search incident to arrest only the space within an arrestee's "immediate control," meaning "the area from within which he might gain possession of a weapon or destructible evidence." **Chimel** at 763. This limiting definition "ensures that the scope of a search incident to arrest is commensurate with its purposes of protecting arresting officers and safeguarding any evidence" related to the arrest that an arrestee might conceal or destroy. *Id*.

The Court then considered the **Chimel** rule in the context of an automobile search. In **Belton**, a lone police officer stopped a speeding car containing four occupants. Upon establishing probable cause that the occupants had committed a drug offense (*e.g.*, smell of marijuana, plain view of envelop marked "Supergold"), the officer ordered the occupants out of the vehicle, separated them, placed them under arrest, patted them down, and searched the vehicle. The officer did not handcuff the arrestees and they remained in proximity to the subject vehicle. The Supreme Court upheld this search ruling that when an officer lawfully arrests "the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of the automobile" and any containers therein, based in large part on the assumption that the items within the passenger compartment of a vehicle are generally within the arrestee's immediate reach. **Belton** at 460.

The Court's ruling in the **Gant** case serves to reconcile the above principles of Fourth Amendment law and narrow the scope of a search of a vehicle incident to arrest. Accordingly, police are authorized to search a vehicle incident to a recent occupant's arrest only when the arrestee is **unsecured** and **within reaching distance of the passenger compartment** at the time of the search. Further, a vehicle search is also justified incident to a lawful arrest when it is reasonable to believe that evidence relevant to the arrest might be found in the vehicle.

In order to conduct a search of a vehicle incident to arrest, officers must be able to clearly articulate facts indicating that:

1. the arrestee could have accessed the vehicle at the time of the search; **or**
2. that evidence of the offense (*i.e.*, drugs, stolen property, etc) for which the subject was arrested might be found therein.

Officers are reminded that this holding does not modify the principles governing search incident to arrest of a person or vehicle inventory searches following arrest.

In addition, no search may be made of the trunk incident to the same arrest unless there is independent probable cause or a lawful inventory search is conducted pursuant to standardized police procedures. **Colorado v. Bertine**, 479 U.S. 367 (1987); **Florida v. Wells**, 495 U.S. 1 (1990). Note that the hatchback area of a vehicle is considered part of the passenger compartment.

MOTOR VEHICLES
SEARCH BASED UPON PROBABLE CAUSE

If there is probable cause that a vehicle contains fruits or instrumentalities of a crime, or contraband, the entire vehicle, including any locked or unlocked containers, may be

searched. **California v. Acevedo**, 500 U.S. 565 (1991); **U.S. v. Ross**, 456 U.S. 798 (1982); **Carroll v U.S.**, 267 U.S. 132 (1925).

1. A vehicle not on private property can be searched without a warrant if the search is based on probable cause (which would be sufficient to justify the issuance of a warrant) that the vehicle contains the items sought.

2. The scope of a warrantless search of a vehicle based on probable cause that the vehicle contains the items sought is the same as that of a vehicle search pursuant to a warrant, that is, all areas or containers in the vehicle that may contain the articles sought may be examined.

3. If probable cause exists that a container within the vehicle contains contraband or evidence, the police may, under the Fourth Amendment, conduct a warrantless search for that container, and if located within the vehicle, may then search that container. Probable cause that contraband or evidence may be found in a specific container would not permit a general search of the entire vehicle, unless such information leads to a reasonable belief that contraband or evidence may be located otherwise within the vehicle. **California v. Acevedo**, 500 US 565 (1991).

4. Once a motor vehicle has been lawfully stopped, an officer may order the driver and/or any passenger(s) to exit the vehicle. **Pennsylvania v. Mimms**, 434 U.S. 106 (1997); **Maryland v. Wilson**, 519 U.S. 408 (1997). Any pat down or search of the driver and/or passenger(s) must still be based on reasonable suspicion or probable cause. A police officer conducting a lawful traffic stop may order a passenger who has left the stopped vehicle to return to and remain in the vehicle until completion of the stop. **U.S. v. Williams**, 419 F.3d 1029 (9th Cir. 2005).

Motor Vehicles Search Based Upon Consent

The United States Supreme Court has held a search to be lawful when police receive general consent to search a vehicle for narcotics, and thereupon, without specific permission, open closed containers found in the vehicle that might reasonably hold the object of their search. **Florida v. Jimeno**, 500 U.S. 248 (1991).

The object of such a search must reasonably be susceptible of being found within such containers, and the officer must have expressed what the object of the search is to the person giving consent.

General consent to search a vehicle would ordinarily not extend to locked containers, nor to the trunk of a vehicle. You must make it clear that you intend to search a person's trunk in order for valid consent to be given. Officers should use plain language (*i.e.*, "Can I search your vehicle?") when requesting consent to search and avoid phrases which can subsequently be misinterpreted.

Consent must always be freely, voluntarily, and knowingly given, and cannot be the product of any duress or coercion. It is the state's burden to prove the legality of consent, so the circumstances surrounding the consent should always be included in the police report for future reference.

Searching Pagers Incident to Arrest

The United States Supreme Court has not addressed the issue of retrieving information from pagers incident to a lawful arrest. Based upon lower court case rulings, the prudent course of action would be for the officer to retrieve the pager messages only contemporaneous to the arrest, and otherwise only with a warrant.

Pretext Seizures/Stops

The United States Supreme Court has ruled that a police officer, having probable cause to stop a vehicle for any traffic violation, may do so even if the officer has an ulterior motive for making the stop. **Whren v. United States**, 517 U.S. 806 (1996). This holding applies to all traffic stops, whether or not the officer is in a marked or unmarked vehicle. In **Whren**, the officers were in plain clothes in an unmarked car patrolling an area of high drug activity.

Plain View Seizures

While there are many complex and disputed issues concerning "plain view," there are some clear principles which can be followed in determining whether a "plain view" seizure of an item will be proper.

If contraband is left in open view and is observed by police who are at a location where they have a legal right to be, and the incriminating character of an object is immediately apparent, the police may seize the object without

a warrant. **Minnesota v. Dickerson**, 508 U.S. 366 (1993); **Horton v. California**, 496 U.S. 128 (1990).

Under the plain view doctrine, a police officer may properly seize evidence or contraband without a warrant if (1) an officer makes a lawful initial intrusion into an area and is lawfully in a position from which to view an object; and (2) the object's incriminating character is immediately apparent, that is, the officer has probable cause to believe the object is evidence of a crime or contraband.

If these two factors are present, and the officer is already lawfully inside a constitutionally protected area, the item may immediately be seized without a warrant. If the officer is outside of the protected area at a lawful vantage point, the observation and surrounding probable cause merely supply the officer with grounds to secure a warrant to enter and seize the object unless the entry can be justified under some other exception to the warrant requirement.

CONSENSUAL ENCOUNTERS

The stop of a person is a seizure, but all citizen contacts are not stops which implicate the Fourth Amendment.

A person is seized (stopped) when a reasonable person in his or her position would believe he or she was not free to terminate the encounter and go about his or her business.

In order to implicate the Fourth Amendment, the stop must be due to physical force of the officer or a submission to lawful authority at the command of the officer.

Officers must be aware that a show of authority, including something as slight as ordering a person to remove their hands from their pockets will convert a consensual encounter into a stop requiring articuable suspicion.

A citizen or consensual encounter is not a stop, and typically occurs when an officer approaches a person and asks if the person is willing to speak with him or her. No reasonable suspicion or probable cause is needed to approach someone in a consensual encounter.

However, as there is no reasonable suspicion or probable cause to hold the individual, the individual is free to terminate the encounter and leave. The person does not have to speak with the police, should he or she choose not to.

If, on the other hand, reasonable suspicion to detain the person is developed as a result of the consensual encounter, the officer may continue the investigation, and if probable cause is developed, the officer may make an arrest.

If an encounter is later viewed to be a stop (a seizure of the person), then the stop must be justified under the Fourth Amendment or else the fruit of the poisonous tree doctrine applies, and all evidence produced as a result of that illegal stop will be suppressed.

STOP AND FRISK

General

The Florida Stop and Frisk Law, § 901.151(2) and (5) Florida Statutes, reads in part:

(2) "Whenever any law enforcement officer of this state encounters any person **under circumstances which reasonably** indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state, or the criminal ordinances of any municipality, or of any county, the officer may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and circumstances surrounding the person's presence abroad which led the officer to believe that the person had committed, was committing, or was about to commit a criminal offense."

(5) "Whenever any law enforcement officer authorized to detain temporarily any person under the provisions of subsection (2) has probable cause to believe that any person whom the officer has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person, the officer may search such person so temporarily detained only to the extent necessary to disclose, and for the purpose of disclosing the presence of such weapon." Note: Although the statute says "probable cause," case law only requires "reasonable suspicion."

A. Application.

The "Stop" procedure involves temporary detention and questioning based on something less than probable cause, for the purpose of investigation, crime prevention or crime detection. Such an investigatory

detention, or "Terry Stop" as it is commonly called, must be based on articulable circumstances, which when viewed in light of your experience, training, and knowledge, lead you to believe that criminal activity may be afoot. You must be able to articulate such factors in order to sustain your burden of reasonable suspicion at any subsequent motion to suppress. It is always advisable, therefore, to list those factors in the police report in order to remember them at a later time.

The Stop and Frisk statute also applies to persons in automobiles. You may have the subject get out of the automobile prior to questioning.

You are **not** required to give the Miranda warnings prior to using your stop and frisk procedure, but it will become necessary to give warnings thereafter if a formal arrest is made and the subject interrogated.

Be public-relations conscious. If you allow the subject to go free, be sure to explain your reasons for the stop and frisk.

B. Decision to Make a Stop

In deciding whether to make a stop, you might consider a number of factors, including:

Finding the subject in an out-of-the ordinary place; *e.g.,*

(1) Standing in a darkened doorway in an alley;

(2) Subject is found in a place not usually frequented at that particular hour of the day or night;

(3) The subject fits the description on a bulletin and/or you have knowledge of his or her criminal record;

(4) The subject sees you and tries to hide or generally makes suspicious movements;

(5) You notice something odd about the subject's clothing or his or her vehicle;

(6) The subject exhibits **any** strange behavior.

The Supreme Court has recently decided that flight at the sight of the police in a high crime area in and of itself constitutes sufficient articulable factors to establish reasonable suspicion for an investigative detention under the Fourth Amendment. Illinois v. Wardlow**,** 528 U.S. 119 (2000).

Remember that you are looking for circumstances which "reasonably indicate" that a person has committed, is committing, or is about to commit a violation of a criminal law or ordinance.

You must not act upon the basis of a hunch. Make use of your knowledge, experience and training as a police officer. The stop and frisk law does not allow an officer to detain and frisk a person for a suspected violation of non-criminal statutes or ordinances.

Once you have decided that a stop is appropriate under the circumstances, you should announce your authority and identify yourself. At that point you may ask for the name and address of the person and an explanation of his or her actions.

C. Decision to Frisk

These are considerations, among others, to aid you in making a decision to frisk:

(1) Is the subject able to give a reasonable account of his or her presence in the area?

(2) Is he or she able to show you satisfactory identification?

(3) Is he or she "visibly shaken" by your investigation?

(4) Does the suspected crime involve the use of weapons?

(5) Does anything about his or her behavior or attitude create further suspicion?

(6) Are there bulges indicative of concealed weapons?

(7) The availability of backup officers and the number of suspects detained.

NOTE: This law is designed for your protection. Your safety should be your first concern.

Having stopped a subject for temporary questioning, any combination of the above circumstances could provide the additional articulable factors necessary to establish reasonable suspicion that the subject is armed and dangerous which would then allow you to make a pat-down (frisk).

D. Length of Detention

No person may be temporarily detained longer than is reasonably necessary to accomplish the purposes outlined in the statute. Such temporary detention shall not extend beyond the place where it was first effected or the immediate vicinity thereof. End your questioning as soon as possible.

NOTE: You should not remove the person from the immediate area without making a formal arrest, unless you have the person's consent.

E. Probable Cause

If at any time after the onset of the temporary detention authorized by this section,

probable cause for the arrest of subject appears, the subject may be arrested.

If, after inquiry into the circumstances which prompted the temporary detention, no probable cause for the arrest of subject appears, he or she must be released.

If a valid frisk uncovers an illegal firearm or weapon (§790.01), place the subject under arrest. Then, incident to the arrest, you may make a complete search of the suspect's person. At this time, if you wish to question him or her further, you must give Miranda rights.

If, in the course of a patdown for the weapons, you should detect narcotics or other contraband, whose contour or mass makes its identity and criminality **immediately** apparent to you based on your experience and training, you may seize the object. **Minnesota v. Dickerson**, 508 U.S. 366 (1993) (referred to as the Plain Feel Doctrine).

F. Testifying in Court

If the "stop" leads to a court appearance, you should use your experience and training as a police officer to testify as to why you took action. You must also be able to testify as to why those circumstances look peculiar to police officers if, in fact, they appear ordinary to the average person on the street.

There are certain points that must be brought out in your testimony to show that the stop and frisk was in compliance with the law–the circumstances leading you to believe that:

(1) A crime had been, was being, or was about to be committed;

(2) The suspect was or might be armed;

NOTE: Be sure to acquaint the prosecutor with the facts by writing a complete report **with emphasis on these important points.**

PROTECTIVE SEARCHES

A decision of the U.S. Supreme Court has clarified the authority of police officers to conduct limited protective searches of the area around a person, in addition to a protective frisk of the person, for weapons, when grounds exist that indicate that the person may be dangerous and have access to a weapon. **Michigan v. Long**, 463 U.S. 1032 (1983). The decision expands principles previously stated by the Supreme Court in decisions commonly referred to under the heading of "stop and frisk" cases. See **Terry v. Ohio**, 392 U.S. 1 (1968); **Adams v. Williams**, 407 U.S. 143 (1972).

Michigan v. Long, 463 U.S. 1032 (1983) involved an encounter between police officers and the driver and sole occupant of a motor vehicle. The encounter occurred in a rural setting, late at night. The officers observed Long, the driver of the vehicle, driving erratically and finally swerving off of the roadway, into a ditch. The officers approached the car and were met at the rear of the vehicle by Long. Long appeared to the officers to be under the influence of some unknown substance. Long did not respond initially when asked to produce a driver's license and vehicle registration, but finally produced a license and began to return to the interior of his vehicle to get the registration. When the officers observed a large knife on the floorboard of the vehicle, Long was prevented from entering the car and frisked for additional weapons. No weapons were found on Long's person, but, prior to allowing him to re-enter his car, one of the officers searched the passenger compartment of the car for more weapons. During this search, the officer raised a front seat armrest and found a pouch of marijuana. Long was then arrested for possession of marijuana. In the trunk of the vehicle the officers found 76 pounds of marijuana. The search of the passenger compartment for weapons and the seizure of the marijuana from the trunk of the vehicle was upheld by a trial court, but the Supreme Court of Michigan reversed that ruling, holding that a "stop and frisk" permissible under the **Terry** case did not extend beyond the person, and that the search of the passenger compartment and ensuing seizure of marijuana from the trunk was invalid. **People v. Long**, 413 Mich. 461, 320 N.W. 2d 866 (1982).

The U.S. Supreme Court reversed the decision of the Michigan Supreme Court, holding that the limited search of the vehicle passenger compartment conducted by the police officer was proper, and remanding that portion of the Michigan case which found the seizure of the marijuana from the trunk to be improper for reconsideration in light of the fact that the initial search was proper. In finding that the protective search conducted by the officer was valid, the Supreme Court recognized the dangers inherent in roadside encounters between the police and suspects, and that the danger to officers can arise from

the presence of weapons known by the suspect to be in the area of the encounter, as well as those concealed on the person of the suspect. Therefore, when officers possess "a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons," a protective search may extend to the passenger compartment of a vehicle recently occupied by the subject, limited to those areas where a weapon could be concealed. **Michigan v. Long**, 463 U.S. at 1049, quoting **Terry v. Ohio**, 392 U.S. 1, 21 (1968). The facts of this case convinced the Supreme Court that the officer did have a reasonable belief that Long could have posed a danger if allowed to re-enter his car. The Court noted the erratic driving behavior exhibited by Long, his appearance of being under the influence of some substance and initial refusal to respond to demands to produce a license and registration, the observation of the knife in the car he was about to re-enter, along with the late hour and remote setting, in finding that the search was reasonable. However, at the same time they approved the search, the Supreme Court also stated that they were not authorizing vehicle searches for every investigative stop, but only in those instances where articulable facts exist to support the search, and only when the search is for weapons.

SOVEREIGN CITIZENS

Sovereign citizens are anti-governmental networks of loosely affiliated individuals who believe that they are exempt from federal, state and local government laws. The sovereign citizen's ideology challenges the legitimacy of government. The most common beliefs of sovereign citizens are:

- All government is illegitimate.
- Even though they physically reside in the U.S., they are separate or "sovereign" from the U.S. and do not have to answer to any government authority, including courts, taxing entities, motor vehicle departments, or law enforcement.
- They are members of another system of government, either common law, township, Kingdom of Heaven, etc., that do not answer to any U.S. laws or codes.
- They have an absolute right to freely travel without having to obey traffic or any other laws.
- Infringing on their "rights" is considered an act of war.

Since this ideology is merely a movement, there is no essential hierarchy. However, there are recruiters, organizers and facilitators that guide new believers through the tedious and profuse paperwork necessary for establishing their new identity in the sovereign belief. This paperwork is often presented to law enforcement during encounters, in an effort to distract the officers. Unfortunately, this distraction has given them the few seconds needed to engage in violent attacks and confrontations with law enforcement. Nationwide trends have shown an increase in violent confrontations with law enforcement, many resulting in death.

Sovereign citizens are also known for using tactics to try to intimidate law enforcement officers, attorneys and judges. One of their tactics is known as "paper terrorism," wherein individuals file bogus liens, and tax forms against law enforcement officers, attorneys and judges. This tactic floods the court system with paperwork and causes unnecessary stress on those involved.

Suggestions for Law Enforcement Officers: The following suggestions are based upon prior law enforcement interactions with sovereign citizens (USE CAUTION):

- Prior to making contact with a suspected sovereign citizen, request back-up.
- Be alert of the possible presence of concealed weapons.
- Photograph and seize any fraudulent items.
- If the subject becomes agitated or hostile, attempt to postpone the confrontation until additional units arrive, or to a future date and location.
- Due to a strong adherence to their beliefs, arguing political philosophy or legal interpretations with the subject may only further agitate the subject.

- Following an encounter with a sovereign citizen, it is suggested that the responding officers periodically check for possible liens placed on their personal homes.

Officers who come into contact with a sovereign citizen are advised to notify their local intelligence unit.

USE OF FORCE

Florida Statutes chapter 776, *Justifiable Use of Force*, proscribes the lawful use of force for use by law enforcement officers in making arrests and the lawful use of force for use by civilians in defense of themselves, others and property.

When a person unlawfully and forcefully enters or attempts to enter a dwelling, residence or occupied vehicle, or removes, or attempts to remove another against that persons will from the above locations, the law affords the property owner a new degree of protection regarding his or her legal ability to use force. A property owner who uses defensive force likely to cause death or great bodily harm is presumed to have acted in reasonable fear of imminent death or great bodily harm when an intruder is found within or entering the above locations. Further, a person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence. § 776.013, Fla. Stat.

A person who is not engaged in an unlawful activity and who is attacked in any place where he or she has a right to be has no duty to retreat, and has the right to stand his or her ground and meet force with force, including the use of deadly force if warranted. *Id.* Florida law provides immunity from criminal prosecution and civil actions to an individual who uses force as permitted in chapter 776, unless the force was used against a law enforcement officer acting in the performance of his or her official duties. § 776.032, Fla. Stat.

BATTERY, AGGRAVATED BATTERY AND MURDER

Florida Statutes § 784.03, provides alternative definitions of battery:

(A) The actual and intentional touching or striking of another person ("against the victim's will"); or

(B) the intentional causation of bodily harm to the victim.

As a general rule, the crime of battery occurs whenever one person ("the perpetrator") touches or injures the victim without legal excuse or justification.

If, while committing a battery, the perpetrator used a deadly weapon, or if he or she seriously injured the victim, the perpetrator may be charged with aggravated battery. If the victim dies of the injuries inflicted on him during an aggravated battery, the perpetrator can be charged with murder or manslaughter. A periodic review of Florida Statutes chapters 782 and 784 is recommended.

LEGAL JUSTIFICATION–TOUCHING OR THE USE OF FORCE

There are three major exceptions to the general rule that one may not legally touch or injure another person:

(1) Consent (expressed, implied, emergency);

(2) Self-Defense; and

(3) Arrest.

The consent may be expressed or implied. An example of express consent would be a situation in which a person accused of shoplifting protests his or her innocence and asks the store manager or responding officer to search him or her for the item alleged to have been stolen. In order to serve as justification for touching, the victim's consent must have been freely given.

Consent to be touched may be implied from a person's actions, or implied as a matter of law from the circumstances. One common situation in which consent is implied as a matter of law from the circumstances is when the person touched is mentally or physically incapable of giving actual consent and it is assumed that most people in his or her position would have consented. For example, when a police officer carries an unconscious person from a position of peril, such as a burning building, the victim's consent will usually be implied as a matter of law, and the police officer will not be held to have committed a battery.

If touching or force varies in scope or intensity from the consent given or implied, a battery has occurred unless some other

justification exists for the physical contact. For example, it would be generally implied that an unconscious person has consented to mouth-to-mouth resuscitation if it was reasonably believed to have been necessary to save one's life. If, however, after having restored the victim's breathing, the rescuer kissed the person on the forehead, the rescuer would have committed a battery. The victim's consent to being kissed will not be implied, absent special circumstances, because it was not necessary to the victim's well-being.

Another legal justification for touching or injuring another person is self-defense. Any person may use non-lethal force when and to the extent that he or she reasonably believes that such force is necessary to defend himself or herself or another person from the unlawful use of force by a third person. The use of deadly force by a private citizen is justified only if the citizen reasonably believes that such force is necessary to prevent great bodily harm (to himself or another person) or, to prevent the commission of a forcible felony. **§ 776.012, Fla. Stat.**

The third major exception to the general rule that a person must not touch or injure another person exists for police officers in the performance of their lawful duties. As a general rule, a police officer may cause whatever physical contact or use whatever non-lethal force is necessary to carry out his or her lawful duties. However, all reasonable alternatives should be exhausted or be clearly ineffective prior to the application of force.

Arrest Situations

The individual who commits a criminal act waives any right to freedom at the time of the arrest. Since, in a number of cases, the arrestee does not voluntarily consent to be taken into custody, resistance is often encountered. The police officer faces the choice of either letting the subject remain at large or applying the necessary force to effectuate a lawful arrest. The job of bringing the subject before the magistrate may include: (1) applying handcuffs; (2) placing the subject in a police vehicle; (3) transporting the subject to a jail facility; and (4) turning the subject over to the custody of jail personnel. In all these situations there is the possibility that the subject will use various types of force to neutralize the efforts of the police officer.

Statutory Authorization

Florida Statutes § 776.05 defines the legal levels of force that law enforcement officers may use in the normal course of their duties. It should be emphasized that when consent or an emergency is not present, and there is no probable cause to make an arrest, nonconsensual touching by police may constitute a crime, and may also result in civil liability. When probable cause for arrest does exist, criminal liability may still occur if the limits set out by Florida Statutes § 776.05 are exceeded.

Therefore, it is important that officers understand this section of the law thoroughly. If too little force is used in any arrest situation, the officer may be injured and the subject may escape; if too much force is used, the officer may incur civil and criminal liability.

Florida Statutes § 776.05 is reproduced in full:

"A law enforcement officer or any person whom the officer has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of any force:

(1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;

(2) When necessarily committed in retaking felons who have escaped; or

(3) When necessarily committed in arresting felons fleeing from justice. However, this subsection shall not constitute a defense in any civil action for damages brought for the wrongful use of deadly force unless the use of deadly force was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:

(a) The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or

(b) The officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person."

The police officer is specially trained to handle violent confrontations, and is not expected to retreat. Of course, if the odds are overwhelmingly against the officer on the scene, it is always prudent to make a retreat until reinforcements arrive. But, there is no legal duty to desist and retreat when an arrest is appropriate and can be done in an effective manner.

The second sentence of § 776.05 talks about the justified use of force in the performance of police duties. Technically, this means that whenever any physical injury or damage occurs as a result of the intentional, legal, official act of police officers, no crime will occur since the use of force was "justified." But, a detailed reading of the second sentence is required since an officer exceeding the law on use of force may find that his or her actions were not "justified." If the force was unjustified, a crime results and/or the officer may be subject to civil liability.

The first clause of the second sentence states that the law enforcement officer "... is justified in the use of any force...." This refers to all types of force from pushing, up to and including the use of a firearm which results in death. Officers should be aware that the Department Manual, is more restrictive than the state statute. The use of deadly force is authorized in only a limited number of situations. Use of deadly force in situations other than those listed in the Department Manual may result in disciplinary action against the officer.

The second sentence of the section continues that an officer is justified in the use of any force "...which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest… ," Two particular key phrases must be considered: (1) "… reasonably believes. .." and (2) "necessary."

In each situation where any type of force is used, the officer is constantly receiving data from his or her surroundings. That data includes many characteristics of the subject such as size, demeanor, past history of arrests, threats, presence of associates of the subject, bystanders, etc. Based on all these facts the officer is constantly forming and reforming a belief as to how much force is necessary to effect an arrest.

The necessary force a police officer must use to take a perpetrator into custody, prevent bodily injury, prevent property damage or prevent the escalation of a potentially volatile situation should be evaluated by the totality of the circumstances. Many factors will determine he necessary use of force required to safely enforce the law. Officer safety, the safety of the community and the safety of the perpetrator must be a primary consideration in the decision to use force.

The word "necessary" also includes the skill level of the officer. It is assumed that police officers have training that is above that of the average population. While a few citizens may have a higher level of expertise in the use of the martial arts and weapons, the police are better trained and able to effect arrests with a lower level of force. The officer may use only that force which is necessary to effect the arrest. At the beginning of an arrest situation, it may appear to the officers that minimal force is necessary. But, the actions of the subject may, within a very short time, indicate that much more force is necessary. Naturally, that necessarily higher level of force would be justified.

The officer is allowed to use "necessary" force to protect himself or herself or others from bodily harm. This includes the protection of fellow officers as well as innocent third parties. The same use of force may also be used when "necessarily committed in retaking felons who have escaped." The use of force "when necessarily committed in arresting felons fleeing from justice" was amended in the 1987 legislative session to reflect the strict guidelines imposed by the U.S. Supreme Court in **Tennessee v. Garner**, 471 U.S. 1 (1985). The amendment requires that the officer either reasonably believes that the fleeing felon poses a threat of death or serious bodily harm to the officer or others, or the officer reasonably believes that a fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person before use of force can be justified in arresting fleeing felons. These last two phrases would include the initial warrant or warrantless arrest of felons, as well as individuals who have escaped from immediate custody after any arrest has been effected.

An individual who escapes from the custody of a police officer (even after the arrest for a misdemeanor) would commit a felony by committing the escape.

LEVEL OF FORCE

In a majority of cases, only some type of physical force will be "necessary" to effect the arrest and protect others. That physical force may be as low a level as the light placing of a hand on the subject's shoulder and directing his or her hands behind the back for handcuffing. It may escalate up to the physical pinning of the subject while handcuffs are applied, use of fists, use of an electronic control device, or use of a firearm. In all cases the statute indicates that only "necessary force" is justified. Any force more than that which is "necessary" would be unjustified and a criminal act by the police officer would occur.

In a criminal case against a police officer where he or she is charged with battery based upon an allegation of unjustifiable use of force, the State has the burden of proving that the physical acts of the officer were unjustified. In a civil lawsuit against a police officer based upon the same allegation, the Plaintiff has the same burden. The defense must show that the officer's use of force was justified and lawful.

"REASONABLE USE OF FORCE" DEPARTMENT RULES AND TRAINING

The legal structure that has been created in Florida Statutes chapter 776 takes into consideration the complex conditions under which law enforcement officers must work. The phrases "reasonably believes," indicates that no liability can result when the officer, based on his or her training and experience, believes that a certain level of force was necessary to effect the arrest or protect other individuals. When the officer is mistaken, but still had a belief based on reason, his actions would be justified.

There are two sources for the reasonable belief that a particular action is necessary: (1) facts of the unique situation; and (2) the officer's experience. The facts of each situation are always different. The lighting conditions, the actions and demeanor of the subject, the time of day, the location, etc., may be different from one situation to another. In one case, it may be necessary to draw a weapon and fire within seconds after arrival, while in another situation, a light touching of the subject's shoulder or verbal commands may be sufficient. But, the training that the officer receives (along with experience that has been incorporated into various department manuals) is a fairly constant factor.

Training and established procedures constitute a standard for actions that can be assumed by the officer to be "reasonable and necessary." Whenever procedures have been followed by an officer, the presumption is that the officer acted "reasonably."

The use of deadly force by a police officer is justified when it is reasonably necessary to defend himself or herself or others from bodily harm, to effect an arrest of a violent felon, or to prevent a forcible felony. The use of deadly force is not reasonably necessary until all practical alternatives have been exhausted. All Miami-Dade police officers should become familiar with Florida Statutes chapter 776 and with the Departmental Manual. Familiarity with these provisions will reduce the likelihood that the officer will inadvertently use more force than allowed by law.

WEAPONS

FIREARMS–SECURITY GUARDS AND BUSINESS PREMISES

The proprietor of a business may keep or carry a firearm concealed or unconcealed on his business premises. § 790.25, Fla. Stat. The same rule is applicable to his employees pursuant to their employment. This statute however, does not exempt security guards from obtaining a class "G" license as required by § 493.6115, Fla. Stat. "Business premises" means the area under the exclusive control or management of the particular business, including the parking lot. However, such premises would not include the entire parking lot of a shopping center unless a security company is employed by the shopping center management to patrol the entire lot. Guards employed by individual businesses may not carry firearms without first obtaining a class "G" license.

Strictly speaking, a security guard may not wear a firearm going to and from his or her work assignments. Remember, however, that it is lawful for a person to possess a weapon or firearm when traveling by private conveyance provided the weapon is securely encased and not in the person's manual possession, or not readily accessible

for immediate use. See Florida Statutes § 790.001(16) and (17) for definitions.

The issuance of a license to operate a guard service by the Secretary of State does not carry with it any "blanket" permit with respect to firearms. Permits are issued to individuals by the Secretary of State pursuant to applicable sections of the Florida Statutes.

Any violation of Florida Statutes chapter 493, except § 493.6405, is punishable as a misdemeanor of the first degree. § 493.6120, Fla. Stat.

WEAPONS IN MOTOR VEHICLES

Florida Statutes § 790.25 provides an exception to the concealed weapons law for firearms being transported in private conveyances. A person 18 years of age or older may possess a concealed firearm within the interior of a private conveyance without a concealed weapons permit if the firearm is securely encased or otherwise not readily available for immediate use.

"Securely encased" means in a glove compartment, whether or not locked; snapped in a holster; in a gun case, whether or not locked; in a zippered gun case; or in a closed box or container which requires a lid or cover to be opened for access. § 790.001(17), Fla. Stat. Other examples include a purse, backpack, briefcase, shoebox with lid, or other similar encasements.

The type of holster used does make a difference. A firearm in a holster without the safety strap across the hammer is not securely encased and therefore constitutes a concealed firearm. **State v. Swoveland**, 413 So. 2d 166 (Fla. 2d DCA 1982). By contrast, a holstered revolver, with a safety strap over the hammer found under the front seat of a motor vehicle was held to be securely encased and within the § 790.25 exceptions. **State v. Hanigan**, 312 So. 2d 785 (Fla. 2d DCA 1975).

Officers who encounter a concealed firearm in a personal conveyance should first determine if the person has a concealed weapons permit and, if not, whether the weapon was securely encased or otherwise not readily accessible for immediate use.

SIMPLE POSSESSION OF WEAPON

There is no penalty for mere possession of a deadly weapon. The carrying of a concealed weapon or firearm without a concealed weapons permit is a violation of Florida Statutes § 790.01.

Exhibition of a weapon, **in a rude, careless, angry or threatening** manner, not in necessary self-defense, is punishable as a misdemeanor of the first degree as provided in Florida Statutes § 790.10.

Florida Statutes § 790.053, the law governing the open carrying of weapons, has been significantly revised effective June 17, 2011. The intent of this revision is to allow persons who have obtained a concealed weapon or firearm license to openly carry firearms in the State.

Revised subsection (2) now states, "It is not a violation of this section for a person licensed to carry a concealed firearm as provided in s. 790.06(1), and who is lawfully carrying a firearm in a concealed manner, to briefly and openly display the firearm to the ordinary sight of another person, **unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense.**" Moreover, subsection (12) (b) states, "A person licensed under this section shall not be prohibited from **carrying or storing a firearm in a vehicle for lawful purposes.**" (Emphasis Added)

Contents

RULES OF CRIMINAL PROCEDURE

CHAPTER 39
PROCEEDINGS RELATING TO CHILDREN

39.01. Definitions.

When used in this chapter, unless the context otherwise requires:

(1) "Abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this subsection, "establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. The term does not include a surrendered newborn infant as described in § 383.50, a "child in need of services" as defined in chapter 984, or a "family in need of services" as defined in chapter 984. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

(2) "Abuse" means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

(3) "Addictions receiving facility" means a substance abuse service provider as defined in chapter 397.

(4) "Adjudicatory hearing" means a hearing for the court to determine whether or not the facts support the allegations stated in the petition in dependency cases or in termination of parental rights cases.

(5) "Adult" means any natural person other than a child.

(6) "Adoption" means the act of creating the legal relationship between parent and child where it did not exist, thereby declaring the child to be legally the child of the adoptive parents and their heir at law, and entitled to all the rights and privileges and subject to all the obligations of a child born to the adoptive parents in lawful wedlock.

(7) "Alleged juvenile sexual offender" means:

(a) A child 12 years of age or younger who is alleged to have committed a violation of chapter 794, chapter 796, chapter 800, § 827.071, or § 847.0133; or

(b) A child who is alleged to have committed any violation of law or delinquent act involving juvenile sexual abuse. "Juvenile sexual abuse" means any sexual behavior which occurs without consent, without equality, or as a result of coercion. For purposes of this paragraph, the following definitions apply:

1. "Coercion" means the exploitation of authority or the use of bribes, threats of force, or intimidation to gain cooperation or compliance.

2. "Equality" means two participants operating with the same level of power in a relationship, neither being controlled nor coerced by the other.

3. "Consent" means an agreement, including all of the following:

a. Understanding what is proposed based on age, maturity, developmental level, functioning, and experience.

b. Knowledge of societal standards for what is being proposed.

c. Awareness of potential consequences and alternatives.

d. Assumption that agreement or disagreement will be accepted equally.

e. Voluntary decision.

f. Mental competence.

Juvenile sexual offender behavior ranges from noncontact sexual behavior such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs to varying degrees of direct sexual contact, such as frottage, fondling, digital penetration, rape, fellatio, sodomy, and various other sexually aggressive acts.

(8) "Arbitration" means a process whereby a neutral third person or panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding.

(9) "Authorized agent" or "designee" of the department means an employee, volunteer, or other person or agency determined by

the state to be eligible for state-funded risk management coverage, which is assigned or designated by the department to perform duties or exercise powers under this chapter.

(10) "Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (47).

(11) "Case plan" means a document, as described in § 39.6011, prepared by the department with input from all parties. The case plan follows the child from the provision of voluntary services through any dependency, foster care, or termination of parental rights proceeding or related activity or process.

(12) "Child" or "youth" means any unmarried person under the age of 18 years who has not been emancipated by order of the court.

(13) "Child protection team" means a team of professionals established by the Department of Health to receive referrals from the protective investigators and protective supervision staff of the department and to provide specialized and supportive services to the program in processing child abuse, abandonment, or neglect cases. A child protection team shall provide consultation to other programs of the department and other persons regarding child abuse, abandonment, or neglect cases.

(14) "Child who has exhibited inappropriate sexual behavior" means a child who is 12 years of age or younger and who has been found by the department or the court to have committed an inappropriate sexual act.

(15) "Child who is found to be dependent" means a child who, pursuant to this chapter, is found by the court:

(a) To have been abandoned, abused, or neglected by the child's parent or parents or legal custodians;

(b) To have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;

(c) To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;

(d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;

(e) To have no parent or legal custodians capable of providing supervision and care;

(f) To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians; or

(g) To have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.

(16) "Child support" means a court-ordered obligation, enforced under chapter 61 and §§ 409.2551-409.2597, for monetary support for the care, maintenance, training, and education of a child.

(17) "Circuit" means any of the 20 judicial circuits as set forth in § 26.021.

(18) "Comprehensive assessment" or "assessment" means the gathering of information for the evaluation of a child's and caregiver's physical, psychiatric, psychological or mental health, educational, vocational, and social condition and family environment as they relate to the child's and caregiver's need for rehabilitative and treatment services, including substance abuse treatment services, mental health services, developmental services, literacy services, medical services, family services, and other specialized services, as appropriate.

(19) "Concurrent planning" means establishing a permanency goal in a case plan that uses reasonable efforts to reunify the child with the parent, while at the same time establishing another goal that must be one of the following options:

(a) Adoption when a petition for termination of parental rights has been filed or will be filed;

(b) Permanent guardianship of a dependent child under § 39.6221;

(c) Permanent placement with a fit and willing relative under § 39.6231; or

(d) Placement in another planned permanent living arrangement under § 39.6241.

(20) "Court," unless otherwise expressly stated, means the circuit court assigned to exercise jurisdiction under this chapter.

(21) "Department" means the Department of Children and Family Services.

(22) "Diligent efforts by a parent" means a course of conduct which results in a reduction in risk to the child in the child's home that would allow the child to be safely placed permanently back in the home as set forth in the case plan.

(23) "Diligent efforts of social service agency" means reasonable efforts to provide social services or reunification services made by any social service agency that is a party to a case plan.

(24) "Diligent search" means the efforts of a social service agency to locate a parent or prospective parent whose identity or location is unknown, initiated as soon as the social service agency is made aware of the existence of such parent, with the search progress reported at each court hearing until the parent is either identified and located or the court excuses further search.

(25) "Disposition hearing" means a hearing in which the court determines the most appropriate protections, services, and placement for the child in dependency cases.

(26) "District" means any one of the 15 service districts of the department established pursuant to § 20.19.

(27) "District administrator" means the chief operating officer of each service district of the department as defined in [1]s. 20.19(5) and, where appropriate, includes any district administrator whose service district falls within the boundaries of a judicial circuit.

(28) "Expedited termination of parental rights" means proceedings wherein a case plan with the goal of reunification is not being offered.

(29) "False report" means a report of abuse, neglect, or abandonment of a child to the central abuse hotline, which report is maliciously made for the purpose of:

(a) Harassing, embarrassing, or harming another person;

(b) Personal financial gain for the reporting person;

(c) Acquiring custody of a child; or

(d) Personal benefit for the reporting person in any other private dispute involving a child.

The term "false report" does not include a report of abuse, neglect, or abandonment of a child made in good faith to the central abuse hotline.

(30) "Family" means a collective body of persons, consisting of a child and a parent, legal custodian, or adult relative, in which:

(a) The persons reside in the same house or living unit; or

(b) The parent, legal custodian, or adult relative has a legal responsibility by blood, marriage, or court order to support or care for the child.

(31) "Foster care" means care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.

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

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

1. Willful acts that produce the following specific injuries:

a. Sprains, dislocations, or cartilage damage.

b. Bone or skull fractures.

c. Brain or spinal cord damage.

d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part or function.

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

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

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

4. Inappropriate or excessively harsh disciplinary action that is likely to result in physical injury, mental injury as defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following factors: the age of the child;

any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

a. Sprains, dislocations, or cartilage damage.

b. Bone or skull fractures.

c. Brain or spinal cord damage.

d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part or function.

k. Significant bruises or welts.

(b) Commits, or allows to be committed, sexual battery, as defined in chapter 794, or lewd or lascivious acts, as defined in chapter 800, against the child.

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

1. Solicit for or engage in prostitution; or

2. Engage in a sexual performance, as defined by chapter 827.

(d) Exploits a child, or allows a child to be exploited, as provided in § 450.151.

(e) Abandons the child. Within the context of the definition of "harm," the term "abandoned the child" or "abandonment of the child" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this paragraph, "establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. The term "abandoned" does not include a surrendered newborn infant as described in § 383.50, a child in need of services as defined in chapter 984, or a family in need of services as defined in chapter 984. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

(f) Neglects the child. Within the context of the definition of "harm," the term "neglects the child" means that the parent or other person responsible for the child's welfare fails to supply the child with adequate food, clothing, shelter, or health care, although financially able to do so or although offered financial or other means to do so. However, a parent or legal custodian who, by reason of the legitimate practice of religious beliefs, does not provide specified medical treatment for a child may not be considered abusive or neglectful for that reason alone, but such an exception does not:

1. Eliminate the requirement that such a case be reported to the department;

2. Prevent the department from investigating such a case; or

3. Preclude a court from ordering, when the health of the child requires it, the provision of medical services by a physician, as defined in this section, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

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

1. A test, administered at birth, which indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or

2. Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

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

(h) Uses mechanical devices, unreasonable restraints, or extended periods of isolation to control a child.

(i) Engages in violent behavior that demonstrates a wanton disregard for the pres-

ence of a child and could reasonably result in serious injury to the child.

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

(k) Has allowed a child's sibling to die as a result of abuse, abandonment, or neglect.

(l) Makes the child unavailable for the purpose of impeding or avoiding a protective investigation unless the court determines that the parent, legal custodian, or caregiver was fleeing from a situation involving domestic violence.

(33) "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's care as defined in subsection (47).

(34) "Judge" means the circuit judge exercising jurisdiction pursuant to this chapter.

(35) "Legal custody" means a legal status created by a court which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, nurture, guide, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

(36) "Licensed child-caring agency" means a person, society, association, or agency licensed by the department to care for, receive, and board children.

(37) "Licensed child-placing agency" means a person, society, association, or institution licensed by the department to care for, receive, or board children and to place children in a licensed child-caring institution or a foster or adoptive home.

(38) "Licensed health care professional" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a nurse licensed under part I of chapter 464, a physician assistant licensed under chapter 458 or chapter 459, or a dentist licensed under chapter 466.

(39) "Likely to injure oneself" means that, as evidenced by violent or other actively self-destructive behavior, it is more likely than not that within a 24-hour period the child will attempt to commit suicide or inflict serious bodily harm on himself or herself.

(40) "Likely to injure others" means that it is more likely than not that within a 24-hour period the child will inflict serious and unjustified bodily harm on another person.

(41) "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

(42) "Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior.

(43) "Necessary medical treatment" means care which is necessary within a reasonable degree of medical certainty to prevent the deterioration of a child's condition or to alleviate immediate pain of a child.

(44) "Neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering the following services to be provided, when the health of the child so requires:

(a) Medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or

(b) Treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

Neglect of a child includes acts or omissions.

(45) "Next of kin" means an adult relative of a child who is the child's brother, sister, grandparent, aunt, uncle, or first cousin.

(46) "Office" means the Office of Adoption and Child Protection within the Executive Office of the Governor.

(47) "Other person responsible for a child's welfare" includes the child's legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child's welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child's care. For the purpose of departmental investigative jurisdiction, this definition does not include the following persons when they are acting in an official capacity: law enforcement officers, except as otherwise provided in this subsection; employees of municipal or county detention facilities; or employees of the Department of Corrections.

(48) "Out-of-home" means a placement outside of the home of the parents or a parent.

(49) "Parent" means a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under § 63.062(1). If a child has been legally adopted, the term "parent" means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless the parental status falls within the terms of § 39.503(1) or § 63.062(1). For purposes of this chapter only, when the phrase "parent or legal custodian" is used, it refers to rights or responsibilities of the parent and, only if there is no living parent with intact parental rights, to the rights or responsibilities of the legal custodian who has assumed the role of the parent.

(50) "Participant," for purposes of a shelter proceeding, dependency proceeding, or termination of parental rights proceeding, means any person who is not a party but who should receive notice of hearings involving the child, including the actual custodian of the child, the foster parents or the legal custodian of the child, identified prospective parents, and any other person whose participation may be in the best interest of the child. A community-based agency under contract with the department to provide protective services may be designated as a participant at the discretion of the court. Participants may be granted leave by the court to be heard without the necessity of filing a motion to intervene.

(51) "Party" means the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child. The presence of the child may be excused by order of the court when presence would not be in the child's best interest. Notice to the child may be excused by order of the court when the age, capacity, or other condition of the child is such that the notice would be meaningless or detrimental to the child.

(52) "Permanency goal" means the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child. Permanency goals applicable under this chapter, listed in order of preference, are:

(a) Reunification;

(b) Adoption when a petition for termination of parental rights has been or will be filed;

(c) Permanent guardianship of a dependent child under § 39.6221;

(d) Permanent placement with a fit and willing relative under § 39.6231; or

(e) Placement in another planned permanent living arrangement under § 39.6241.

The permanency goal is also the case plan goal. If concurrent case planning is being used, reunification may be pursued at the same time that another permanency goal is pursued.

(53) "Permanency plan" means the plan that establishes the placement intended to serve as the child's permanent home.

(54) "Permanent guardian" means the relative or other adult in a permanent guardianship of a dependent child under § 39.6221.

(55) "Permanent guardianship of a dependent child" means a legal relationship that a court creates under § 39.6221 between a child and a relative or other adult approved by the court which is intended to be permanent and self-sustaining through the transfer of parental rights with respect to the child relating to protection, education, care and control of the person, custody of the person, and decisionmaking on behalf of the child.

(56) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily part.

(57) "Physician" means any licensed physician, dentist, podiatric physician, or optometrist and includes any intern or resident.

(58) "Preliminary screening" means the gathering of preliminary information to be used in determining a child's need for further evaluation or assessment or for referral for other substance abuse services through means such as psychosocial interviews; urine and breathalyzer screenings; and reviews of available educational, delinquency, and dependency records of the child.

(59) "Preventive services" means social services and other supportive and rehabilitative services provided to the parent or legal custodian of the child and to the child for the purpose of averting the removal of the child from the home or disruption of a family which will or could result in the placement of a child in foster care. Social services and other supportive and rehabilitative services shall promote the child's need for physical, mental, and emotional health and a safe, stable, living environment, shall promote family autonomy, and shall strengthen family life, whenever possible.

(60) "Prospective parent" means a person who claims to be, or has been identified as, a person who may be a mother or a father of a child.

(61) "Protective investigation" means the acceptance of a report alleging child abuse, abandonment, or neglect, as defined in this chapter, by the central abuse hotline or the acceptance of a report of other dependency by the department; the investigation of each report; the determination of whether action by the court is warranted; the determination of the disposition of each report without court or public agency action when appropriate; and the referral of a child to another public or private agency when appropriate.

(62) "Protective investigator" means an authorized agent of the department who receives and investigates reports of child abuse, abandonment, or neglect; who, as a result of the investigation, may recommend that a dependency petition be filed for the child; and who performs other duties necessary to carry out the required actions of the protective investigation function.

(63) "Protective supervision" means a legal status in dependency cases which permits the child to remain safely in his or her own home or other nonlicensed placement under the supervision of an agent of the department and which must be reviewed by the court during the period of supervision.

(64) "Relative" means a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by the whole or half blood, by affinity, or by adoption. The term does not include a stepparent.

(65) "Reunification services" means social services and other supportive and rehabilitative services provided to the parent of the child, to the child, and, where appropriate, to the relative placement, nonrelative placement, or foster parents of the child, for the purpose of enabling a child who has been placed in out-of-home care to safely return to his or her parent at the earliest possible time. The health and safety of the child shall be the paramount goal of social services and other supportive and rehabilitative services. The services shall promote the child's need for physical, mental, and emotional health and a safe, stable, living environment, shall promote family autonomy, and shall strengthen family life, whenever possible.

(66) "Secretary" means the Secretary of Children and Family Services.

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

(a) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(b) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(c) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.

(d) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this does not include:

1. Any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for a child; or

2. Any act intended for a valid medical purpose.

(e) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(f) The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such expo-

sure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.

(g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in chapter 796 based on such behavior; or allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution;

2. Engage in a sexual performance, as defined by chapter 827; or

3. Participate in the trade of sex trafficking as provided in § 796.035.

(68) "Shelter" means a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.

(69) "Shelter hearing" means a hearing in which the court determines whether probable cause exists to keep a child in shelter status pending further investigation of the case.

(70) "Social service agency" means the department, a licensed child-caring agency, or a licensed child-placing agency.

(71) "Social worker" means any person who has a bachelor's, master's, or doctoral degree in social work.

(72) "Substance abuse" means using, without medical reason, any psychoactive or mood-altering drug, including alcohol, in such a manner as to induce impairment resulting in dysfunctional social behavior.

(73) "Substantial compliance" means that the circumstances which caused the creation of the case plan have been significantly remedied to the extent that the well-being and safety of the child will not be endangered upon the child's remaining with or being returned to the child's parent.

(74) "Taken into custody" means the status of a child immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release or placement.

(75) "Temporary legal custody" means the relationship that a court creates between a child and an adult relative of the child, legal custodian, agency, or other person approved by the court until a more permanent arrangement is ordered. Temporary legal custody confers upon the custodian the right to have temporary physical custody of the child and the right and duty to protect, nurture, guide, and discipline the child and to provide the child with food, shelter, and education, and ordinary medical, dental, psychiatric, and psychological care, unless these rights and duties are otherwise enlarged or limited by the court order establishing the temporary legal custody relationship.

(76) "Victim" means any child who has sustained or is threatened with physical, mental, or emotional injury identified in a report involving child abuse, neglect, or abandonment, or child-on-child sexual abuse.

39.201. Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.

(1) (a) Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

(b) Any person who knows, or who has reasonable cause to suspect, that a child is abused by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

(c) Any person who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender, as defined in this chapter, shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

(d) Reporters in the following occupation categories are required to provide their names to the hotline staff:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;

2. Health or mental health professional other than one listed in subparagraph 1.;

3. Practitioner who relies solely on spiritual means for healing;

4. School teacher or other school official or personnel;

5. Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker;

6. Law enforcement officer; or

7. Judge.

The names of reporters shall be entered into the record of the report, but shall be held confidential and exempt as provided in § 39.202.

(e) A professional who is hired by or enters into a contract with the department for the purpose of treating or counseling any person, as a result of a report of child abuse, abandonment, or neglect, is not required to again report to the central abuse hotline the abuse, abandonment, or neglect that was the subject of the referral for treatment.

(f) An officer or employee of the judicial branch is not required to again provide notice of reasonable cause to suspect child abuse, abandonment, or neglect when that child is currently being investigated by the department, there is an existing dependency case, or the matter has previously been reported to the department, provided there is reasonable cause to believe the information is already known to the department. This paragraph applies only when the information has been provided to the officer or employee in the course of carrying out his or her official duties.

(g) Nothing in this chapter or in the contracting with community-based care providers for foster care and related services as specified in § 409.1671 shall be construed to remove or reduce the duty and responsibility of any person, including any employee of the community-based care provider, to report a suspected or actual case of child abuse, abandonment, or neglect or the sexual abuse of a child to the department's central abuse hotline.

(h) An officer or employee of a law enforcement agency is not required to provide notice to the department of reasonable cause to suspect child abuse by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare when the incident under investigation by the law enforcement agency was reported to law enforcement by the Central Abuse Hotline through the electronic transfer of the report or call. The department's Central Abuse Hotline is not required to electronically transfer calls and reports received pursuant to paragraph (2)(b) to the county sheriff's office if the matter was initially reported to the department by the county sheriff's office or another law enforcement agency. This paragraph applies only when the information related to the alleged child abuse has been provided to the officer or employee of a law enforcement agency or Central Abuse Hotline employee in the course of carrying out his or her official duties.

(2) (a) Each report of known or suspected child abuse, abandonment, or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, except those solely under § 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the department's central abuse hotline. Such reports may be made on the single statewide toll-free telephone number or via fax, web-based chat, or web-based report. Personnel at the department's central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions shall be accepted for the protective investigation pursuant to part III of this chapter. Any call received from a parent or legal custodian seeking assistance for himself or herself which does not meet the criteria for being a report of child abuse, abandonment, or neglect may be accepted by the hotline for response to ameliorate a potential future risk of harm to a child. If it is determined by a child welfare professional that a need for community services exists, the department shall refer the parent or legal custodian for appropriate voluntary community services.

(b) Each report of known or suspected child abuse by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, shall be made immediately to the department's central abuse hotline. Such reports may be made on the single statewide toll-free telephone number or via fax, web-based chat, or web-based report. Such reports or calls shall be immediately electronically transferred to the appropriate county sheriff's office by the central abuse hotline.

(c) Reports involving a known or suspected juvenile sexual offender or a child who has exhibited inappropriate sexual behavior shall be made and received by the department.

1. The department shall determine the age of the alleged offender, if known.

2. If the alleged offender is 12 years of age or younger, the central abuse hotline shall

immediately electronically transfer the report or call to the county sheriff's office. The department shall conduct an assessment and assist the family in receiving appropriate services pursuant to § 39.307, and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the central abuse hotline.

3. If the alleged offender is 13 years of age or older, the central abuse hotline shall immediately electronically transfer the report or call to the appropriate county sheriff's office and send a written report to the appropriate county sheriff's office within 48 hours after the initial report to the central abuse hotline.

(d) If the report is of an instance of known or suspected child abuse, abandonment, or neglect that occurred out of state and the alleged perpetrator and the child alleged to be a victim live out of state, the central abuse hotline shall not accept the report or call for investigation, but shall transfer the information on the report to the appropriate state.

(e) If the report is of an instance of known or suspected child abuse involving impregnation of a child under 16 years of age by a person 21 years of age or older solely under § 827.04(3), the report shall be made immediately to the appropriate county sheriff's office or other appropriate law enforcement agency. If the report is of an instance of known or suspected child abuse solely under § 827.04(3), the reporting provisions of this subsection do not apply to health care professionals or other persons who provide medical or counseling services to pregnant children when such reporting would interfere with the provision of medical services.

(f) Reports involving known or suspected institutional child abuse or neglect shall be made and received in the same manner as all other reports made pursuant to this section.

(g) Reports involving surrendered newborn infants as described in § 383.50 shall be made and received by the department.

1. If the report is of a surrendered newborn infant as described in § 383.50 and there is no indication of abuse, neglect, or abandonment other than that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the department shall provide to the caller the name of a licensed child-placing agency on a rotating basis from a list of licensed child-placing agencies eligible and required to accept physical custody of and to place newborn infants left at a hospital, emergency medical services station, or fire station. The report shall not be considered a report of abuse, neglect, or abandonment solely because the infant has been left at a hospital, emergency medical services station, or fire station pursuant to § 383.50.

2. If the call, fax, web-based chat, or web-based report includes indications of abuse or neglect beyond that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the report shall be considered as a report of abuse, neglect, or abandonment and shall be subject to the requirements of § 39.395 and all other relevant provisions of this chapter, notwithstanding any provisions of chapter 383.

(h) Hotline counselors shall receive periodic training in encouraging reporters to provide their names when reporting abuse, abandonment, or neglect. Callers shall be advised of the confidentiality provisions of § 39.202. The department shall secure and install electronic equipment that automatically provides to the hotline the number from which the call or fax is placed or the Internet protocol (IP) address from which the report is received. This number shall be entered into the report of abuse, abandonment, or neglect and become a part of the record of the report, but shall enjoy the same confidentiality as provided to the identity of the reporter pursuant to § 39.202.

(i) The department shall voice-record all incoming or outgoing calls that are received or placed by the central abuse hotline which relate to suspected or known child abuse, neglect, or abandonment. The department shall maintain an electronic copy of each fax and web-based report. The recording or electronic copy of each fax and web-based report shall become a part of the record of the report but, notwithstanding § 39.202, shall be released in full only to law enforcement agencies and state attorneys for the purpose of investigating and prosecuting criminal charges pursuant to § 39.205, or to employees of the department for the purpose of investigating and seeking administrative penalties pursuant to § 39.206. Nothing in this paragraph shall prohibit the use of the recordings, the electronic copies of faxes, and web-based reports by hotline staff for quality assurance and training.

(j) 1. The department shall update the web form used for reporting child abuse, abandonment, or neglect to:

a. Include qualifying questions in order to obtain necessary information required to assess need and a response.

b. Indicate which fields are required to submit the report.

c. Allow a reporter to save his or her report and return to it at a later time.

2. The report shall be made available to the counselors in its entirety as needed to update the Florida Safe Families Network or other similar systems.

(k) The department shall conduct a study to determine the feasibility of using text and short message service formats to receive and process reports of child abuse, abandonment, or neglect to the central abuse hotline.

(3) Any person required to report or investigate cases of suspected child abuse, abandonment, or neglect who has reasonable cause to suspect that a child died as a result of child abuse, abandonment, or neglect shall report his or her suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report his or her findings, in writing, to the local law enforcement agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in § 39.202.

(4) The department shall operate and maintain a central abuse hotline to receive all reports made pursuant to this section in writing, via fax, via web-based reporting, via web-based chat, or through a single statewide toll-free telephone number, which any person may use to report known or suspected child abuse, abandonment, or neglect at any hour of the day or night, any day of the week. The department shall promote public awareness of the central abuse hotline through community-based partner organizations and public service campaigns. The central abuse hotline is the first step in the safety assessment and investigation process. The central abuse hotline shall be operated in such a manner as to enable the department to:

(a) Immediately identify and locate prior reports or cases of child abuse, abandonment, or neglect through utilization of the department's automated tracking system.

(b) Monitor and evaluate the effectiveness of the department's program for reporting and investigating suspected abuse, abandonment, or neglect of children through the development and analysis of statistical and other information.

(c) Track critical steps in the investigative process to ensure compliance with all requirements for any report of abuse, abandonment, or neglect.

(d) Maintain and produce aggregate statistical reports monitoring patterns of child abuse, child abandonment, and child neglect. The department shall collect and analyze child-on-child sexual abuse reports and include the information in aggregate statistical reports. The department shall collect and analyze, in separate statistical reports, those reports of child abuse and sexual abuse which are reported from or occurred on the campus of any Florida College System institution, state university, or nonpublic college, university, or school, as defined in § 1000.21 or § 1005.02.

(e) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for children who have been subject to abuse, abandonment, or neglect.

(f) Initiate and enter into agreements with other states for the purpose of gathering and sharing information contained in reports on child maltreatment to further enhance programs for the protection of children.

(5) The department shall be capable of receiving and investigating, 24 hours a day, 7 days a week, reports of known or suspected child abuse, abandonment, or neglect and reports that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care. If it appears that the immediate safety or well-being of a child is endangered, that the family may flee or the child will be unavailable for purposes of conducting a child protective investigation, or that the facts otherwise so warrant, the department shall commence an investigation immediately, regardless of the time of day or night. In all other child abuse, abandonment, or neglect cases, a child protective investigation shall be commenced within 24 hours after receipt of the report. In an institutional investigation, the alleged perpetrator may be represented by an attorney, at his or her own expense, or accompanied by another person, if the person or the attorney executes an affidavit of understanding with the department and agrees to comply with the confidentiality provisions of § 39.202. The absence of an attorney or other person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons. In institutional child abuse cases when the institution is not operating and the child cannot otherwise be

located, the investigation shall commence immediately upon the resumption of operation. If requested by a state attorney or local law enforcement agency, the department shall furnish all investigative reports to that agency.

(6) Information in the central abuse hotline may not be used for employment screening, except as provided in § 39.202(2)(a) and (h). Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to §§ 402.301-402.319 and §§ 409.175-409.176.

(7) On an ongoing basis, the department's quality assurance program shall review calls, fax reports, and web-based reports to the hotline involving three or more unaccepted reports on a single child, where jurisdiction applies, in order to detect such things as harassment and situations that warrant an investigation because of the frequency or variety of the source of the reports. A component of the quality assurance program shall analyze unaccepted reports to the hotline by identified relatives as a part of the review of screened out calls. The Program Director for Family Safety may refer a case for investigation when it is determined, as a result of this review, that an investigation may be warranted.

39.202. Confidentiality of reports and records in cases of child abuse or neglect.

(1) In order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, shall be confidential and exempt from the provisions of § 119.07(1) and shall not be disclosed except as specifically authorized by this chapter. Such exemption from § 119.07(1) applies to information in the possession of those entities granted access as set forth in this section.

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(a) Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, or county agencies responsible for carrying out:

1. Child or adult protective investigations;

2. Ongoing child or adult protective services;

3. Early intervention and prevention services;

4. Healthy Start services;

5. Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapter 393, or family day care homes or informal child care providers who receive school readiness funding, or other homes used to provide for the care and welfare of children; or

6. Services for victims of domestic violence when provided by certified domestic violence centers working at the department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

(b) Criminal justice agencies of appropriate jurisdiction.

(c) The state attorney of the judicial circuit in which the child resides or in which the alleged abuse or neglect occurred.

(d) The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected, and the child, and their attorneys, including any attorney representing a child in civil or criminal proceedings. This access shall be made available no later than 30 days after the department receives the initial report of abuse, neglect, or abandonment. However, any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

(e) Any person alleged in the report as having caused the abuse, abandonment, or neglect of a child. This access shall be made available no later than 30 days after the department receives the initial report of abuse, abandonment, or neglect and, when the alleged perpetrator is not a parent, shall be limited to information involving the protective investigation only and shall not include any information relating to subsequent dependency proceedings. However, any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

(f) A court upon its finding that access to such records may be necessary for the deter-

mination of an issue before the court; however, such access shall be limited to inspection in camera, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.

(g) A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.

(h) Any appropriate official of the department or the Agency for Persons with Disabilities who is responsible for:

1. Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult, when carrying out his or her official function;

2. Taking appropriate administrative action concerning an employee of the department or the agency who is alleged to have perpetrated child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult; or

3. Employing and continuing employment of personnel of the department or the agency.

(i) Any person authorized by the department who is engaged in the use of such records or information for bona fide research, statistical, or audit purposes. Such individual or entity shall enter into a privacy and security agreement with the department and shall comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such records or information shall be treated as confidential by the researcher and shall not be released in any form.

(j) The Division of Administrative Hearings for purposes of any administrative challenge.

(k) Any appropriate official of a Florida advocacy council investigating a report of known or suspected child abuse, abandonment, or neglect; the Auditor General or the Office of Program Policy Analysis and Government Accountability for the purpose of conducting audits or examinations pursuant to law; or the guardian ad litem for the child.

(l) Employees or agents of an agency of another state that has comparable jurisdiction to the jurisdiction described in paragraph (a).

(m) The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed pursuant to § 447.207. Records may be released only after deletion of all information which specifically identifies persons other than the employee.

(n) Employees or agents of the Department of Revenue responsible for child support enforcement activities.

(o) Any person in the event of the death of a child determined to be a result of abuse, abandonment, or neglect. Information identifying the person reporting abuse, abandonment, or neglect shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

(p) An employee of the local school district who is designated as a liaison between the school district and the department pursuant to an interagency agreement required under § 39.0016 and the principal of a public school, private school, or charter school where the child is a student. Information contained in the records which the liaison or the principal determines are necessary for a school employee to effectively provide a student with educational services may be released to that employee.

(q) [1]

Staff of a children's advocacy center that is established and operated under § 39.3035.

(r) A physician licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a mental health professional licensed under chapter 491 engaged in the care or treatment of the child.

(s) Persons with whom the department is seeking to place the child or to whom placement has been granted, including foster parents for whom an approved home study has been conducted, the designee of a licensed residential group home described in § 39.523, an approved relative or nonrelative with whom a child is placed pursuant to § 39.402, preadoptive parents for whom a favorable preliminary adoptive home study has been conducted, adoptive parents, or an adoption entity acting on behalf of preadoptive or adoptive parents.

(3) The department may release to professional persons such information as is necessary for the diagnosis and treatment of the child or the person perpetrating the abuse or neglect.

(4) Notwithstanding any other provision of law, when a child under investigation or supervision of the department or its contracted service providers is determined to be missing, the following shall apply:

(a) The department may release the following information to the public when it be-

lieves the release of the information is likely to assist efforts in locating the child or to promote the safety or well-being of the child:

1. The name of the child and the child's date of birth;

2. A physical description of the child, including at a minimum the height, weight, hair color, eye color, gender, and any identifying physical characteristics of the child; and

3. A photograph of the child.

(b) With the concurrence of the law enforcement agency primarily responsible for investigating the incident, the department may release any additional information it believes likely to assist efforts in locating the child or to promote the safety or well-being of the child.

(c) The law enforcement agency primarily responsible for investigating the incident may release any information received from the department regarding the investigation, if it believes the release of the information is likely to assist efforts in locating the child or to promote the safety or well-being of the child.

The good faith publication or release of this information by the department, a law enforcement agency, or any recipient of the information as specifically authorized by this subsection shall not subject the person, agency or entity releasing the information to any civil or criminal penalty. This subsection does not authorize the release of the name of the reporter, which may be released only as provided in subsection (5).

(5) The name of any person reporting child abuse, abandonment, or neglect may not be released to any person other than employees of the department responsible for child protective services, the central abuse hotline, law enforcement, the child protection team, or the appropriate state attorney, without the written consent of the person reporting. This does not prohibit the subpoenaing of a person reporting child abuse, abandonment, or neglect when deemed necessary by the court, the state attorney, or the department, provided the fact that such person made the report is not disclosed. Any person who reports a case of child abuse or neglect may, at the time he or she makes the report, request that the department notify him or her that a child protective investigation occurred as a result of the report. Any person specifically listed in § 39.201(1) who makes a report in his or her official capacity may also request a written summary of the outcome of the investigation. The department shall mail such a notice to the reporter within 10 days after completing the child protective investigation.

(6) All records and reports of the child protection team of the Department of Health are confidential and exempt from the provisions of §§ 119.07(1) and 456.057, and shall not be disclosed, except, upon request, to the state attorney, law enforcement, the department, and necessary professionals, in furtherance of the treatment or additional evaluative needs of the child, by order of the court, or to health plan payors, limited to that information used for insurance reimbursement purposes.

(7) The department shall make and keep reports and records of all cases under this chapter and shall preserve the records pertaining to a child and family until the child who is the subject of the record is 30 years of age, and may then destroy the records.

(a) Within 90 days after the child leaves the department's custody, the department shall give a notice to the person having legal custody of the child, or to the young adult who was in the department's custody, which specifies how the records may be obtained.

(b) The department may adopt rules regarding the format, storage, retrieval, and release of such records.

(8) A person who knowingly or willfully makes public or discloses to any unauthorized person any confidential information contained in the central abuse hotline is subject to the penalty provisions of § 39.205. This notice shall be prominently displayed on the first sheet of any documents released pursuant to this section.

39.203. Immunity from liability in cases of child abuse, abandonment, or neglect.

(1) (a) Any person, official, or institution participating in good faith in any act authorized or required by this chapter, or reporting in good faith any instance of child abuse, abandonment, or neglect to the department or any law enforcement agency, shall be immune from any civil or criminal liability which might otherwise result by reason of such action.

(b) Except as provided in this chapter, nothing contained in this section shall be deemed to grant immunity, civil or criminal, to any person suspected of having abused, abandoned, or neglected a child, or committed any illegal act upon or against a child.

(2) (a) No resident or employee of a facility serving children may be subjected to reprisal or discharge because of his or her actions

in reporting abuse, abandonment, or neglect pursuant to the requirements of this section.

(b) Any person making a report under this section shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of such reporting party by reason of his or her making such report. Any detrimental change made in the residency or employment status of such person, including, but not limited to, discharge, termination, demotion, transfer, or reduction in pay or benefits or work privileges, or negative evaluations within a prescribed period of time shall establish a rebuttable presumption that such action was retaliatory.

39.205. Penalties relating to reporting of child abuse, abandonment, or neglect.

(1) A person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. A judge subject to discipline pursuant to § 12, Art. V of the Florida Constitution shall not be subject to criminal prosecution when the information was received in the course of official duties.

(2) Unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist, a person who is 18 years of age or older and lives in the same house or living unit as a child who is known or suspected to be a victim of child abuse, neglect of a child, or aggravated child abuse, and knowingly and willfully fails to report the child abuse commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in § 1000.21 or § 1005.02, whose administrators knowingly and willfully, upon receiving information from faculty, staff, or other institution employees, fail to report known or suspected child abuse, abandonment, or neglect committed on the property of the university, college, or school, or during an event or function sponsored by the university, college, or school, or who knowingly and willfully prevent another person from doing so, shall be subject to fines of $1 million for each such failure.

(a) A Florida College System institution subject to a fine shall be assessed by the State Board of Education.

(b) A state university subject to a fine shall be assessed by the Board of Governors.

(c) A nonpublic college, university, or school subject to a fine shall be assessed by the Commission for Independent Education.

(4) Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in § 1000.21 or § 1005.02, whose law enforcement agency fails to report known or suspected child abuse, abandonment, or neglect committed on the property of the university, college, or school, or during an event or function sponsored by the university, college, or school, shall be subject to fines of $1 million for each such failure assessed in the same manner as subsection (3).

(5) Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in § 1000.21 or § 1005.02, shall have the right to challenge the determination that the institution acted knowingly and willfully under subsection (3) or subsection (4) in an administrative hearing pursuant to § 120.57; however, if it is found that actual knowledge and information of known or suspected child abuse was in fact received by the institution's administrators and was not reported, a presumption of a knowing and willful act will be established.

(6) A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline or in the records of any child abuse, abandonment, or neglect case, except as provided in this chapter, commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(7) The department shall establish procedures for determining whether a false report of child abuse, abandonment, or neglect has been made and for submitting all identifying information relating to such a report to the appropriate law enforcement agency and shall report annually to the Legislature the number of reports referred.

(8) If the department or its authorized agent has determined during the course of its investigation that a report is a false report, the department may discontinue all investigative activities and shall, with the consent of the alleged perpetrator, refer the report to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report

as defined in § 39.01. During the pendency of the investigation, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning children in that same family in accordance with § 39.301. If the law enforcement agency believes that there are indicators of abuse, abandonment, or neglect, it must immediately notify the department, which must ensure the safety of the children. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.

(9) A person who knowingly and willfully makes a false report of child abuse, abandonment, or neglect, or who advises another to make a false report, is guilty of a felony of the third degree, punishable as provided in § 775.082 or § 775.083. Anyone making a report who is acting in good faith is immune from any liability under this subsection.

(10) The State Board of Education shall adopt rules to implement this section as it relates to Florida College System institutions; the Commission for Independent Education shall adopt rules to implement this section as it relates to nonpublic colleges, universities, and schools; and the Board of Governors shall adopt regulations to implement this section as it relates to state universities.

39.301. Initiation of protective investigations.

(1) Upon receiving a report of known or suspected child abuse, abandonment, or neglect, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care, the central abuse hotline shall determine if the report requires an immediate onsite protective investigation. For reports requiring an immediate onsite protective investigation, the central abuse hotline shall immediately notify the department's designated district staff responsible for protective investigations to ensure that an onsite investigation is promptly initiated. For reports not requiring an immediate onsite protective investigation, the central abuse hotline shall notify the department's designated district staff responsible for protective investigations in sufficient time to allow for an investigation. At the time of notification, the central abuse hotline shall also provide information to district staff on any previous report concerning a subject of the present report or any pertinent information relative to the present report or any noted earlier reports.

[NOTE: If the parent, adult household member or other person responsible for the child does not allow access to the child, the child protective investigator shall seek assistance from law enforcement and if necessary seek an order of the court through the Child Welfare Legal Services attorney. Florida Administrative Rule 65C-29.003(3)(e).]

(2) (a) The department shall immediately forward allegations of criminal conduct to the municipal or county law enforcement agency of the municipality or county in which the alleged conduct has occurred.

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

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

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

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

4. A child is known or suspected to be the victim of sexual battery, as defined in § 827.071, or of sexual abuse, as defined in § 39.01.

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

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

(c) Upon receiving a written report of an allegation of criminal conduct from the department, the law enforcement agency shall review the information in the written report to determine whether a criminal investigation is warranted. If the law enforcement agency accepts the case for criminal investigation, it shall coordinate its investigative activities with the department, whenever feasible. If the law enforcement agency does not accept the case for criminal investigation, the agency shall notify the department in writing.

(d) The local law enforcement agreement required in § 39.306 shall describe the specific local protocols for implementing this section.

[Subsections (3) – (22) intentionally omitted.]

39.304. Photographs, medical examinations, X rays, and medical treatment of abused, abandoned, or neglected child.

(1) (a) Any person required to investigate cases of suspected child abuse, abandonment, or neglect may take or cause to be taken photographs of the areas of trauma visible on a child who is the subject of a report. Any child protection team that examines a child who is the subject of a report must take, or cause to be taken, photographs of any areas of trauma visible on the child. Photographs of physical abuse injuries, or duplicates thereof, shall be provided to the department for inclusion in the investigative file and shall become part of that file. Photographs of sexual abuse trauma shall be made part of the child protection team medical record.

(b) If the areas of trauma visible on a child indicate a need for a medical examination, or if the child verbally complains or otherwise exhibits distress as a result of injury through suspected child abuse, abandonment, or neglect, or is alleged to have been sexually abused, the person required to investigate may cause the child to be referred for diagnosis to a licensed physician or an emergency department in a hospital without the consent of the child's parents or legal custodian. Such examination may be performed by any licensed physician or an advanced registered nurse practitioner licensed pursuant to part I of chapter 464. Any licensed physician, or advanced registered nurse practitioner licensed pursuant to part I of chapter 464, who has reasonable cause to suspect that an injury was the result of child abuse, abandonment, or neglect may authorize a radiological examination to be performed on the child without the consent of the child's parent or legal custodian.

(2) Consent for any medical treatment shall be obtained in the following manner.

(a) 1. Consent to medical treatment shall be obtained from a parent or legal custodian of the child; or

2. A court order for such treatment shall be obtained.

(b) If a parent or legal custodian of the child is unavailable and his or her whereabouts cannot be reasonably ascertained, and it is after normal working hours so that a court order cannot reasonably be obtained, an authorized agent of the department shall have the authority to consent to necessary medical treatment for the child. The authority of the department to consent to medical treatment in this circumstance shall be limited to the time reasonably necessary to obtain court authorization.

(c) If a parent or legal custodian of the child is available but refuses to consent to the necessary treatment, a court order shall be required unless the situation meets the definition of an emergency in § 743.064 or the treatment needed is related to suspected abuse, abandonment, or neglect of the child by a parent or legal custodian. In such case, the department shall have the authority to consent to necessary medical treatment. This authority is limited to the time reasonably necessary to obtain court authorization.

In no case shall the department consent to sterilization, abortion, or termination of life support.

(3) Any facility licensed under chapter 395 shall provide to the department, its agent, or a child protection team that contracts with the department any photograph or report on examinations made or X rays taken pursuant to this section, or copies thereof, for the purpose of investigation or assessment of cases of abuse, abandonment, neglect, or exploitation of children.

(4) Any photograph or report on examinations made or X rays taken pursuant to this section, or copies thereof, shall be sent to the department as soon as possible and shall be preserved in permanent form in records held by the department.

(5) The county in which the child is a resident shall bear the initial costs of the examination of the allegedly abused, abandoned, or neglected child; however, the parents or legal custodian of the child shall be required to reimburse the county for the costs of such examination, other than an initial forensic physical examination as provided in § 960.28, and to reimburse the department for the cost of the photographs taken pursuant to this section. A medical provider may not bill a child victim, directly or indirectly, for the cost of an initial forensic physical examination.

39.306. Child protective investigations; working agreements with local law enforcement.

The department shall enter into agreements with the jurisdictionally responsible county sheriffs' offices and local police departments that will assume the lead in conducting any potential criminal investigations arising from allegations of child abuse, abandonment, or neglect. The written agreement must specify how the requirements of this chapter will be met. For the purposes of such agreement, the jurisdictionally respon-

sible law enforcement entity is authorized to share Florida criminal history and local criminal history information that is not otherwise exempt from § 119.07(1) with the district personnel, authorized agent, or contract provider directly responsible for the child protective investigation and emergency child placement. The agencies entering into such agreement must comply with § 943.0525. Criminal justice information provided by such law enforcement entity shall be used only for the purposes specified in the agreement and shall be provided at no charge. Notwithstanding any other provision of law, the Department of Law Enforcement shall provide to the department electronic access to Florida criminal justice information which is lawfully available and not exempt from § 119.07(1), only for the purpose of child protective investigations and emergency child placement. As a condition of access to such information, the department shall be required to execute an appropriate user agreement addressing the access, use, dissemination, and destruction of such information and to comply with all applicable laws and regulations, and rules of the Department of Law Enforcement.

39.401. Taking a child alleged to be dependent into custody; law enforcement officers and authorized agents of the department.

(1) A child may only be taken into custody:

(a) Pursuant to the provisions of this part, based upon sworn testimony, either before or after a petition is filed; or

(b) By a law enforcement officer, or an authorized agent of the department, if the officer or authorized agent has probable cause to support a finding:

1. That the child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment;

2. That the parent or legal custodian of the child has materially violated a condition of placement imposed by the court; or

3. That the child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.

(2) If the law enforcement officer takes the child into custody, that officer shall:

(a) Release the child to:

1. The parent or legal custodian of the child;

2. A responsible adult approved by the court when limited to temporary emergency situations;

3. A responsible adult relative or the adoptive parent of the child's sibling who shall be given priority consideration over a nonrelative placement when this is in the best interests of the child; or

4. A responsible adult approved by the department; or

(b) Deliver the child to an authorized agent of the department, stating the facts by reason of which the child was taken into custody and sufficient information to establish probable cause that the child is abandoned, abused, or neglected, or otherwise dependent. For such a child for whom there is also probable cause to believe he or she has been sexually exploited, the law enforcement officer shall deliver the child to the department. The department may place the child in an appropriate short-term safe house as provided for in § 409.1678 if a short-term safe house is available.

For cases involving allegations of abandonment, abuse, or neglect, or other dependency cases, within 3 days after such release or within 3 days after delivering the child to an authorized agent of the department, the law enforcement officer who took the child into custody shall make a full written report to the department.

(3) If the child is taken into custody by, or is delivered to, an authorized agent of the department, the agent shall review the facts supporting the removal with an attorney representing the department. The purpose of the review is to determine whether there is probable cause for the filing of a shelter petition.

(a) If the facts are not sufficient, the child shall immediately be returned to the custody of the parent or legal custodian.

(b) If the facts are sufficient and the child has not been returned to the custody of the parent or legal custodian, the department shall file the petition and schedule a hearing, and the attorney representing the department shall request that a shelter hearing be held within 24 hours after the removal of the child. While awaiting the shelter hearing, the authorized agent of the department may place the child in licensed shelter care, or in a short-term safe house if the child is a sexually exploited child, or may release the child to a parent or legal custodian or responsible adult relative or the adoptive parent of the child's sibling who shall be given priority consideration over a licensed placement, or

a responsible adult approved by the department if this is in the best interests of the child. Placement of a child which is not in a licensed shelter must be preceded by a criminal history records check as required under § 39.0138. In addition, the department may authorize placement of a housekeeper/homemaker in the home of a child alleged to be dependent until the parent or legal custodian assumes care of the child.

(4) When a child is taken into custody pursuant to this section, the department shall request that the child's parent, caregiver, or legal custodian disclose the names, relationships, and addresses of all parents and prospective parents and all next of kin of the child, so far as are known.

(5) Judicial review and approval is required within 24 hours after placement for all nonrelative placements. A nonrelative placement must be for a specific and predetermined period of time, not to exceed 12 months, and shall be reviewed by the court at least every 6 months. If the nonrelative placement continues for longer than 12 months, the department shall request the court to establish permanent guardianship or require that the nonrelative seek licensure as a foster care provider within 30 days after the court decision. Failure to establish permanent guardianship or obtain licensure does not require the court to change a child's placement unless it is in the best interest of the child to do so.

39.906. Referral to centers and notice of rights.

Any law enforcement officer who investigates an alleged incident of domestic violence shall advise the victim of such violence that there is a domestic violence center from which the victim may receive services. The law enforcement officer shall give the victim immediate notice of the legal rights and remedies available in accordance with the provisions of § 741.29.

CHAPTER 48
PROCESS AND SERVICE OF PROCESS

48.031. Service of process generally; service of witness subpoenas.

(1) (a) Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents. Minors who are or have been married shall be served as provided in this section.

(b) Employers, when contacted by an individual authorized to make service of process, shall permit the authorized individual to make service on employees in a private area designated by the employer.

(2) (a) Substitute service may be made on the spouse of the person to be served at any place in the county, if the cause of action is not an adversary proceeding between the spouse and the person to be served, if the spouse requests such service, and if the spouse and person to be served are residing together in the same dwelling.

(b) Substitute service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service if two or more attempts to serve the owner have been made at the place of business.

(3) (a) The service of process of witness subpoenas, whether in criminal cases or civil actions, shall be made as provided in subsection (1). However, service of a subpoena on a witness in a criminal traffic case, a misdemeanor case, or a second degree or third degree felony may be made by United States mail directed to the witness at the last known address, and the service must be mailed at least 7 days prior to the date of the witness's required appearance. Failure of a witness to appear in response to a subpoena served by United States mail that is not certified may not be grounds for finding the witness in contempt of court.

(b) A criminal witness subpoena may be posted by a person authorized to serve process at the witness's residence if three attempts to serve the subpoena, made at different times of the day or night on different dates, have failed. The subpoena must be posted at least 5 days prior to the date of the witness's required appearance.

(4) (a) Service of a criminal witness subpoena upon a law enforcement officer or upon any federal, state, or municipal employee called to testify in an official capacity in a criminal case may be made as provided in subsection (1) or by delivery to a designated supervisory or administrative employee at the witness's place of employment if the agency head or highest ranking official at the witness's place of employment has designated such employee to accept such service.

However, no such designated employee is required to accept service:

1. For a witness who is no longer employed by the agency at that place of employment;

2. If the witness is not scheduled to work prior to the date the witness is required to appear; or

3. If the appearance date is less than 5 days from the date of service.

The agency head or highest ranking official at the witness's place of employment may determine the days of the week and the hours that service may be made at the witness's place of employment.

(b) Service may also be made in accordance with subsection (3) provided that the person who requests the issuance of the criminal witness subpoena shall be responsible for mailing the subpoena in accordance with that subsection and for making the proper return of service to the court.

(5) A person serving process shall place, on the first page of at least one of the processes served, the date and time of service and his or her identification number and initials for all service of process. The person serving process shall list on the return-of-service form all initial pleadings delivered and served along with the process. The person issuing the process shall file the return-of-service form with the court.

(6) If the only address for a person to be served, which is discoverable through public records, is a private mailbox, substitute service may be made by leaving a copy of the process with the person in charge of the private mailbox, but only if the process server determines that the person to be served maintains a mailbox at that location.

(7) A gated residential community, including a condominium association or a cooperative, shall grant unannounced entry into the community, including its common areas and common elements, to a person who is attempting to serve process on a defendant or witness who resides within or is known to be within the community.

CHAPTER 90
EVIDENCE CODE

90.91. Photographs of property wrongfully taken; use in prosecution, procedure; return of property to owner.

In any prosecution for a crime involving the wrongful taking of property, a photograph of the property alleged to have been wrongfully taken may be deemed competent evidence of such property and may be admissible in the prosecution to the same extent as if such property were introduced as evidence. Such photograph shall bear a written description of the property alleged to have been wrongfully taken, the name of the owner of the property, the location where the alleged wrongful taking occurred, the name of the investigating law enforcement officer, the date the photograph was taken, and the name of the photographer. Such writing shall be made under oath by the investigating law enforcement officer, and the photograph shall be identified by the signature of the photographer. Upon the filing of such photograph and writing with the law enforcement authority or court holding such property as evidence, the property may be returned to the owner from whom the property was taken.

CHAPTER 112
PUBLIC OFFICERS AND EMPLOYEES: GENERAL PROVISIONS

112.532. Law enforcement officers' and correctional officers' rights.

All law enforcement officers and correctional officers employed by or appointed to a law enforcement agency or a correctional agency shall have the following rights and privileges:

(1) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL OFFICERS WHILE UNDER INVESTIGATION.—Whenever a law enforcement officer or correctional officer is under investigation and subject to interrogation by members of his or her agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal, the interrogation must be conducted under the following conditions:

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer or correctional officer is on duty, unless the seriousness of the investigation is of such a degree that immediate action is required.

(b) The interrogation shall take place either at the office of the command of the investigating officer or at the office of the local precinct, police unit, or correctional unit in which the incident allegedly occurred, as designated by the investigating officer or agency.

(c) The law enforcement officer or correctional officer under investigation shall be informed of the rank, name, and command of the officer in charge of the investigation, the

interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by or through one interrogator during any one investigative interrogation, unless specifically waived by the officer under investigation.

(d) The law enforcement officer or correctional officer under investigation must be informed of the nature of the investigation before any interrogation begins, and he or she must be informed of the names of all complainants. All identifiable witnesses shall be interviewed, whenever possible, prior to the beginning of the investigative interview of the accused officer. The complaint, all witness statements, including all other existing subject officer statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to each officer who is the subject of the complaint before the beginning of any investigative interview of that officer. An officer, after being informed of the right to review witness statements, may voluntarily waive the provisions of this paragraph and provide a voluntary statement at any time.

(e) Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.

(f) The law enforcement officer or correctional officer under interrogation may not be subjected to offensive language or be threatened with transfer, dismissal, or disciplinary action. A promise or reward may not be made as an inducement to answer any questions.

(g) The formal interrogation of a law enforcement officer or correctional officer, including all recess periods, must be recorded on audio tape, or otherwise preserved in such a manner as to allow a transcript to be prepared, and there shall be no unrecorded questions or statements. Upon the request of the interrogated officer, a copy of any recording of the interrogation session must be made available to the interrogated officer no later than 72 hours, excluding holidays and weekends, following said interrogation.

(h) If the law enforcement officer or correctional officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he or she shall be completely informed of all his or her rights before commencing the interrogation.

(i) At the request of any law enforcement officer or correctional officer under investigation, he or she has the right to be represented by counsel or any other representative of his or her choice, who shall be present at all times during the interrogation whenever the interrogation relates to the officer's continued fitness for law enforcement or correctional service.

(j) Notwithstanding the rights and privileges provided by this part, this part does not limit the right of an agency to discipline or to pursue criminal charges against an officer.

(2) COMPLAINT REVIEW BOARDS.—A complaint review board shall be composed of three members: One member selected by the chief administrator of the agency or unit; one member selected by the aggrieved officer; and a third member to be selected by the other two members. Agencies or units having more than 100 law enforcement officers or correctional officers shall utilize a five-member board, with two members being selected by the administrator, two members being selected by the aggrieved officer, and the fifth member being selected by the other four members. The board members shall be law enforcement officers or correctional officers selected from any state, county, or municipal agency within the county. There shall be a board for law enforcement officers and a board for correctional officers whose members shall be from the same discipline as the aggrieved officer. The provisions of this subsection shall not apply to sheriffs or deputy sheriffs.

(3) CIVIL SUITS BROUGHT BY LAW ENFORCEMENT OFFICERS OR CORRECTIONAL OFFICERS.—Every law enforcement officer or correctional officer shall have the right to bring civil suit against any person, group of persons, or organization or corporation, or the head of such organization or corporation, for damages, either pecuniary or otherwise, suffered during the performance of the officer's official duties, for abridgment of the officer's civil rights arising out of the officer's performance of official duties, or for filing a complaint against the officer which the person knew was false when it was filed. This section does not establish a separate civil action against the officer's employing law enforcement agency for the investigation and processing of a complaint filed under this part.

(4) (a) NOTICE OF DISCIPLINARY ACTION.—A dismissal, demotion, transfer, reassignment, or other personnel action that might result in loss of pay or benefits or that might otherwise be considered a punitive measure may not be taken against any

law enforcement officer or correctional officer unless the law enforcement officer or correctional officer is notified of the action and the reason or reasons for the action before the effective date of the action.

(b) Notwithstanding § 112.533(2), whenever a law enforcement officer or correctional officer is subject to disciplinary action consisting of suspension with loss of pay, demotion, or dismissal, the officer or the officer's representative shall, upon request, be provided with a complete copy of the investigative file, including the final investigative report and all evidence, and with the opportunity to address the findings in the report with the employing law enforcement agency before imposing disciplinary action consisting of suspension with loss of pay, demotion, or dismissal. The contents of the complaint and investigation shall remain confidential until such time as the employing law enforcement agency makes a final determination whether or not to issue a notice of disciplinary action consisting of suspension with loss of pay, demotion, or dismissal. This paragraph does not provide law enforcement officers with a property interest or expectancy of continued employment, employment, or appointment as a law enforcement officer.

(5) RETALIATION FOR EXERCISING RIGHTS.—No law enforcement officer or correctional officer shall be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to his or her employment or appointment, or be threatened with any such treatment, by reason of his or her exercise of the rights granted by this part.

(6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—

(a) Except as provided in this subsection, disciplinary action, suspension, demotion, or dismissal may not be undertaken by an agency against a law enforcement officer or correctional officer for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation of the misconduct. If the agency determines that disciplinary action is appropriate, it shall complete its investigation and give notice in writing to the law enforcement officer or correctional officer of its intent to proceed with disciplinary action, along with a proposal of the specific action sought, including length of suspension, if applicable. Notice to the officer must be provided within 180 days after the date the agency received notice of the alleged misconduct, except as follows:

1. The running of the limitations period may be tolled for a period specified in a written waiver of the limitation by the law enforcement officer or correctional officer.

2. The running of the limitations period is tolled during the time that any criminal investigation or prosecution is pending in connection with the act, omission, or other allegation of misconduct.

3. If the investigation involves an officer who is incapacitated or otherwise unavailable, the running of the limitations period is tolled during the period of incapacitation or unavailability.

4. In a multijurisdictional investigation, the limitations period may be extended for a period of time reasonably necessary to facilitate the coordination of the agencies involved.

5. The running of the limitations period may be tolled for emergencies or natural disasters during the time period wherein the Governor has declared a state of emergency within the jurisdictional boundaries of the concerned agency.

6. The running of the limitations period is tolled during the time that the officer's compliance hearing proceeding is continuing beginning with the filing of the notice of violation and a request for a hearing and ending with the written determination of the compliance review panel or upon the violation being remedied by the agency.

(b) An investigation against a law enforcement officer or correctional officer may be reopened, notwithstanding the limitations period for commencing disciplinary action, demotion, or dismissal, if:

1. Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

2. The evidence could not have reasonably been discovered in the normal course of investigation or the evidence resulted from the predisciplinary response of the officer.

Any disciplinary action resulting from an investigation that is reopened pursuant to this paragraph must be completed within 90 days after the date the investigation is reopened.

112.533. Receipt and processing of complaints.

(1) (a) Every law enforcement agency and correctional agency shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such agency from any person,

which shall be the procedure for investigating a complaint against a law enforcement and correctional officer and for determining whether to proceed with disciplinary action or to file disciplinary charges, notwithstanding any other law or ordinance to the contrary. When law enforcement or correctional agency personnel assigned the responsibility of investigating the complaint prepare an investigative report or summary, regardless of form, the person preparing the report shall, at the time the report is completed:

1. Verify pursuant to § 92.525 that the contents of the report are true and accurate based upon the person's personal knowledge, information, and belief.

2. Include the following statement, sworn and subscribed to pursuant to § 92.525:

"I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in §§ 112.532 and 112.533, Florida Statutes."

The requirements of subparagraphs 1. and 2. shall be completed prior to the determination as to whether to proceed with disciplinary action or to file disciplinary charges. This subsection does not preclude the Criminal Justice Standards and Training Commission from exercising its authority under chapter 943.

(b) 1. Any political subdivision that initiates or receives a complaint against a law enforcement officer or correctional officer must within 5 business days forward the complaint to the employing agency of the officer who is the subject of the complaint for review or investigation.

2. For purposes of this paragraph, the term "political subdivision" means a separate agency or unit of local government created or established by law or ordinance and the officers thereof and includes, but is not limited to, an authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

(2) (a) A complaint filed against a law enforcement officer or correctional officer with a law enforcement agency or correctional agency and all information obtained pursuant to the investigation by the agency of the complaint is confidential and exempt from the provisions of § 119.07(1) until the investigation ceases to be active, or until the agency head or the agency head's designee provides written notice to the officer who is the subject of the complaint, either personally or by mail, that the agency has either:

1. Concluded the investigation with a finding not to proceed with disciplinary action or to file charges; or

2. Concluded the investigation with a finding to proceed with disciplinary action or to file charges.

Notwithstanding the foregoing provisions, the officer who is the subject of the complaint, along with legal counsel or any other representative of his or her choice, may review the complaint and all statements regardless of form made by the complainant and witnesses and all existing evidence, including, but not limited to, incident reports, analyses, GPS locator information, and audio or video recordings relating to the investigation, immediately before beginning the investigative interview. All statements, regardless of form, provided by a law enforcement officer or correctional officer during the course of a complaint investigation of that officer shall be made under oath pursuant to § 92.525. Knowingly false statements given by a law enforcement officer or correctional officer under investigation may subject the law enforcement officer or correctional officer to prosecution for perjury. If a witness to a complaint is incarcerated in a correctional facility and may be under the supervision of, or have contact with, the officer under investigation, only the names and written statements of the complainant and nonincarcerated witnesses may be reviewed by the officer under investigation immediately prior to the beginning of the investigative interview.

(b) This subsection does not apply to any public record which is exempt from public disclosure pursuant to chapter 119. For the purposes of this subsection, an investigation shall be considered active as long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future. An investigation shall be presumed to be inactive if no finding is made within 45 days after the complaint is filed.

(c) Notwithstanding other provisions of this section, the complaint and information shall be available to law enforcement agencies, correctional agencies, and state attorneys in the conduct of a lawful criminal investigation.

(3) A law enforcement officer or correctional officer has the right to review his or her official personnel file at any reasonable time under the supervision of the designated

records custodian. A law enforcement officer or correctional officer may attach to the file a concise statement in response to any items included in the file identified by the officer as derogatory, and copies of such items must be made available to the officer.

(4) Any person who is a participant in an internal investigation, including the complainant, the subject of the investigation and the subject's legal counsel or a representative of his or her choice, the investigator conducting the investigation, and any witnesses in the investigation, who willfully discloses any information obtained pursuant to the agency's investigation, including, but not limited to, the identity of the officer under investigation, the nature of the questions asked, information revealed, or documents furnished in connection with a confidential internal investigation of an agency, before such complaint, document, action, or proceeding becomes a public record as provided in this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. However, this subsection does not limit a law enforcement or correctional officer's ability to gain access to information under paragraph (2)(a). Additionally, a sheriff, police chief, or other head of a law enforcement agency, or his or her designee, is not precluded by this section from acknowledging the existence of a complaint and the fact that an investigation is underway.

112.534. Failure to comply; official misconduct.

(1) If any law enforcement agency or correctional agency, including investigators in its internal affairs or professional standards division, or an assigned investigating supervisor, intentionally fails to comply with the requirements of this part, the following procedures apply. For purposes of this section, the term "law enforcement officer" or "correctional officer" includes the officer's representative or legal counsel, except in application of paragraph (d).

(a) The law enforcement officer or correctional officer shall advise the investigator of the intentional violation of the requirements of this part which is alleged to have occurred. The officer's notice of violation is sufficient to notify the investigator of the requirements of this part which are alleged to have been violated and the factual basis of each violation.

(b) If the investigator fails to cure the violation or continues the violation after being notified by the law enforcement officer or correctional officer, the officer shall request the agency head or his or her designee be informed of the alleged intentional violation. Once this request is made, the interview of the officer shall cease, and the officer's refusal to respond to further investigative questions does not constitute insubordination or any similar type of policy violation.

(c) Thereafter, within 3 working days, a written notice of violation and request for a compliance review hearing shall be filed with the agency head or designee which must contain sufficient information to identify the requirements of this part which are alleged to have been violated and the factual basis of each violation. All evidence related to the investigation must be preserved for review and presentation at the compliance review hearing. For purposes of confidentiality, the compliance review panel hearing shall be considered part of the original investigation.

(d) Unless otherwise remedied by the agency before the hearing, a compliance review hearing must be conducted within 10 working days after the request for a compliance review hearing is filed, unless, by mutual agreement of the officer and agency or for extraordinary reasons, an alternate date is chosen. The panel shall review the circumstances and facts surrounding the alleged intentional violation. The compliance review panel shall be made up of three members: one member selected by the agency head, one member selected by the officer filing the request, and a third member to be selected by the other two members. The review panel members shall be law enforcement officers or correctional officers who are active from the same law enforcement discipline as the officer requesting the hearing. Panel members may be selected from any state, county, or municipal agency within the county in which the officer works. The compliance review hearing shall be conducted in the county in which the officer works.

(e) It is the responsibility of the compliance review panel to determine whether or not the investigator or agency intentionally violated the requirements provided under this part. It may hear evidence, review relevant documents, and hear argument before making such a determination; however, all evidence received shall be strictly limited to the allegation under consideration and may not be related to the disciplinary charges pending against the officer. The investigative materials are considered confidential for purposes of the compliance review hearing and determination.

(f) The officer bears the burden of proof to establish that the violation of this part was

intentional. The standard of proof for such a determination is by a preponderance of the evidence. The determination of the panel must be made at the conclusion of the hearing, in writing, and filed with the agency head and the officer.

(g) If the alleged violation is sustained as intentional by the compliance review panel, the agency head shall immediately remove the investigator from any further involvement with the investigation of the officer. Additionally, the agency head shall direct an investigation be initiated against the investigator determined to have intentionally violated the requirements provided under this part for purposes of agency disciplinary action. If that investigation is sustained, the sustained allegations against the investigator shall be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct or misuse of position.

(2) (a) All the provisions of § 838.022 shall apply to this part.

(b) The provisions of chapter 120 do not apply to this part.

CHAPTER 117
NOTARIES PUBLIC

117.10. Law enforcement and correctional officers.

Law enforcement officers, correctional officers, and correctional probation officers, as defined in § 943.10, and traffic accident investigation officers and traffic infraction enforcement officers, as described in § 316.640, are authorized to administer oaths when engaged in the performance of official duties. Sections 117.01, 117.04, 117.045, 117.05, and 117.103 do not apply to the provisions of this section. An officer may not notarize his or her own signature.

CHAPTER 119
PUBLIC RECORDS

119.011. Definitions.

As used in this chapter, the term:

(1) "Actual cost of duplication" means the cost of the material and supplies used to duplicate the public record, but does not include labor cost or overhead cost associated with such duplication.

(2) "Agency" means 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.

(3) (a) "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

(b) "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

(c) "Criminal intelligence information" and "criminal investigative information" shall not include:

1. The time, date, location, and nature of a reported crime.

2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in § 119.071(2)(h).

3. The time, date, and location of the incident and of the arrest.

4. The crime charged.

5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in § 119.071(2)(h), and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of § 119.07(1) until released at trial if it is found that the release of such information would:

a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and

b. Impair the ability of a state attorney to locate or prosecute a codefendant.

6. Informations and indictments except as provided in § 905.26.

(d) The word "active" shall have the following meaning:

1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.

2. Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of § 775.15 or other statute of limitation.

[JRemainder intentionally omitted.]

119.07. Inspection and copying of records; photographing public records; fees; exemptions.

(1) (a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

(b) A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records.

(c) A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

(d) A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.

(e) If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.

(f) If requested by the person seeking to inspect or copy the record, the custodian of public records shall state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.

[Remainder intentionally omitted.]

119.071. General exemptions from inspection or copying of public records.

(1) [Intentionally omitted.]

(2) AGENCY INVESTIGATIONS.—

(a) All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

(b) Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

(c) 1. Active criminal intelligence information and active criminal investigative information are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

2. a. A request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency and the custodian's response to the request, and any information that would identify whether a law enforcement agency has requested or received that public record are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution, during the period in which the information constitutes active criminal intelligence information or active criminal investigative information.

b. The law enforcement agency that made the request to inspect or copy a public record shall give notice to the custodial agency when the criminal intelligence information or criminal investigative information is no longer active so that the request made by the law enforcement agency, the custodian's response to the request, and information that would identify whether the law enforcement agency had requested or received that public record are available to the public.

c. This exemption is remedial in nature, and it is the intent of the Legislature that the exemption be applied to requests for information received before, on, or after the effective date of this paragraph.

(d) Any information revealing surveillance techniques or procedures or personnel is exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution. Any comprehensive inventory of state and local law enforcement resources compiled pursuant to part I, chapter 23, and any comprehensive policies or plans compiled by a criminal justice agency

pertaining to the mobilization, deployment, or tactical operations involved in responding to an emergency, as defined in § 252.34, are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution and unavailable for inspection, except by personnel authorized by a state or local law enforcement agency, the office of the Governor, the Department of Legal Affairs, the Department of Law Enforcement, or the Division of Emergency Management as having an official need for access to the inventory or comprehensive policies or plans.

(e) Any information revealing the substance of a confession of a person arrested is exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution, until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition.

(f) Any information revealing the identity of a confidential informant or a confidential source is exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

(g) 1. All complaints and other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

a. This exemption does not affect any function or activity of the Florida Commission on Human Relations.

b. Any state or federal agency that is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties.

2. If an alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

(h) 1. The following criminal intelligence information or criminal investigative information is confidential and exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution:

a. Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse as defined by chapter 827.

b. Any information which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under chapter 794, chapter 796, chapter 800, § 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with § 119.15, and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

(i) Any criminal intelligence information or criminal investigative information that reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime, is exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

(j) 1. Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a

crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution. Any information not otherwise held confidential or exempt from § 119.07(1) which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution, upon written request by the victim, which must include official verification that an applicable crime has occurred. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this section.

2. a. Any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in chapter 800 or in § 794.011, § 827.071, § 847.012, § 847.0125, § 847.013, § 847.0133, or § 847.0145, which reveals that minor's identity, including, but not limited to, the minor's face; the minor's home, school, church, or employment telephone number; the minor's home, school, church, or employment address; the name of the minor's school, church, or place of employment; or the personal assets of the minor; and which identifies that minor as the victim of a crime described in this subparagraph, held by a law enforcement agency, is confidential and exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution. Any governmental agency that is authorized to have access to such statements by any provision of law shall be granted such access in the furtherance of the agency's statutory duties, notwithstanding the provisions of this section.

b. A public employee or officer who has access to a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in chapter 800 or in § 794.011, § 827.071, § 847.012, § 847.0125, § 847.013, § 847.0133, or § 847.0145 may not willfully and knowingly disclose videotaped information that reveals the minor's identity to a person who is not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order entered by the court having jurisdiction of the alleged offense. A person who violates this provision commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(k) 1. A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential and exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either:

a. Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or

b. Concluded the investigation with a finding to proceed with disciplinary action or file charges.

2. Subparagraph 1. is subject to the Open Government Sunset Review Act in accordance with § 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

(3) SECURITY.—

(a) 1. As used in this paragraph, the term "security system plan" includes all:

a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;

b. Threat assessments conducted by any agency or any private entity;

c. Threat response plans;

d. Emergency evacuation plans;

e. Sheltering arrangements; or

f. Manuals for security personnel, emergency equipment, or security training.

2. A security system plan or portion thereof for:

a. Any property owned by or leased to the state or any of its political subdivisions; or

b. Any privately owned or leased property

held by an agency is confidential and exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution. This exemption is remedial in nature, and it is the intent of the Legislature that this exemption apply to security system plans held by an agency before, on, or after the effective date of this paragraph.

3. Information made confidential and exempt by this paragraph may be disclosed by the custodian of public records to:

a. The property owner or leaseholder; or

b. Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those persons who are responsible for such attempts or acts.

(b) 1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed:

a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

b. To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or

c. Upon a showing of good cause before a court of competent jurisdiction.

4. The entities or persons receiving such information shall maintain the exempt status of the information.

(c) 1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development, which records are held by an agency are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

2. This exemption applies to any such records held by an agency before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to the owner or owners of the structure in question or the owner's legal representative; or upon a showing of good cause before a court of competent jurisdiction.

4. This paragraph does not apply to comprehensive plans or site plans, or amendments thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review.

5. As used in this paragraph, the term:

a. "Attractions and recreation facility" means any sports, entertainment, amusement, or recreation facility, including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility that:

I. For single-performance facilities:

Provides single-performance facilities; or

Provides more than 10,000 permanent seats for spectators.

II. For serial-performance facilities:

Provides parking spaces for more than 1,000 motor vehicles; or

Provides more than 4,000 permanent seats for spectators.

b. "Entertainment or resort complex" means a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owners or operators of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity includes an area within a 5-mile radius of the theme park complex.

c. "Industrial complex" means any industrial, manufacturing, processing, distribution, warehousing, or wholesale facility or plant, as well as accessory uses and structures, under common ownership that:

I. Provides onsite parking for more than 250 motor vehicles;

II. Encompasses 500,000 square feet or more of gross floor area; or

III. Occupies a site of 100 acres or more, but excluding wholesale facilities or plants that primarily serve or deal onsite with the general public.

d. "Retail and service development" means any retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite and is operated under one common property ownership, development plan, or management that:

I. Encompasses more than 400,000 square feet of gross floor area; or

II. Provides parking spaces for more than 2,500 motor vehicles.

e. "Office development" means any office building or park operated under common ownership, development plan, or management that encompasses 300,000 or more square feet of gross floor area.

f. "Hotel or motel development" means any hotel or motel development that accommodates 350 or more units.

(4) AGENCY PERSONNEL INFORMATION.—

(a) The social security numbers of all current and former agency employees which numbers are held by the employing agency are confidential and exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with § 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

(b) 1. Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution. However, such information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission or pursuant to court order.

2. a. Personal identifying information of a dependent child of a current or former officer or employee of an agency, which dependent child is insured by an agency group insurance plan, is exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution. For purposes of this exemption, "dependent child" has the same meaning as in § 409.2554.

b. This exemption is remedial in nature and applies to personal identifying information held by an agency before, on, or after the effective date of this exemption.

c. This subparagraph is subject to the Open Government Sunset Review Act in accordance with § 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) Any information revealing undercover personnel of any criminal justice agency is exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

(d) 1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2. a. I. The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from § 119.07(1).

II. The names of the spouses and children of active or former sworn or civilian law enforcement personnel and the other specified agency personnel identified in sub-sub-subparagraph (I) are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

III. Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with § 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with § 633.408; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from § 119.07(1).

c. The home addresses, dates of birth, and telephone numbers of current or former

justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from § 119.07(1).

d. I. The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

II. The names of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

III. Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with § 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

e. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

g. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in § 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public.

i. The home addresses, telephone numbers, dates of birth, and photographs of cur-

rent or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

k. The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with § 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

l. The home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution if the county tax collector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with § 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

5. This paragraph is subject to the Open Government Sunset Review Act in accordance with § 119.15, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

[Remainder intentionally omitted.]

CHAPTER 901
ARRESTS

901.01. Judicial officers have committing authority.

Each state judicial officer is a conservator of the peace and has committing authority to issue warrants of arrest, commit offenders to jail, and recognize them to appear to answer the charge. He or she may require sureties of the peace when the peace has been substantially threatened or disturbed.

901.02. Issuance of arrest warrants.

(1) A judge, upon examination of the complaint and proofs submitted, if satisfied that probable cause exists for the issuance of an arrest warrant for any crime committed within the judge's jurisdiction, shall thereupon issue an arrest warrant signed by the judge with the judge's name of office.

(2) The court may issue a warrant for the defendant's arrest when all of the following circumstances apply:

(a) A complaint has been filed charging the commission of a misdemeanor only.

(b) The summons issued to the defendant has been returned unserved.

(c) The conditions of subsection (1) are met.

(3) A judge may electronically sign an arrest warrant if the requirements of subsection (1) or subsection (2) are met and the judge, based on an examination of the complaint and proofs submitted, determines that the complaint:

(a) Bears the affiant's signature, or electronic signature if the complaint was submitted electronically.

(b) Is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths.

(c) If submitted electronically, is submitted by reliable electronic means.

(4) An arrest warrant shall be deemed to be issued by a judge at the time the judge affixes the judge's signature or electronic signature to the warrant. As used in this section, the term "electronic signature" has the same meaning as provided in § 933.40.

901.04. Direction and execution of warrant.

Warrants shall be directed to all sheriffs of the state. A warrant shall be executed only by the sheriff of the county in which the arrest is made unless the arrest is made in fresh pursuit, in which event it may be executed by any sheriff who is advised of the existence of the warrant. An arrest may be made on any day and at any time of the day or night.

901.09. When summons shall be issued.

(1) When the complaint is for an offense that the trial court judge is empowered to try summarily, the trial court judge shall issue a summons instead of a warrant, unless she or he reasonably believes that the person against whom the complaint was made will not appear upon a summons, in which event the trial court judge shall issue a warrant.

(2) When the complaint is for a misdemeanor that the trial court judge is not empowered to try summarily, the trial court judge shall issue a summons instead of a warrant if she or he reasonably believes that the person against whom the complaint was made will appear upon a summons.

(3) The summons shall set forth substantially the nature of the offense and shall command the person against whom the complaint was made to appear before the trial court judge at a stated time and place.

901.11. Effect of not answering summons.

Failure to appear as commanded by a summons without good cause is an indirect criminal contempt of court and may be punished by a fine of not more than $100. When a person fails to appear as commanded by a summons, the trial court judge shall issue a warrant. If the trial court judge acquires reason to believe that the person summoned will not appear as commanded after issuing a summons, the trial court judge may issue a warrant.

901.15. When arrest by officer without warrant is lawful.

A law enforcement officer may arrest a person without a warrant when:

(1) The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance shall be made immediately or in fresh pursuit.

(2) A felony has been committed and he or she reasonably believes that the person committed it.

(3) He or she reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.

(4) A warrant for the arrest has been issued and is held by another peace officer for execution.

(5) A violation of chapter 316 has been committed in the presence of the officer. Such an arrest may be made immediately or in fresh pursuit. Any law enforcement officer, upon receiving information relayed to him or her from a fellow officer stationed on the ground or in the air that a driver of a vehicle has violated chapter 316, may arrest the driver for violation of those laws when reasonable and proper identification of the vehicle and the violation has been communicated to the arresting officer.

(6) There is probable cause to believe that the person has committed a criminal act according to § 790.233 or according to § 741.31 or § 784.047 which violates an injunction for protection entered pursuant to § 741.30 or § 784.046, or a foreign protection order accorded full faith and credit pursuant to

§ 741.315, over the objection of the petitioner, if necessary.

(7) There is probable cause to believe that the person has committed an act of domestic violence, as defined in § 741.28, or dating violence, as provided in § 784.046. The decision to arrest shall not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to strongly discourage arrest and charges of both parties for domestic violence or dating violence on each other and to encourage training of law enforcement and prosecutors in these areas. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection, under § 741.31(4) or § 784.047, or pursuant to a foreign order of protection accorded full faith and credit pursuant to § 741.315, is immune from civil liability that otherwise might result by reason of his or her action.

(8) There is probable cause to believe that the person has committed child abuse, as defined in § 827.03, or has violated § 787.025, relating to luring or enticing a child for unlawful purposes. The decision to arrest does not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to protect abused children by strongly encouraging the arrest and prosecution of persons who commit child abuse. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his or her action.

(9) There is probable cause to believe that the person has committed:

(a) Any battery upon another person, as defined in § 784.03.

(b) An act of criminal mischief or a graffiti-related offense as described in § 806.13.

(c) A violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as described in § 327.461.

(10) The officer has determined that he or she has probable cause to believe that a misdemeanor has been committed, based upon a signed affidavit provided to the officer by a law enforcement officer of the United States Government, recognized as such by United States statute, or a United States military law enforcement officer, recognized as such by the Uniform Code of Military Justice or the United States Department of Defense Regulations, when the misdemeanor was committed in the presence of the United States law enforcement officer or the United States military law enforcement officer on federal military property over which the state has maintained exclusive jurisdiction for such a misdemeanor.

(11) (a) A law enforcement officer of the Florida National Guard, recognized as such by the Uniform Code of Military Justice or the United States Department of Defense Regulations, has probable cause to believe a felony was committed on state military property or when a felony or misdemeanor was committed in his or her presence on such property.

(b) All law enforcement officers of the Florida National Guard shall promptly surrender all persons arrested and charged with a felony to the sheriff of the county within which the state military property is located, and all persons arrested and charged with misdemeanors shall be surrendered to the applicable authority as may be provided by law, but otherwise to the sheriff of the county in which the state military property is located. The Florida National Guard shall promptly notify the applicable law enforcement agency of an arrest and the location of the prisoner.

(c) The Adjutant General, in consultation with the Criminal Justice Standards and Training Commission, shall prescribe minimum training standards for such law enforcement officers of the Florida National Guard.

(12) He or she is employed by the State of Florida as a law enforcement officer as defined in § 943.10(1) or part-time law enforcement officer as defined in § 943.10(6), and:

(a) He or she reasonably believes that a felony involving violence has been or is being committed and that the person to be arrested has committed or is committing the felony;

(b) While engaged in the exercise of his or her state law enforcement duties, the officer reasonably believes that a felony has been or is being committed; or

(c) A felony warrant for the arrest has been issued and is being held for execution by another peace officer.

Notwithstanding any other provision of law, the authority of an officer pursuant to this subsection is statewide. This subsection does not limit the arrest authority conferred on such officer by any other provision of law.

(13) There is probable cause to believe that the person has committed an act that violates a condition of pretrial release provided in § 903.047 when the original arrest was for an act of domestic violence as defined in § 741.28, or when the original arrest was for an act of dating violence as defined in § 784.046.

(14) There is probable cause to believe that the person has committed trespass in a secure area of an airport when signs are posted in conspicuous areas of the airport which notify that unauthorized entry into such areas constitutes a trespass and specify the methods for gaining authorized access to such areas. An arrest under this subsection may be made on or off airport premises. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of the law enforcement officer's action.

(15) There is probable cause to believe that the person has committed assault upon a law enforcement officer, a firefighter, an emergency medical care provider, public transit employees or agents, or other specified officers as set forth in § 784.07 or has committed assault or battery upon any employee of a receiving facility as defined in § 394.455 who is engaged in the lawful performance of his or her duties.

901.1505. Federal law enforcement officers; powers.

(1) As used in this section, the term "federal law enforcement officer" means a person who is employed by the Federal Government as a full-time law enforcement officer as defined by the applicable provisions of the United States Code, who is empowered to effect an arrest for violations of the United States Code, who is authorized to carry firearms in the performance of her or his duties, and who has received law enforcement training equivalent to that prescribed in § 943.13.

(2) Every federal law enforcement officer has the following authority:

(a) To make a warrantless arrest of any person who has committed a felony or misdemeanor as defined by state statute, which felony or misdemeanor involves violence, in the presence of the officer while the officer is engaged in the exercise of her or his federal law enforcement duties. If the officer reasonably believes that such a felony or misdemeanor as defined by state statute has been committed in her or his presence, the officer may make a warrantless arrest of any person whom she or he reasonably believes to have committed such felony or misdemeanor.

(b) To use any force which the officer reasonably believes to be necessary to defend herself or himself or another from bodily harm while making the arrest or any force necessarily committed in arresting any felon fleeing from justice when the officer reasonably believes either that the fleeing felon poses a threat of death or serious physical harm to the officer or others or that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person.

(c) To conduct a warrantless search incident to the arrest, as provided in § 901.21, and to conduct any other constitutionally permissible search pursuant to the officer's lawful duties.

(d) To possess firearms; and to seize weapons in order to protect herself or himself from attack, prevent the escape of an arrested person, or assure the subsequent lawful custody of the fruits of a crime or the articles used in the commission of a crime, as provided in § 901.21.

901.151. Stop and Frisk Law.

(1) This section may be known and cited as the "Florida Stop and Frisk Law."

(2) Whenever any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of any municipality or county, the officer may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and the circumstances surrounding the person's presence abroad which led the officer to believe that the person had committed, was committing, or was about to commit a criminal offense.

(3) No person shall be temporarily detained under the provisions of subsection (2) longer than is reasonably necessary to effect the purposes of that subsection. Such temporary detention shall not extend beyond the place where it was first effected or the immediate vicinity thereof.

(4) If at any time after the onset of the temporary detention authorized by subsection (2), probable cause for arrest of person shall appear, the person shall be arrested. If, after an inquiry into the circumstances which prompted the temporary detention, no probable cause for the arrest of the person shall appear, the person shall be released.

(5) Whenever any law enforcement officer authorized to detain temporarily any person under the provisions of subsection (2) has probable cause to believe that any person whom the officer has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person, the officer may search such person so temporarily detained only to the

extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon. If such a search discloses such a weapon or any evidence of a criminal offense it may be seized.

(6) No evidence seized by a law enforcement officer in any search under this section shall be admissible against any person in any court of this state or political subdivision thereof unless the search which disclosed its existence was authorized by and conducted in compliance with the provisions of subsections (2)-(5).

901.16. Method of arrest by officer by a warrant.

A peace officer making an arrest by a warrant shall inform the person to be arrested of the cause of arrest and that a warrant has been issued, except when the person flees or forcibly resists before the officer has an opportunity to inform the person, or when giving the information will imperil the arrest. The officer need not have the warrant in his or her possession at the time of arrest but on request of the person arrested shall show it to the person as soon as practicable.

901.17. Method of arrest by officer without warrant.

A peace officer making an arrest without a warrant shall inform the person to be arrested of the officer's authority and the cause of arrest except when the person flees or forcibly resists before the officer has an opportunity to inform the person or when giving the information will imperil the arrest.

901.18. Officer may summon assistance.

A peace officer making a lawful arrest may command the aid of persons she or he deems necessary to make the arrest. A person commanded to aid shall render assistance as directed by the officer. A person commanded to aid a peace officer shall have the same authority to arrest as that peace officer and shall not be civilly liable for any reasonable conduct in rendering assistance to that officer.

901.19. Right of officer to break into building.

(1) If a peace officer fails to gain admittance after she or he has announced her or his authority and purpose in order to make an arrest either by a warrant or when authorized to make an arrest for a felony without a warrant, the officer may use all necessary and reasonable force to enter any building or property where the person to be arrested is or is reasonably believed to be.

(2) When any of the implements, devices, or apparatus commonly used for gambling purposes are found in any house, room, booth, or other place used for the purpose of gambling, a peace officer shall seize and hold them subject to the discretion of the court, to be used as evidence, and afterwards they shall be publicly destroyed in the presence of witnesses under order of the court to that effect.

901.20. Use of force to effect release of person making arrest detained in building.

A peace officer may use any reasonable force to liberate himself or herself or another person from detention in a building entered for the purpose of making a lawful arrest.

901.21. Search of person arrested.

(1) When a lawful arrest is effected, a peace officer may search the person arrested and the area within the person's immediate presence for the purpose of:

(a) Protecting the officer from attack;

(b) Preventing the person from escaping; or

(c) Discovering the fruits of a crime.

(2) A peace officer making a lawful search without a warrant may seize all instruments, articles, or things discovered on the person arrested or within the person's immediate control, the seizure of which is reasonably necessary for the purpose of:

(a) Protecting the officer from attack;

(b) Preventing the escape of the arrested person; or

(c) Assuring subsequent lawful custody of the fruits of a crime or of the articles used in the commission of a crime.

901.211. Strip searches of persons arrested; body cavity search.

(1) As used in this section, the term "strip search" means having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual or manual inspection of the genitals; buttocks; anus; breasts, in the case of a female; or undergarments of such person.

(2) No person arrested for a traffic, regulatory, or misdemeanor offense, except in a case which is violent in nature, which involves a weapon, or which involves a controlled substance, shall be strip searched unless:

(a) There is probable cause to believe that the individual is concealing a weapon, a controlled substance, or stolen property; or

(b) A judge at first appearance has found that the person arrested cannot be released either on recognizance or bond and therefore shall be incarcerated in the county jail.

(3) Each strip search shall be performed by a person of the same gender as the arrested person and on premises where the search cannot be observed by persons not physically conducting or observing the search pursuant to this section. Any observer shall be of the same gender as the arrested person.

(4) Any body cavity search must be performed under sanitary conditions.

(5) No law enforcement officer shall order a strip search within the agency or facility without obtaining the written authorization of the supervising officer on duty.

(6) Nothing in this section shall be construed as limiting any statutory or common-law right of any person for purposes of any civil action or injunctive relief.

901.215. Search of person arrested for identifying device indicating a medical disability.

Every law enforcement officer, sheriff, deputy sheriff, or other arresting officer shall, when arresting any person who appears to be inebriated, intoxicated, or not in control of his or her physical functions, examine such person to ascertain whether or not the person is wearing a medic-alert bracelet or necklace or has upon his or her person some other visible identifying device which would specifically delineate a medical disability which would account for the actions of such person. Any arresting officer who does, in fact, discover such identifying device upon such person shall take immediate steps to aid the afflicted person in receiving medication or other treatment for his or her disability.

901.22. Arrest after escape or rescue.

If a person lawfully arrested escapes or is rescued, the person from whose custody she or he escapes or was rescued or any other officer may immediately pursue and retake the person arrested without a warrant at any time and in any place.

901.24. Right of person arrested to consult attorney.

A person arrested shall be allowed to consult with any attorney entitled to practice in this state, alone and in private at the place of custody, as often and for such periods of time as is reasonable.

901.245. Interpreter services for deaf persons.

In the event that a person who is deaf is arrested and taken into custody for an alleged violation of a criminal law of this state, the services of a qualified interpreter shall be sought prior to interrogating such deaf person. If the services of a qualified interpreter cannot be obtained, the arresting officer may interrogate or take a statement from such person provided such interrogation and the answers thereto shall be in writing. The interrogation and the answers thereto shall be preserved and turned over to the court in the event such person is tried for the alleged offense.

901.25. Fresh pursuit; arrest outside jurisdiction.

(1) The term "fresh pursuit" as used in this act shall include fresh pursuit as defined by the common law and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. It shall also include the pursuit of a person who has violated a county or municipal ordinance or chapter 316 or has committed a misdemeanor.

(2) Any duly authorized state, county, or municipal arresting officer is authorized to arrest a person outside the officer's jurisdiction when in fresh pursuit. Such officer shall have the same authority to arrest and hold such person in custody outside his or her jurisdiction, subject to the limitations hereafter set forth, as has any authorized arresting state, county, or municipal officer of this state to arrest and hold in custody a person not arrested in fresh pursuit.

(3) If an arrest is made in this state by an officer outside the county within which his or her jurisdiction lies, the officer shall immediately notify the officer in charge of the jurisdiction in which the arrest is made. Such officer in charge of the jurisdiction shall, along with the officer making the arrest, take the person so arrested before a trial court judge of the county in which the arrest was made without unnecessary delay.

(4) The employing agency of the state, county, or municipal officer making an arrest on fresh pursuit shall be liable for all actions of said officer in the same fashion that it is liable for the officer's acts made while making an arrest within his or her jurisdiction.

(5) The officer making an arrest on fresh pursuit shall be fully protected with respect to pension, retirement, workers' compensation, and other such benefits just as if the officer had made an arrest in his or her own jurisdiction.

901.252. Authority to patrol municipally owned or leased property and facilities outside municipal limits; taking into custody outside territorial jurisdiction.

(1) A duly constituted law enforcement officer employed by a municipality may patrol property and facilities which are owned or leased by the municipality but are outside the jurisdictional limits of the municipality, and, when there is probable cause to believe a person has committed or is committing a violation of state law or of a county or municipal ordinance on such property or facilities, may take the person into custody and detain the person in a reasonable manner and for a reasonable time. The law enforcement officer employed by the municipality shall immediately call a law enforcement officer with jurisdiction over the property or facility on which the violation occurred after detaining a person under this subsection.

(2) A law enforcement officer employed by a municipality who detains a person under subsection (1) is not civilly or criminally liable for false arrest, false imprisonment, or unlawful detention on the basis of any reasonable actions taken in compliance with subsection (1).

901.26. Arrest and detention of foreign nationals.

Failure to provide consular notification under the Vienna Convention on Consular Relations or other bilateral consular conventions shall not be a defense in any criminal proceeding against any foreign national and shall not be cause for the foreign national's discharge from custody.

901.28. Notice to appear for misdemeanors or violations of municipal or county ordinances; effect on authority to conduct search.

The issuance of a notice to appear shall not be construed to affect a law enforcement officer's authority to conduct an otherwise lawful search, as provided by law.

901.29. Authorization to take person to medical facility.

Even though a notice to appear is issued, a law enforcement officer shall be authorized to take a person to a medical facility for such care as appropriate.

901.31. Failure to obey written promise to appear.

Any person who willfully fails to appear before any court or judicial officer as required by a written notice to appear shall be fined not more than the fine of the principal charge or imprisoned up to the maximum sentence of imprisonment of the principal charge, or both, regardless of the disposition of the charge upon which the person was originally arrested. Nothing in this section shall interfere with or prevent the court from exercising its power to punish for contempt.

901.35. Financial responsibility for medical expenses.

(1) Notwithstanding any other provision of law, the responsibility for paying the expenses of medical care, treatment, hospitalization, and transportation for any person ill, wounded, or otherwise injured during or at the time of arrest for any violation of a state law or a county or municipal ordinance is the responsibility of the person receiving such care, treatment, hospitalization, and transportation. The provider of such services shall seek reimbursement for the expenses incurred in providing medical care, treatment, hospitalization, and transportation from the following sources in the following order:

(a) From an insurance company, health care corporation, or other source, if the prisoner is covered by an insurance policy or subscribes to a health care corporation or other source for those expenses.

(b) From the person receiving the medical care, treatment, hospitalization, or transportation.

(c) From a financial settlement for the medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

(2) Upon a showing that reimbursement from the sources listed in subsection (1) is not available, the costs of medical care, treatment, hospitalization, and transportation shall be paid:

(a) From the general fund of the county in which the person was arrested, if the arrest was for violation of a state law or county ordinance; or

(b) From the municipal general fund, if the arrest was for violation of a municipal ordinance.

The responsibility for payment of such medical costs shall exist until such time as

an arrested person is released from the custody of the arresting agency.

(3) An arrested person who has health insurance, subscribes to a health care corporation, or receives health care benefits from any other source shall assign such benefits to the health care provider.

CHAPTER 903
BAIL

903.22. Arrest of principal by surety before forfeiture.

A surety may arrest the defendant before a forfeiture of the bond for the purpose of surrendering the defendant or the surety may authorize a peace officer to make the arrest by endorsing the authorization on a certified copy of the bond.

CHAPTER 914
WITNESSES; CRIMINAL PROCEEDINGS

914.15. Law enforcement officers; nondisclosure of personal information.

Any law enforcement officer of the state or of any political subdivision thereof who provides information relative to a criminal investigation or in proceedings preliminary to a criminal case may refuse, unless ordered by the court, to disclose his or her residence address, home telephone number, or any personal information concerning the officer's family. Any law enforcement officer who testifies as a witness in a criminal case may refuse to disclose personal information concerning his or her family unless it is determined by the court that such evidence is relevant to the case.

CHAPTER 921
SENTENCE

921.241. Felony judgments; fingerprints and social security number required in record.

(1) At the time a defendant is found guilty of a felony, the judge shall cause the defendant's fingerprints to be taken.

(2) Every judgment of guilty or not guilty of a felony shall be in writing, signed by the judge, and recorded by the clerk of the court. The judge shall cause to be affixed to every written judgment of guilty of a felony, in open court, in the presence of such judge, and at the time the judgment is rendered, the fingerprints of the defendant against whom such judgment is rendered. Such fingerprints shall be affixed beneath the judge's signature to such judgment. Beneath such fingerprints shall be appended a certificate to the following effect:

"I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, _____, and that they were placed thereon by said defendant in my presence, in open court, this the _____ day of _____, ____ (year)."

Such certificate shall be signed by the judge, whose signature thereto shall be followed by the word "Judge."

(3) Any such written judgment of guilty of a felony, or a certified copy thereof, shall be admissible in evidence in the several courts of this state as prima facie evidence that the fingerprints appearing thereon and certified by the judge as aforesaid are the fingerprints of the defendant against whom such judgment of guilty of a felony was rendered.

(4) At the time the defendant's fingerprints are taken, the judge shall also cause the defendant's social security number to be taken. The defendant's social security number shall be affixed to every written judgment of guilty of a felony, in open court, in the presence of such judge, and at the time the judgment is rendered. If the defendant is unable or unwilling to provide his or her social security number, the reason for its absence shall be indicated on the written judgment.

CHAPTER 933
SEARCH AND INSPECTION WARRANTS

933.01. Persons competent to issue search warrant.

A search warrant authorized by law may be issued by any judge, including the committing judge of the trial court having jurisdiction where the place, vehicle, or thing to be searched may be.

933.02. Grounds for issuance of search warrant.

Upon proper affidavits being made, a search warrant may be issued under the provisions of this chapter upon any of the following grounds:

(1) When the property shall have been stolen or embezzled in violation of law;

(2) When any property shall have been used:

(a) As a means to commit any crime;

(b) In connection with gambling, gambling implements and appliances; or

(c) In violation of § 847.011 or other laws in reference to obscene prints and literature;

(3) When any property constitutes evidence relevant to proving that a felony has been committed;

(4) When any property is being held or possessed:

(a) In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;

(b) In violation of the fish and game laws;

(c) In violation of the laws relative to food and drug; or

(d) In violation of the laws relative to citrus disease pursuant to § 581.184; or

(5) When the laws in relation to cruelty to animals, as provided in chapter 828, have been or are violated in any particular building or place.

This section also applies to any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.

933.03. Destruction of obscene prints and literature.

All obscene prints and literature, or other things mentioned in § 847.011 found by an officer in executing a search warrant, or produced or brought into court, shall be safely kept so long as is necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court before whom the case is brought.

933.04. Affidavits.

The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated and no search warrant shall be issued except upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the person and thing to be seized.

933.05. Issuance in blank prohibited.

A search warrant cannot be issued except upon probable cause supported by affidavit or affidavits, naming or describing the person, place, or thing to be searched and particularly describing the property or thing to be seized; no search warrant shall be issued in blank, and any such warrant shall be returned within 10 days after issuance thereof.

933.06. Sworn application required before issuance.

The judge must, before issuing the warrant, have the application of some person for said warrant duly sworn to and subscribed, and may receive further testimony from witnesses or supporting affidavits, or depositions in writing, to support the application. The affidavit and further proof, if same be had or required, must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

933.07. Issuance of search warrants.

(1) The judge, upon examination of the application and proofs submitted, if satisfied that probable cause exists for the issuing of the search warrant, shall thereupon issue a search warrant signed by him or her with his or her name of office, to any sheriff and the sheriff's deputies or any police officer or other person authorized by law to execute process, commanding the officer or person forthwith to search the property described in the warrant or the person named, for the property specified, and to bring the property and any person arrested in connection therewith before the judge or some other court having jurisdiction of the offense.

(2) Notwithstanding any other provisions of this chapter, the Department of Agriculture and Consumer Services, based on grounds specified in § 933.02(4)(d), may obtain a search warrant authorized by this chapter for an area in size up to and including the full extent of the county in which the search warrant is issued. The judge issuing such search warrant shall conduct a court proceeding prior to the issuance of such search warrant upon reasonable notice and shall receive, hear, and determine any objections by property owners to the issuance of such search warrant. Such search warrant may be served by employees or authorized contractors of the Department of Agriculture and Consumer Services. Such search warrant may be made returnable at any time up to 6 months from the date of issuance.

(3) A judge may electronically sign a search warrant if the requirements of subsection (1) or subsection (2) are met and the judge, based on an examination of the application and proofs submitted, determines that the application:

(a) Bears the affiant's signature, or electronic signature if the application was submitted electronically.

(b) Is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths.

(c) If submitted electronically, is submitted by reliable electronic means.

(4) A search warrant shall be deemed to be issued by a judge at the time the judge

affixes the judge's signature or electronic signature to the warrant. As used in this section, the term "electronic signature" has the same meaning as provided in § 933.40.

933.08. Search warrants to be served by officers mentioned therein.

The search warrant shall in all cases be served by any of the officers mentioned in its direction, but by no other person except in aid of the officer requiring it, said officer being present and acting in its execution.

933.09. Officer may break open door, etc., to execute warrant.

The officer may break open any outer door, inner door or window of a house, or any part of a house or anything therein, to execute the warrant, if after due notice of the officer's authority and purpose he or she is refused admittance to said house or access to anything therein.

933.10. Execution of search warrant during day or night.

A search warrant issued under this chapter may, if expressly authorized in such warrant by the judge, be executed by being served either in the daytime or in the nighttime, as the exigencies of the occasion may demand or require.

933.101. Service on Sunday.

A search warrant may be executed by being served on Sunday, if expressly authorized in such warrant by the judge.

933.11. Duplicate to be delivered when warrant served.

All search warrants shall be issued in duplicate. The duplicate shall be delivered to the officer with the original warrant, and when the officer serves the warrant, he or she shall deliver a copy to the person named in the warrant, or in his or her absence to some person in charge of, or living on the premises. When property is taken under the warrant the officer shall deliver to such person a written inventory of the property taken and receipt for the same, specifying the same in detail, and if no person is found in possession of the premises where such property is found, shall leave the said receipt on the premises.

933.12. Return and inventory.

Upon the return of the warrant the officer shall attach thereto or thereon a true inventory of the property taken under the warrant, and at the foot of the inventory shall verify the same by affidavit taken before some officer authorized to administer oaths, or before the issuing officer, said verification to be to the following effect:

I, A. B., the officer by whom the warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on said warrant.

933.13. Copy of inventory shall be delivered upon request.

The judge to whom the warrant is returned, upon the request of any claimant or any person from whom said property is taken, or the officer who executed the search warrant, shall deliver to said applicant a true copy of the inventory of the property mentioned in the return on said warrant.

HIST: § 13, ch. 9321, 1923; CGL 8515; § 40, ch. 2004-11.

933.14. Return of property taken under search warrant.

(1) If it appears to the judge before whom the warrant is returned that the property or papers taken are not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds upon which the warrant was issued, or if it appears to the judge before whom any property is returned that the property was secured by an "unreasonable" search, the judge may order a return of the property taken; provided, however, that in no instance shall contraband such as slot machines, gambling tables, lottery tickets, tally sheets, rundown sheets, or other gambling devices, paraphernalia and equipment, or narcotic drugs, obscene prints and literature be returned to anyone claiming an interest therein, it being the specific intent of the Legislature that no one has any property rights subject to be protected by any constitutional provision in such contraband; provided, further, that the claimant of said contraband may upon sworn petition and proof submitted by him or her in the circuit court of the county where seized, show that said contraband articles so seized were held, used or possessed in a lawful manner, for a lawful purpose, and in a lawful place, the burden of proof in all cases being upon the claimant. The sworn affidavit or complaint upon which the search warrant was issued or the testimony of the officers showing probable cause to search without a warrant or incident to a legal arrest, and the finding of such slot machines, gambling tables, lottery tickets, tally sheets, rundown sheets, scratch sheets, or other gambling devices, paraphernalia, and equipment, including money used in gambling or in furtherance of gambling, or

narcotic drugs, obscene prints and literature, or any of them, shall constitute prima facie evidence of the illegal possession of such contraband and the burden shall be upon the claimant for the return thereof, to show that such contraband was lawfully acquired, possessed, held, and used.

(2) No intoxicating liquor seized on any warrant from any place other than a private dwelling house shall be returned, but the same may be held for such other and further proceedings which may arise upon a trial of the cause, unless it shall appear by the sworn petition of the claimant and proof submitted by him or her that said liquors so seized were held, used or possessed in a lawful manner, and in lawful place, or by a permit from the proper federal or state authority, the burden of proof in all cases being upon the claimant. The sworn affidavit or complaint upon which the search warrant was issued and the finding of such intoxicating liquor shall constitute prima facie evidence of the illegal possession of such liquor, and the burden shall be upon the claimant for the return thereof, to show that such liquor was lawfully acquired, possessed, held, and used.

(3) No pistol or firearm taken by any officer with a search warrant or without a search warrant upon a view by the officer of a breach of the peace shall be returned except pursuant to an order of a trial court judge.

(4) If no cause is shown for the return of any property seized or taken under a search warrant, the judge shall order that the same be impounded for use as evidence at any trial of any criminal or penal cause growing out of the having or possession of said property, but perishable property held or possessed in violation of law may be sold where the same is not prohibited, as may be directed by the court, or returned to the person from whom taken. The judge to whom said search warrant is returned shall file the same with the inventory and sworn return in the proper office, and if the original affidavit and proofs upon which the warrant was issued are in his or her possession, he or she shall apply to the officer having the same and the officer shall transmit and deliver all of the papers, proofs, and certificates to the proper office where the proceedings are lodged.

933.15. Obstruction of service or execution of search warrant; penalty.

Whoever shall knowingly and willfully obstruct, resist, or oppose any officer or person aiding such officer, in serving or attempting to serve or execute any search warrant, or shall assault, beat or wound any person or officer, or his or her deputies or assistants, knowing him or her to be such an officer or person so authorized, shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

933.16. Maliciously procuring search warrant to be issued; penalty.

Any person who maliciously and without probable cause procures a search warrant to be issued and executed shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

933.17. Exceeding authority in executing search warrant; penalty.

Any officer who in executing a search warrant willfully exceeds his or her authority or exercises it with unnecessary severity, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

933.18. When warrant may be issued for search of private dwelling.

No search warrant shall issue under this chapter or under any other law of this state to search any private dwelling occupied as such unless:

(1) It is being used for the unlawful sale, possession, or manufacture of intoxicating liquor;

(2) Stolen or embezzled property is contained therein;

(3) It is being used to carry on gambling;

(4) It is being used to perpetrate frauds and swindles;

(5) The law relating to narcotics or drug abuse is being violated therein;

(6) A weapon, instrumentality, or means by which a felony has been committed, or evidence relevant to proving said felony has been committed, is contained therein;

(7) One or more of the following child abuse offenses is being committed there:

(a) Interference with custody, in violation of § 787.03.

(b) Commission of an unnatural and lascivious act with a child, in violation of § 800.02.

(c) Exposure of sexual organs to a child, in violation of § 800.03.

(8) It is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, boardinghouse, or lodginghouse;

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

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

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

933.19. Searches and seizures of vehicles carrying contraband or illegal intoxicating liquors or merchandise.

(1) The provisions of the opinion rendered by the Supreme Court of the United States on March 2, 1925, in that certain cause wherein George Carroll and John Kiro were plaintiffs in error and the United States was defendant in error, reported in 267 United States Reports, beginning at page 132, relative to searches and seizures of vehicles carrying contraband or illegal intoxicating liquors or merchandise, and construing the Fourth Amendment to the Constitution of the United States, are adopted as the statute law of the state applicable to searches and seizures under § 12, Art. I of the State Constitution, when searches and seizures shall be made by any duly authorized and constituted bonded officer of this state exercising police authority in the enforcement of any law of the state relative to the unlawful transportation or hauling of intoxicating liquors or other contraband or illegal drugs or merchandise prohibited or made unlawful or contraband by the laws of the state.

(2) The same rules as to admissibility of evidence and liability of officers for illegal or unreasonable searches and seizures as were laid down in said case by the Supreme Court of the United States shall apply to and govern the rights, duties and liabilities of officers and citizens in the state under the like provisions of the Florida Constitution relating to searches and seizures.

(3) All points of law decided in the aforesaid case relating to the construction or interpretation of the provisions of the Constitution of the United States relative to searches and seizures of vehicles carrying contraband or illegal intoxicating liquors or merchandise shall be taken to be the law of the state enacted by the Legislature to govern and control such subject.

933.20. "Inspection warrant"; definition.

As used in §§ 933.20-933.30, "inspection warrant" means an order in writing, in the name of the people, signed by a person competent to issue search warrants pursuant to § 933.01, and directed to a state or local official, commanding him or her to conduct an inspection required or authorized by state or local law or rule relating to municipal or county building, fire, safety, environmental, animal control, land use, plumbing, electrical, health, minimum housing, or zoning standards.

933.27. Refusal to permit authorized inspection; penalty.

Any person who willfully refuses to permit an inspection authorized by a warrant issued pursuant to this act is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

933.28. Maliciously causing issuance of inspection warrant; penalty.

Any person who maliciously, or with knowledge that cause to issue an inspection warrant does not exist, causes the issuance of an inspection warrant by executing a supporting affidavit or by directing or requesting another to execute a supporting affidavit, or who maliciously causes an inspection warrant to be executed and served for purposes other than defined in this act, is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 984
CHILDREN AND FAMILIES IN NEED OF SERVICES

984.13. Taking into custody a child alleged to be from a family in need of services or to be a child in need of services.

(1) A child may be taken into custody:

(a) By a law enforcement officer when the officer has reasonable grounds to believe that the child has run away from his or her parents, guardian, or other legal custodian.

(b) By a law enforcement officer when the officer has reasonable grounds to believe that

the child is absent from school without authorization or is suspended or expelled and is not in the presence of his or her parent or legal guardian, for the purpose of delivering the child without unreasonable delay to the appropriate school system site. For the purpose of this paragraph, "school system site" includes, but is not limited to, a center approved by the superintendent of schools for the purpose of counseling students and referring them back to the school system or an approved alternative to a suspension or expulsion program. If a student is suspended or expelled from school without assignment to an alternative school placement, the law enforcement officer shall deliver the child to the parent or legal guardian, to a location determined by the parent or guardian, or to a designated truancy interdiction site until the parent or guardian can be located.

(c) Pursuant to an order of the circuit court based upon sworn testimony before or after a petition is filed under § 984.15.

(d) By a law enforcement officer when the child voluntarily agrees to or requests services pursuant to this chapter or placement in a shelter.

(2) The person taking the child into custody shall:

(a) Release the child to a parent, guardian, legal custodian, or responsible adult relative or to a department-approved family-in-need-of-services and child-in-need-of-services provider if the person taking the child into custody has reasonable grounds to believe the child has run away from a parent, guardian, or legal custodian; is truant; or is beyond the control of the parent, guardian, or legal custodian; following such release, the person taking the child into custody shall make a full written report to the intake office of the department within 3 days; or

(b) Deliver the child to the department, stating the facts by reason of which the child was taken into custody and sufficient information to establish probable cause that the child is from a family in need of services.

(3) If the child is taken into custody by, or is delivered to, the department, the appropriate representative of the department shall review the facts and make such further inquiry as necessary to determine whether the child shall remain in custody or be released. Unless shelter is required as provided in § 984.14(1), the department shall:

(a) Release the child to his or her parent, guardian, or legal custodian, to a responsible adult relative, to a responsible adult approved by the department, or to a department-approved family-in-need-of-services and child-in-need-of-services provider; or

(b) Authorize temporary services and treatment that would allow the child alleged to be from a family in need of services to remain at home.

CHAPTER 985
JUVENILE JUSTICE; INTERSTATE COMPACT ON JUVENILES

985.04. Oaths; records; confidential information.

(1) Except as provided in subsections (2), (3), (6), and (7) and § 943.053, all information obtained under this chapter in the discharge of official duty by any judge, any employee of the court, any authorized agent of the department, the Parole Commission, the Department of Corrections, the juvenile justice circuit boards, any law enforcement agent, or any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile is confidential and may be disclosed only to the authorized personnel of the court, the department and its designees, the Department of Corrections, the Parole Commission, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile, and others entitled under this chapter to receive that information, or upon order of the court. Within each county, the sheriff, the chiefs of police, the district school superintendent, and the department shall enter into an interagency agreement for the purpose of sharing information about juvenile offenders among all parties. The agreement must specify the conditions under which summary criminal history information is to be made available to appropriate school personnel, and the conditions under which school records are to be made available to appropriate department personnel. Such agreement shall require notification to any classroom teacher of assignment to the teacher's classroom of a juvenile who has been placed in a probation or commitment program for a felony offense. The agencies entering into such agreement must comply with § 943.0525, and must maintain the confidentiality of information that is otherwise exempt from § 119.07(1), as provided by law.

(2) Notwithstanding any other provisions of this chapter, the name, photograph, address, and crime or arrest report of a child:

(a) Taken into custody if the child has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

(b) Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;

(c) Transferred to the adult system under § 985.557, indicted under § 985.56, or waived under § 985.556;

(d) Taken into custody by a law enforcement officer for a violation of law subject to § 985.557(2)(b) or (d); or

(e) Transferred to the adult system but sentenced to the juvenile system under § 985.565

shall not be considered confidential and exempt from § 119.07(1) solely because of the child's age.

(3) A law enforcement agency may release a copy of the juvenile offense report to the victim of the offense. However, information gained by the victim under this chapter, including the next of kin of a homicide victim, regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies.

(4) (a) Notwithstanding any other provision of this section, when a child of any age is taken into custody by a law enforcement officer for an offense that would have been a felony if committed by an adult, or a crime of violence, the law enforcement agency must notify the superintendent of schools that the child is alleged to have committed the delinquent act.

(b) Notwithstanding paragraph (a) or any other provision of this section, when a child of any age is formally charged by a state attorney with a felony or a delinquent act that would be a felony if committed by an adult, the state attorney shall notify the superintendent of the child's school that the child has been charged with such felony or delinquent act. The information obtained by the superintendent of schools under this section must be released within 48 hours after receipt to appropriate school personnel, including the principal of the school of the child and the director of transportation. The principal must immediately notify the child's immediate classroom teachers, the child's assigned bus driver, and any other school personnel whose duties include direct supervision of the child. Upon notification, the principal is authorized to begin disciplinary actions under § 1006.09(1)-(4).

(c) The superintendent must notify the other school personnel whose duties include direct supervision of the child of the disposition of the charges against the child.

(d) The department shall disclose to the school superintendent the presence of any child in the care and custody or under the jurisdiction or supervision of the department who has a known history of criminal sexual behavior with other juveniles; is an alleged juvenile sexual offender, as defined in § 39.01; or has pled guilty or nolo contendere to, or has been found to have committed, a violation of chapter 794, chapter 796, chapter 800, § 827.071, or § 847.0133, regardless of adjudication. Any employee of a district school board who knowingly and willfully discloses such information to an unauthorized person commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(5) Authorized agents of the department may administer oaths and affirmations.

(6) (a) Records maintained by the department, including copies of records maintained by the court, which pertain to a child found to have committed a delinquent act which, if committed by an adult, would be a crime specified in § 435.04 may not be destroyed under this section for 25 years after the youth's final referral to the department, except in cases of the death of the child. Such records, however, shall be sealed by the court for use only in meeting the screening requirements for personnel in § 402.3055 and the other sections cited above, or under departmental rule; however, current criminal history information must be obtained from the Department of Law Enforcement in accordance with § 943.053. The information shall be released to those persons specified in the above cited sections for the purposes of complying with those sections. The court may punish by contempt any person who releases or uses the records for any unauthorized purpose.

(b) Sexual offender and predator registration information as required in §§ 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815 is a public record pursuant to § 119.07(1) and as otherwise provided by law.

(7) (a) Records in the custody of the department regarding children are not open to inspection by the public. Such records may be inspected only upon order of the Secretary of Juvenile Justice or his or her authorized agent by persons who have sufficient reason and upon such conditions for their use and disposition as the secretary or his or her au-

thorized agent deems proper. The information in such records may be disclosed only to other employees of the department who have a need therefor in order to perform their official duties; to other persons as authorized by rule of the department; and, upon request, to the Department of Corrections. The secretary or his or her authorized agent may permit properly qualified persons to inspect and make abstracts from records for statistical purposes under whatever conditions upon their use and disposition the secretary or his or her authorized agent deems proper, provided adequate assurances are given that children's names and other identifying information will not be disclosed by the applicant.

(b) The destruction of records pertaining to children committed to or supervised by the department pursuant to a court order, which records are retained until a child reaches the age of 24 years or until a serious or habitual delinquent child reaches the age of 26 years, shall be subject to chapter 943.

(8) Criminal history information made available to governmental agencies by the Department of Law Enforcement or other criminal justice agencies shall not be used for any purpose other than that specified in the provision authorizing the releases.

985.101. Taking a child into custody.

(1) A child may be taken into custody under the following circumstances:

(a) Pursuant to an order of the circuit court issued under this chapter, based upon sworn testimony, either before or after a petition is filed.

(b) For a delinquent act or violation of law, pursuant to Florida law pertaining to a lawful arrest. If such delinquent act or violation of law would be a felony if committed by an adult or involves a crime of violence, the arresting authority shall immediately notify the district school superintendent, or the superintendent's designee, of the school district with educational jurisdiction of the child. Such notification shall include other education providers such as the Florida School for the Deaf and the Blind, university developmental research schools, and private elementary and secondary schools. The information obtained by the superintendent of schools pursuant to this section must be released within 48 hours after receipt to appropriate school personnel, including the principal of the child's school, or as otherwise provided by law. The principal must immediately notify the child's immediate classroom teachers. Information provided by an arresting authority under this paragraph may not be placed in the student's permanent record and shall be removed from all school records no later than 9 months after the date of the arrest.

(c) By a law enforcement officer for failing to appear at a court hearing after being properly noticed.

(d) By a law enforcement officer who has probable cause to believe that the child is in violation of the conditions of the child's probation, home detention, postcommitment probation, or conditional release supervision; has absconded from nonresidential commitment; or has escaped from residential commitment.

Nothing in this subsection shall be construed to allow the detention of a child who does not meet the detention criteria in part V.

(2) Except in emergency situations, a child may not be placed into or transported in any police car or similar vehicle that at the same time contains an adult under arrest, unless the adult is alleged or believed to be involved in the same offense or transaction as the child.

(3) When a child is taken into custody as provided in this section, the person taking the child into custody shall attempt to notify the parent, guardian, or legal custodian of the child. The person taking the child into custody shall continue such attempt until the parent, guardian, or legal custodian of the child is notified or the child is delivered to a juvenile probation officer under §§ 985.14 and 985.145, whichever occurs first. If the child is delivered to a juvenile probation officer before the parent, guardian, or legal custodian is notified, the juvenile probation officer shall continue the attempt to notify until the parent, guardian, or legal custodian of the child is notified. Following notification, the parent or guardian must provide identifying information, including name, address, date of birth, social security number, and driver's license number or identification card number of the parent or guardian to the person taking the child into custody or the juvenile probation officer.

(4) Taking a child into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence in conjunction therewith is lawful.

985.11. Fingerprinting and photographing.

(1) (a) A child who is charged with or found to have committed an offense that would be a felony if committed by an adult shall be fingerprinted and the fingerprints

must be submitted to the Department of Law Enforcement as provided in § 943.051(3)(a).

(b) A child who is charged with or found to have committed one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law Enforcement as provided in § 943.051(3)(b):

1. Assault, as defined in § 784.011.
2. Battery, as defined in § 784.03.
3. Carrying a concealed weapon, as defined in § 790.01(1).
4. Unlawful use of destructive devices or bombs, as defined in § 790.1615(1).
5. Neglect of a child, as defined in § 827.03(1)(e).
6. Assault on a law enforcement officer, a firefighter, or other specified officers, as defined in § 784.07(2)(a).
7. Open carrying of a weapon, as defined in § 790.053.
8. Exposure of sexual organs, as defined in § 800.03.
9. Unlawful possession of a firearm, as defined in § 790.22(5).
10. Petit theft, as defined in § 812.014.
11. Cruelty to animals, as defined in § 828.12(1).
12. Arson, resulting in bodily harm to a firefighter, as defined in § 806.031(1).
13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in § 790.115.

A law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has committed any other violation of law, as the agency deems appropriate. Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file, and these records and all copies thereof must be marked "Juvenile Confidential." These records are not available for public disclosure and inspection under § 119.07(1) except as provided in §§ 943.053 and 985.04(2), but shall be available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person authorized by the court to have access to such records. In addition, such records may be submitted to the Department of Law Enforcement for inclusion in the state criminal history records and used by criminal justice agencies for criminal justice purposes. These records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

(c) The court shall be responsible for the fingerprinting of any child at the disposition hearing if the child has been adjudicated or had adjudication withheld for any felony in the case currently before the court.

(2) If the child is not referred to the court, or if the child is found not to have committed a violation of law, the court may, after notice to the law enforcement agency involved, order the originals and copies of the fingerprints and photographs destroyed. Unless otherwise ordered by the court, if the child is found to have committed an offense which would be a felony if it had been committed by an adult, then the law enforcement agency having custody of the fingerprint and photograph records shall retain the originals and immediately thereafter forward adequate duplicate copies to the court along with the written offense report relating to the matter for which the child was taken into custody. Except as otherwise provided by this subsection, the clerk of the court, after the disposition hearing on the case, shall forward duplicate copies of the fingerprints and photographs, together with the child's name, address, date of birth, age, and sex, to:

(a) The sheriff of the county in which the child was taken into custody, in order to maintain a central child identification file in that county.

(b) The law enforcement agency of each municipality having a population in excess of 50,000 persons and located in the county of arrest, if so requested specifically or by a general request by that agency.

(3) This section does not prohibit the fingerprinting or photographing of child traffic violators. All records of such traffic violations shall be kept in the full name of the violator and shall be open to inspection and publication in the same manner as adult traffic violations. This section does not apply to the photographing of children by the Department of Juvenile Justice or the Department of Children and Family Services.

985.115. Release or delivery from custody.

(1) A child taken into custody shall be released from custody as soon as is reasonably possible.

(2) Unless otherwise ordered by the court under § 985.255 or § 985.26, and unless there

is a need to hold the child, a person taking a child into custody shall attempt to release the child as follows:

(a) To the child's parent, guardian, or legal custodian or, if the child's parent, guardian, or legal custodian is unavailable, unwilling, or unable to provide supervision for the child, to any responsible adult. Prior to releasing the child to a responsible adult, other than the parent, guardian, or legal custodian, the person taking the child into custody may conduct a criminal history background check of the person to whom the child is to be released. If the person has a prior felony conviction, or a conviction for child abuse, drug trafficking, or prostitution, that person is not a responsible adult for the purposes of this section. The person to whom the child is released shall agree to inform the department or the person releasing the child of the child's subsequent change of address and to produce the child in court at such time as the court may direct, and the child shall join in the agreement.

(b) Contingent upon specific appropriation, to a shelter approved by the department or to an authorized agent or short-term safe house under § 39.401(2)(b).

(c) If the child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, to a law enforcement officer who shall deliver the child to a hospital for necessary evaluation and treatment.

(d) If the child is believed to be mentally ill as defined in § 394.463(1), to a law enforcement officer who shall take the child to a designated public receiving facility as defined in § 394.455 for examination under § 394.463.

(e) If the child appears to be intoxicated and has threatened, attempted, or inflicted physical harm on himself or herself or another, or is incapacitated by substance abuse, to a law enforcement officer who shall deliver the child to a hospital, addictions receiving facility, or treatment resource.

(f) If available, to a juvenile assessment center equipped and staffed to assume custody of the child for the purpose of assessing the needs of the child in custody. The center may then release or deliver the child under this section with a copy of the assessment.

(3) Upon taking a child into custody, a law enforcement officer may deliver the child, for temporary custody not to exceed 6 hours, to a secure booking area of a jail or other facility intended or used for the detention of adults, for the purpose of fingerprinting or photographing the child or awaiting appropriate transport to the department or as provided in § 985.13(2), provided no regular sight and sound contact between the child and adult inmates or trustees is permitted and the receiving facility has adequate staff to supervise and monitor the child's activities at all times.

(4) Nothing in this section or § 985.13 shall prohibit the proper use of law enforcement diversion programs. Law enforcement agencies may initiate and conduct diversion programs designed to divert a child from the need for department custody or judicial handling. Such programs may be cooperative projects with local community service agencies.

985.25. Detention intake.

(1) The juvenile probation officer shall receive custody of a child who has been taken into custody from the law enforcement agency and shall review the facts in the law enforcement report or probable cause affidavit and make such further inquiry as may be necessary to determine whether detention care is required.

(a) During the period of time from the taking of the child into custody to the date of the detention hearing, the initial decision as to the child's placement into secure detention care, nonsecure detention care, or home detention care shall be made by the juvenile probation officer under §§ 985.24 and 985.245(1).

(b) The juvenile probation officer shall base the decision whether or not to place the child into secure detention care, home detention care, or nonsecure detention care on an assessment of risk in accordance with the risk assessment instrument and procedures developed by the department under § 985.245. However, a child charged with possessing or discharging a firearm on school property in violation of § 790.115 shall be placed in secure detention care.

(c) If the juvenile probation officer determines that a child who is eligible for detention based upon the results of the risk assessment instrument should be released, the juvenile probation officer shall contact the state attorney, who may authorize release. If detention is not authorized, the child may be released by the juvenile probation officer in accordance with §§ 985.115 and 985.13.

Under no circumstances shall the juvenile probation officer or the state attorney or law enforcement officer authorize the detention of any child in a jail or other facility intended or used for the detention of adults, without an order of the court.

(2) The arresting law enforcement agency shall complete and present its investigation of an offense to the appropriate state attorney's office within 8 days after placement of the child in secure detention. The investigation shall include, but is not limited to, police reports and supplemental police reports, witness statements, and evidence collection documents. The failure of a law enforcement agency to complete and present its investigation within 8 days shall not entitle a juvenile to be released from secure detention or to a dismissal of any charges.

985.275. Detention of escapee or absconder on authority of the department.

(1) If an authorized agent of the department has reasonable grounds to believe that any delinquent child committed to the department has escaped from a residential commitment facility or from being lawfully transported thereto or therefrom, or has absconded from a nonresidential commitment facility, the agent may take the child into active custody and may deliver the child to the facility or, if it is closer, to a detention center for return to the facility. However, a child may not be held in detention longer than 24 hours, excluding Saturdays, Sundays, and legal holidays, unless a special order so directing is made by the judge after a detention hearing resulting in a finding that detention is required based on the criteria in § 985.255. The order shall state the reasons for such finding. The reasons shall be reviewable by appeal or in habeas corpus proceedings in the district court of appeal.

(2) Any sheriff or other law enforcement officer, upon the request of the secretary of the department or duly authorized agent, shall take a child who has escaped from a residential commitment facility or from being lawfully transported thereto or therefrom, or has absconded from a nonresidential commitment facility, into custody and deliver the child to the appropriate juvenile probation officer.

985.721. Escapes from secure detention or residential commitment facility.

An escape from:

An escape from:

(1) Any secure detention facility maintained for the temporary detention of children, pending adjudication, disposition, or placement;

(2) Any residential commitment facility described in § 985.03(46), maintained for the custody, treatment, punishment, or rehabilitation of children found to have committed delinquent acts or violations of law; or

(3) Lawful transportation to or from any such secure detention facility or residential commitment facility,

constitutes escape within the intent and meaning of § 944.40 and is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

RULES OF CRIMINAL PROCEDURE

Rule 3.121. Arrest Warrant.

(a) *Issuance.*—An arrest warrant, when issued, shall:

(1) be in writing and in the name of the State of Florida;

(2) set forth substantially the nature of the offense;

(3) command that the person against whom the complaint was made be arrested and brought before a judge;

(4) specify the name of the person to be arrested or, if the name is unknown to the judge, designate the person by any name or description by which the person can be identified with reasonable certainty;

(5) state the date when issued and the county where issued;

(6) be signed by the judge with the title of the office; and

(7) in all offenses bailable as of right be endorsed with the amount of bail and the return date.

(b) *Amendment.*—No arrest warrant shall be dismissed nor shall any person in custody be discharged because of any defect as to form in the warrant; but the warrant may be amended by the judge to remedy such defect.

Rule 3.125. Notice to Appear.

(a) *Definition.*—Unless indicated otherwise, notice to appear means a written order issued by a law enforcement officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time.

(b) *By Arresting Officer.*—If a person is arrested for an offense declared to be a misdemeanor of the first or second degree or a violation, or is arrested for violation of a municipal or county ordinance triable in the county, and demand to be taken before a judge is not made, notice to appear may be issued by the arresting officer unless:

(1) the accused fails or refuses to sufficiently identify himself or herself or supply the required information;

(2) the accused refuses to sign the notice to appear;

(3) the officer has reason to believe that the continued liberty of the accused constitutes an unreasonable risk of bodily injury to the accused or others;

(4) the accused has no ties with the jurisdiction reasonably sufficient to assure the accused's appearance or there is substantial risk that the accused will refuse to respond to the notice;

(5) the officer has any suspicion that the accused may be wanted in any jurisdiction; or

(6) it appears that the accused previously has failed to respond to a notice or a summons or has violated the condi-tions of any pretrial release program.

(c) *By Booking Officer.*—If the arresting officer does not issue notice to appear because of one of the exceptions listed in subdivision (b) and takes the accused to police headquarters, the booking officer may issue notice to appear if the officer determines that there is a likelihood that the accused will appear as directed, based on a reasonable investigation of the accused's:

(1) residence and length of residence in the community;

(2) family ties in the community;

(3) employment record;

(4) character and mental condition;

(5) past record of convictions; or

(6) past history of appearance at court proceedings.

(d) *How and When Served.*—If notice to appear is issued, it shall be prepared in quadruplicate. The officer shall de-liver 1 copy of the notice to appear to the arrested person and the person, to secure release, shall give a written promise to appear in court by signing the 3 remaining copies: 1 to be retained by the officer and 2 to be filed with the clerk of the court. These 2 copies shall be sworn to by the arresting officer before a notary public or a deputy clerk. If notice to appear is issued under subdivision (b), the notice shall be issued immediately upon arrest. If notice to appear is issued under subdivision (c), the notice shall be issued immediately upon completion of the investigation. The arresting officer or other duly authorized official then shall release from custody the person arrested.

(e) *Copy to the Clerk of the Court.*—With the sworn notice to appear, the arresting officer shall file with the clerk a list of witnesses and their addresses and a list of tangible evidence in the cause. One copy shall be retained by the of-ficer and 2 copies shall be filed with the clerk of the court.

(f) *Copy to State Attorney.*—The clerk shall deliver 1 copy of the notice to appear and schedule of witnesses and evidence filed therewith to the state attorney.

(g) *Contents.*—If notice to appear is issued, it shall contain the:

(1) name and address of the accused;

(2) date of offense;

(3) offense(s) charged—by statute and municipal ordinance if applicable;

(4) counts of each offense;

(5) time and place that the accused is to appear in court;

(6) name and address of the trial court having jurisdiction to try the offense(s) charged;

(7) name of the arresting officer;

(8) name(s) of any other person(s) charged at the same time; and

(9) signature of the accused.

(h) *Failure to Appear.*—If a person signs a written notice to appear and fails to respond to the notice to appear, a warrant of arrest shall be issued under rule 3.121.

(i) *Traffic Violations Excluded.*—Nothing contained herein shall prevent the operation of a traffic violations bu-reau, the issuance of citations for traffic violations, or any procedure under chapter 316, Florida Statutes.

(j) *Rules and Regulations.*—Rules and regulations of procedure governing the exercise of authority to issue notices to appear shall be established by the chief judge of the circuit.

(k) *Procedure by Court.*

(1) When the accused appears before the court under the requirements of the notice to appear, the court shall ad-vise the defendant as set forth in rule 3.130(b), and the provisions of that rule shall apply. The accused at such appear-ance may elect to waive the right to counsel and trial and enter a plea of guilty or nolo contendere by executing the waiver form contained on the notice to appear, and the court may enter judgment and sentence in the cause.

(2) In the event the defendant enters a plea of not guilty, the court may set the cause for jury or nonjury trial on the notice to appear under the provisions of rules 3.140 and 3.160. When the court sets a trial date by the court, the clerk shall, without further praecipe, issue witness subpoenas to the law enforcement officer who executed the notice to appear and to the witnesses whose names and addresses appear on the list filed by the officer, requiring their attendance at trial.

[Remainder intentionally omitted.]

Contents

FORFEITURE LAW – A BRIEF SUMMARY

FACTORS TO ESTABLISH PROBABLE CAUSE – UNDER "TOTALITY OF THE CIRCUMSTANCES"

1. The presence of any contraband: i.e., narcotics, illegally obtained prescription drugs, adulterated drugs, stolen property in vicinity of $: i.e., same container, safe, room, house, motor vehicle, on claimant or in any area related to claimant, room, house, motor vehicle.
2. Large amount of $ itself.
3. Large amount of $ and claimant has bank accounts where $ could have been deposited.
4. "Marked" bills commingled with seized $.
5. Preponderance of bills are small denominations from street sales.
6. Narcotics dog alert to $ and/or to area where $ is located.
7. Distinctive packaging of $ with rubber bands.
8. Distinctive packaging of $ in "quick count" bundles.
9. Distinctive packaging of $ with duct tape or foil.
10. Distinctive packaging of $ with substance in attempt to mask narcotics odor, i.e., fabric softener sheets, axle grease, pepper, coffee, fish, detergent, feces, etc.
11. $ which is not found with or near, but smells like any masking ingredient, or any substance indicating where $ had been hidden, i.e., gasoline odor.
12. $ in dirty or other bad condition, indicating prior unusual location such as burial ground.
13. Unusual container for $, i.e., diaper bag, "Crown Royale" bag, duffle bag.
14. Unusual location for $, i.e., motor vehicle trunk, wheel well, hub cap, gas tank, person's socks, taped or bound to legs or middle, hidden in private area.
15. False or hidden compartment in motor vehicle, boat or structure.
16. $ which was printed after the date that $ was alleged to have been accumulated or saved.
17. Ledgers, documents, or markings on packaging of $, indicating narcotics sales or $ laundering.
18. Fingerprints on $ packaging or narcotics or money laundering ledgers.
19. Narcotics paraphernalia: baggies, rolling paper, pipes, razor, heat sealer, scales (Ohaus or electronic).
20. Firearms legally or illegally obtained or carried in vicinity of illegal activities.
21. Claimant gives nonexistent address or address where he/she is not known to reside.
22. Physical proximity of $ to firearms and paraphernalia.
23. Radar detector.
24. Paper and recovered numbers.
25. Cell phones and recovered numbers.
26. $ counting machines.
27. Surveillance cameras.
28. Barred and heavy metal doors.
29. Heavy tinting on motor vehicle windows, windows in businesses and residences.
30. Claimant has numerous safe deposit boxes.
31. Persons acting as lookouts.
32. Admissions, confessions.
33. Conflicting or inconsistent stories as to source of $, intended use or destination of $, or other related facts from witnesses and claimant.
34. Denial of knowledge of $, oral or written.
35. Denial of ownership of $, oral or written.
36. Claimant's extreme nervousness.
37. Claimant flees police.
38. Claimant physical abandonment of the $ or other property.
39. Claimant refuses to consent to search under unusual circumstances, i.e., police respond to crime scene where claimant or relative is a victim.
40. Inability or refusal by claimant to provide corroborative information which claimant makes about the $.
41. Claimant or witnesses make statements which are not believable or factually impossible on their face.
42. Third party's inability or refusal to corroborate claimant's explanation of source or intended use of the $.
43. Inability or refusal of claimant to state the amount of $ being claimed.

44. Lack of documentation for source and/or intended use of $.
45. Claimant's alleged legitimate business as source of $ does not exist, or does not/cannot account for amount of $.
46. Claimant has no documented or reported employment or income is inconsistently low in comparison to amount of $.
47. Claimant filed no state sales tax for business, sales tax reports which are inconsistent with amount of income claimed and/or amount of $ seized.
48. Claimant filed no federal income tax returns, or income tax returns are inconsistent with amount of income claimed and/or amount of $ seized.
49. Claimant does not have government, professional, or regulatory licenses required for alleged business.
50. Claimant's lifestyle (home, home furnishings, electronic equipment, motor vehicle) is not consistent with documented or reported income.
51. Claimant's immigration status is illegal or nonconforming.
52. Claimant is a fugitive from justice (claim will be stricken only if claimant is a fugitive. In criminal case related to forfeiture; otherwise, it remains a factor).
53. Claimant uses or used false information or aka's.
54. Prior police contact with claimant or other related to the claimant or the seizure, or at the place of the seizure: arrests, convictions, forfeitures, probation, other seizures of property.
55. Police contact with claimant or others related to claimant or the seizure, or at the place of the seizure: arrests, convictions, forfeitures, probation, other seizures of property **after** the seizure.
56. Claimant was driving, flying, taking a train along a known narcotics route, or was at a known narcotics location.
57. City, country, area where $ is seized, or where claimant or $ was from or going to, is known source, location or distribution point for drugs, money laundering or other illegal activities.
58. Transmitting $ within or into or out of Florida in violation of Florida money transmitter law (chapter 560).
59. Transmitting $ within or into Florida in violation of any federal law, or the law of any other state or foreign country, including failure to make lawful declarations.
60. Structuring or "smurfing," multiple deposits of under $10,000 to avoid state and federal reporting.

** From *Florida Forfeiture Handbook* – 2005 edition Secher/Swain

CIVIL FORFEITURE GUIDELINES

I. Mechanics of Forfeiture

Forfeiture in Florida involves the seizure by and ultimate transfer of ownership to a law enforcement agency of real or personal property used or attempted to be used in criminal activity, or which represents the proceeds or is purchased from the proceeds of illegal activity. Forfeiture seeks to accomplish the following law enforcement goals: to deprive criminals of their ill-gotten gains; to prevent the further illicit use of property; and to deter illegal behavior. Forfeiture is a civil remedy made available to law enforcement agencies pursuant to the Florida Contraband Forfeiture Act ("the Act"), as contained in §§ 932.701 - 932.707, Florida Statutes.

The Act provides that contraband as defined in the statute, may be seized by a law enforcement agency based upon probable cause and thereupon forfeited through a civil court proceeding, or trial, upon proof by clear and convincing evidence (a somewhat lesser burden than proof beyond a reasonable doubt as required in a criminal case). Such a trial must be held before a jury unless waived by the claimant to the property. Real property seizures differ from personal property seizures as described below.

A law enforcement agency is strictly required to proceed against seized property by filing a Complaint/Petition for Forfeiture within 45 days of seizure in the jurisdiction wherein the seizure or the predicate offense(s) occurred. The filing of the complaint/petition initiates an "in rem" civil action, wherein the seizing agency is the plaintiff/petitioner, and the property itself is the defendant. A person claiming an interest in the property is known as the claimant, and must answer the complaint/petition pursuant to the Florida Rules of Civil Procedure upon service by the seizing agency.

The Act also requires that all persons known to the seizing agency to have an interest in the property be sent notice by certified mail within five (5) working days of the seizure that they are entitled to an Adversarial Preliminary Hearing, which must be held within ten (10) days from the receipt of any request for such a hearing. The courts have found that any tardiness in sending the notice violates due process, and requires that the seized property be returned. The purpose of the hearing is to prevent improvident seizures by having the court make an early determination as to whether probable cause exists that the seized property constitutes contraband. A finding by the court that probable cause does not exist subjects the seizing agency to court costs and attorney's fees up to $1,000. Typically, the seizing officer is called upon to testify at the Adversarial Preliminary Hearing, and should be prepared to face cross-examination by the claimant's defense counsel. Notice must be afforded to all known owners or lienholders, as well as to any person in possession of property when seized. Persons in possession of property when seized may participate at the Adversarial Preliminary Hearing, regardless of their ownership interest.

Even if a seizing agency meets it burden at trial of proving by clear and convincing evidence that seized property constitutes contraband, there are two statutory defenses available to a claimant under the Act, either as an innocent owner or a bona fide lienholder. It is the seizing agency's burden to disprove these defenses by a preponderance of the evidence (the greater weight of the evidence). The seizing agency must prove that an owner either knew, or should have known after reasonable inquiry, that his or her property was being employed or was likely to be employed in criminal activity. Similarly, the seizing agency must prove that any bona fide lienholder, at the time the lien was made, had actual knowledge that the property was being employed or was likely to be employed in criminal activity.

Once a forfeiture action has been timely initiated by filing a civil complaint/petition within 45 days of seizure, no other action to recover any interest in the property may be maintained. Such prohibited actions would include a replevin or similar action filed in civil court or a motion for return of property filed in a related criminal case. As in all civil cases, full discovery may be taken by the claimant, and officers should be prepared to collect requested material and be deposed as required.

Forfeiture is a civil matter controlled by statute and does not necessitate an arrest or conviction. Moreover, any related criminal proceedings or determinations are neither relevant nor admissible in a civil forfeiture action. However, since forfeiture is considered "quasi-criminal" in nature, Fourth Amendment search and seizure issues are relevant and may be independently considered within the civil forfeiture action and even as early as the Adversarial Preliminary Hearing. A finding that property was illegally seized would thereupon result in its suppression as evidence in the forfeiture case.

II. Forfeiture of Narcotics Related Currency

Currency, or other means of exchange, which was used, attempted to be used, or intended to be used in violation of any provision of chapter 893 (drug abuse and control) may be seized and forfeited provided a nexus can be shown between the currency and narcotics activity, although the use of the currency does not have to be traced to a specific narcotics transaction. Sometimes the nexus is obvious, such as when currency is found in close proximity to illegal narcotics or has visible residue adhering to the bills or the bills' packaging, or was actually used to consummate a drug deal. Many times, however, no drugs are present but the totality of the circumstances still indicates that the money has a nexus to drug dealing.

Just such circumstantial evidence was used to successfully prosecute a forfeiture action by the Miami-Dade Police Department involving the seizure of $142,795 by Miami-Dade Police Officers. In Lobo v. Metro-Dade Police Dept., 505 So.2d 621 (3rd DCA 1987), the court found probable cause for seizure based on the totality of the circumstances, including the large amount of currency itself, the packaging of the money in a duffel bag in stacks secured with rubber bands (quick count bundles), conflicting statements as to the source of the currency, and an alert on the money by a trained narcotics detection dog. It should be noted that an alert by a trained narcotics detection dog is significant in a drug money case and provides evidence that currency was in recent, close or actual proximity to drugs, or had been just before packaging. An alert is not caused by any innocent environmental contamination of currency by cocaine residue on circulated U.S. currency, as frequently alleged by the media. See, U.S. v. $22,474.00 in U.S. Cur-

rency, 246 F.3d 1212 (9th Cir. 2000). This global contamination theory, which states in essence that a dog alert is not probative of probable cause because a high percentage of circulated U.S. currency is contaminated with drug residue, was soundly rejected by the Eleventh Circuit Court of Appeals, citing studies by Drs. Furton and Rose which demonstrated that narcotics detection dogs alert to the odor of methyl benzoate, a by-product of street cocaine, and not otherwise to generally circulated currency. United States v. $242,484, 389 F. 3d 1149, at fn. 9-10 (11th Cir. 2004). For further reference see: "Identification of Odor Signature Chemicals in Cocaine", by Kenneth G. Furton, et al., Journal of Chromatographic Science, Vol. 40, pg. 147, March 2002; and U.S. v. Funds in the Amount of $30,670.00, 403 F.3d 448, at 462 (7th Cir. 2005).

Much evidentiary value and impact stem from the visual impression that circumstantial factors may create. Therefore, every effort should be made to document the currency appearance prior to moving it or disturbing the packaging or wrappings. The containers or wrappings in which the currency is stored may also be significant, especially if they are not used to store or transport currency as a usual business practice. A person who is qualified through training and experience to render an expert opinion regarding the practices employed by drug traffickers should be able to opine that the currency was used in illegal narcotics activity.

Circumstantial evidence to support a forfeiture seizure will, of course, vary from incident to incident. Therefore, it is a mistake in any case to rely on any one significant piece of evidence, and fail to preserve and use all of the small pieces of evidence that when combined add up to a totality of circumstances. Interviewing and documenting all witnesses at the time of the seizure as to the source and intended use of seized currency, and the witnesses' activities surrounding the seizure, is essential to building your case. Immediate follow up to attempt to substantiate the information provided by witnesses is also important, since information provided in these cases is often inaccurate, conflicting, or not capable of being substantiated.

Other factors which appellate courts have considered significant in determining that currency is subject to forfeiture include: notations such as names and numbers found on wrappers or narcotics, unusual containers for money (i.e., diaper bags, gas tanks), odorous masking substances or wrappings (i.e., duct tape, dryer sheets, coffee, axle grease), drug paraphernalia, firearms, and scales. It is important to note that all evidence collected and presented at the time of the court's probable cause determination is admissible, which includes evidence and statements at the time of seizure and all follow-up investigative information.

III. Forfeiture of Real and Personal Property

The Florida Contraband Forfeiture Act broadly provides for the seizure of any real or personal property which was used or attempted to be used in any way as an instrumentality in the commission of, or used or attempted to be used to facilitate the commission of, a felony, or which constitutes the proceeds of a felony. Personal property may be seized based on probable cause in the same manner as all other 4th Amendment seizures. Examples of personal property that can be seized include vehicles, boats, and airplanes, as well as money, jewelry, tools, computers, or records.

The seizure and forfeiture of real property, however, differs extensively. Real property canot be seized except by order of court or the filing of a "lis pendens" after a civil forfeiture action is filed, which serves as a claim against the property. Moreover, under Florida law, a person's primary residence, or homestead, is exempt from seizure (although federal law may still allow for its seizure). Any questions concerning a forfeiture matter should be directed to the Legal Bureau's Forfeiture Section or the on-call Legal Advisor.

IV. Sharing in the Proceeds of Federal Forfeitures

The United States Attorney General may authorize a transfer of an equitable share in a federal forfeiture to a state or local law enforcement agency. Comprehensive Crime Control Act of 1984, Pub. L. No. 98473, 98 Stat. 1837 (1984). Consequently, state and local law enforcement agencies have the ability to share in the proceeds of a federal forfeiture action when they assist in a seizure or investigation arising out of violations of laws enforced by federal law enforcement agencies.

The following Department of Justice Agencies participate in the sharing program: The Federal Bureau of Investigation; Drug Enforcement Administration; and Immigration and Naturalization Service (now Homeland Security). Additionally, the United States Park Police, United States Marshalls Service, United States Attorneys Offices, and

the United States Postal Inspection Service participate in the forfeiture program, although they do not directly adopt state and local seizures.

The following agencies previously under the Department of Treasury have also participated in a similar sharing program administered by the Department of Treasury (it is still unclear how the newly created Department of Homeland Security will affect the way these agencies participate): United States Customs Service (now Homeland Security), Internal Revenue Service Criminal Investigation Division, United States Secret Service (now Homeland Security), Bureau of Alcohol, Tobacco, Firearms and Explosives (now a Department of Justice Agency), and the United States Coast Guard.

State and local agencies are not automatically entitled to share in the proceeds of a federal forfeiture. An application must be made using the DAG-71 for Justice Department agencies and Form TDF92-22.46 when the seizure was made by a Treasury Department agency, at present Homeland Security agencies are still accepting the Treasury form. These forms are available from the field offices of the various federal agencies or from the Police Legal Bureau. Officers who assist any federal agency in an investigation, even if merely making a traffic stop that results in the seizure of property, should consult the Police Legal Bureau's Forfeiture Section so that an application for a share of any seized property may be made if appropriate.

The officer assisting in the seizure should complete the application for federal sharing. Questions concerning the completion of the application form should be directed to the Police Legal Bureau or the concerned federal agency. The sharing request must be presented to the Police Legal Bureau for processing and certification of legal sufficiency. The Police Legal Bureau will then forward the request to the appropriate federal agency.

There are strict time restrictions on the submission of federal sharing applications. Applications must be submitted to the proper federal agency within 60 calendar days of the seizure resulting from joint investigations and 30 calendar days for adopted seizures. Consequently, the original sharing request should be received by the Police Legal Bureau within 7 calendar days of the seizure. Late applications may result in the sharing request being denied by the concerned federal agency and the loss of substantial funds that would have gone to the Law Enforcement Trust Fund. Therefore, every effort should be made to ensure there are no delays in the processing of the sharing request.

A separate application usually must be submitted for each seizure resulting from an investigation. For example, if an investigation results in the seizure of currency, an automobile, and 20 pieces of jewelry, a separate application must be submitted for the currency, automobile and the jewelry. The 20 pieces of jewelry can be submitted on one application provided they were all part of a single seizure.

It should be noted that federal sharing is based on the net proceeds of federally forfeited property, which can be affected by many variables, e.g. administrative and maintenance costs associated with the forfeiture, upkeep of property, unfavorable judicial rulings, return of the property, etc. Additionally, the percentage of the proceeds requested may not be the percentage received. The exercise of sharing authority is discretionary by the federal government. Consequently, the amount shared may be substantially less than the amount seized.

A more detailed explanation of procedures and restrictions on federal equitable sharing can be found in the Department of Treasury's "Guide to Equitable Sharing for Foreign Countries and Federal, State and Local Law Enforcement Agencies," and the Department of Justice's "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies."

CHAPTER 932
PROVISIONS SUPPLEMENTAL TO CRIMINAL PROCEDURE LAW

932.701. Short title; definitions.

(1) Sections 932.701-932.706 shall be known and may be cited as the "Florida Contraband Forfeiture Act."

(2) As used in the Florida Contraband Forfeiture Act:

(a) "Contraband article" means:

1. Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the

contraband article can be traced to a specific narcotics transaction.

2. Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.

3. Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.

4. Any motor fuel upon which the motor fuel tax has not been paid as required by law.

5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

6. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

7. Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of § 812.014(2)(c).

8. Any motor vehicle offered for sale in violation of § 320.28.

9. Any motor vehicle used during the course of committing an offense in violation of § 322.34(9)(a).

10. Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of § 810.145 and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

11. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under § 409.920 or § 409.9201; any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under § 409.920 or § 409.9201.

12. Any personal property, including, but not limited to, any vehicle, item, object, tool, device, weapon, machine, money, security, book, or record, that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person's third or subsequent violation of § 509.144, whether or not comprising an element of the offense.

(b) "Bona fide lienholder" means the holder of a lien perfected pursuant to applicable law.

(c) "Promptly proceed" means to file the complaint within 45 days after seizure.

(d) "Complaint" is a petition for forfeiture filed in the civil division of the circuit court by the seizing agency requesting the court to issue a judgment of forfeiture.

(e) "Person entitled to notice" means any owner, entity, bona fide lienholder, or person in possession of the property subject to forfeiture when seized, who is known to the seizing agency after a diligent search and inquiry.

(f) "Adversarial preliminary hearing" means a hearing in which the seizing agency is required to establish probable cause that the property subject to forfeiture was used in violation of the Florida Contraband Forfeiture Act.

(g) "Forfeiture proceeding" means a hearing or trial in which the court or jury determines whether the subject property shall be forfeited.

(h) "Claimant" means any party who has proprietary interest in property subject to forfeiture and has standing to challenge such forfeiture, including owners, registered owners, bona fide lienholders, and titleholders.

932.702. Unlawful to transport, conceal, or possess contraband articles or to acquire real or personal property with contraband proceeds; use of vessel, motor vehicle, aircraft, other personal property, or real property.

It is unlawful:

(1) To transport, carry, or convey any contraband article in, upon, or by means of any vessel, motor vehicle, or aircraft.

(2) To conceal or possess any contraband article.

(3) To use any vessel, motor vehicle, aircraft, other personal property, or real property to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.

(4) To conceal, or possess, or use any contraband article as an instrumentality in the commission of or in aiding or abetting in the commission of any felony or violation of the Florida Contraband Forfeiture Act.

(5) To acquire real or personal property by the use of proceeds obtained in violation of the Florida Contraband Forfeiture Act.

932.703. Forfeiture of contraband article; exceptions.

(1) (a) Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.

(b) Notwithstanding any other provision of the Florida Contraband Forfeiture Act, except the provisions of paragraph (a), contraband articles set forth in § 932.701(2)(a)7. used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, shall be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.

(c) All rights to, interest in, and title to contraband articles used in violation of § 932.702 shall immediately vest in the seizing law enforcement agency upon seizure.

(d) The seizing agency may not use the seized property for any purpose until the rights to, interest in, and title to the seized property are perfected in accordance with the Florida Contraband Forfeiture Act. This section does not prohibit use or operation necessary for reasonable maintenance of seized property. Reasonable efforts shall be made to maintain seized property in such a manner as to minimize loss of value.

(2) (a) Personal property may be seized at the time of the violation or subsequent to the violation, if the person entitled to notice is notified at the time of the seizure or by certified mail, return receipt requested, that there is a right to an adversarial preliminary hearing after the seizure to determine whether probable cause exists to believe that such property has been or is being used in violation of the Florida Contraband Forfeiture Act. Seizing agencies shall make a diligent effort to notify the person entitled to notice of the seizure. Notice provided by certified mail must be mailed within 5 working days after the seizure and must state that a person entitled to notice may request an adversarial preliminary hearing within 15 days after receiving such notice. When a postseizure, adversarial preliminary hearing as provided in this section is desired, a request must be made in writing by certified mail, return receipt requested, to the seizing agency. The seizing agency shall set and notice the hearing, which must be held within 10 days after the request is received or as soon as practicable thereafter.

(b) Real property may not be seized or restrained, other than by lis pendens, subsequent to a violation of the Florida Contraband Forfeiture Act until the persons entitled to notice are afforded the opportunity to attend the preseizure adversarial preliminary hearing. A lis pendens may be obtained by any method authorized by law. Notice of the adversarial preliminary hearing shall be by certified mail, return receipt requested. The purpose of the adversarial preliminary hearing is to determine whether probable cause exists to believe that such property has been used in violation of the Florida Contraband Forfeiture Act. The seizing agency shall make a diligent effort to notify any person entitled to notice of the seizure. The preseizure adversarial preliminary hearing provided herein shall be held within 10 days of the filing of the lis pendens or as soon as practicable.

(c) When an adversarial preliminary hearing is held, the court shall review the verified affidavit and any other supporting documents and take any testimony to determine whether there is probable cause to believe that the property was used, is being used, was attempted to be used, or was intended to be used in violation of the Florida Contraband Forfeiture Act. If probable cause is established, the court shall authorize the seizure or continued seizure of the subject contraband. A copy of the findings of the court shall be provided to any person entitled to notice.

(d) If the court determines that probable cause exists to believe that such property was used in violation of the Florida Contraband Forfeiture Act, the court shall order the property restrained by the least restrictive means to protect against disposal, waste, or continued illegal use of such property pending disposition of the forfeiture proceeding. The court may order the claimant to post a bond or other adequate security equivalent to the value of the property.

(3) Neither replevin nor any other action to recover any interest in such property shall be maintained in any court, except as provided in this act; however, such action may be maintained if forfeiture proceedings are not initiated within 45 days after the date of seizure. However, if good cause is shown, the court may extend the aforementioned prohibition to 60 days.

(4) In any incident in which possession of any contraband article defined in § 932.701(2)(a) constitutes a felony, the vessel, motor vehicle, aircraft, other personal property, or real property in or on which such contraband article is located at the time of seizure shall be contraband subject to forfeiture. It shall be presumed in the manner provided in § 90.302(2) that the vessel, motor vehicle, aircraft, other personal property, or real property in which or on which such contraband article is located at the time of seizure is being used or was attempted or intended to be used in a manner to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of a contraband article defined in § 932.701(2).

(5) The court shall order the forfeiture of any other property of a claimant, excluding lienholders, up to the value of any property subject to forfeiture under this section if any of the property described in this section:

(a) Cannot be located;

(b) Has been transferred to, sold to, or deposited with, a third party;

(c) Has been placed beyond the jurisdiction of the court;

(d) Has been substantially diminished in value by any act or omission of the person in possession of the property; or

(e) Has been commingled with any property which cannot be divided without difficulty.

(6) (a) Property may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by a preponderance of the evidence that the owner either knew, or should have known after a reasonable inquiry, that the property was being employed or was likely to be employed in criminal activity.

(b) A bona fide lienholder's interest that has been perfected in the manner prescribed by law prior to the seizure may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by a preponderance of the evidence that the lienholder had actual knowledge, at the time the lien was made, that the property was being employed or was likely to be employed in criminal activity. If a lienholder's interest is not subject to forfeiture under the requirements of this section, such interest shall be preserved by the court by ordering the lienholder's interest to be paid as provided in § 932.7055.

(c) Property titled or registered between husband and wife jointly by the use of the conjunctives "and," "and/or," or "or," in the manner prescribed by law prior to the seizure, may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by a preponderance of the evidence that the coowner either knew or had reason to know, after reasonable inquiry, that such property was employed or was likely to be employed in criminal activity.

(d) A vehicle that is rented or leased from a company engaged in the business of renting or leasing vehicles, which vehicle was rented or leased in the manner prescribed by law prior to the seizure, may not be forfeited under the Florida Contraband Forfeiture Act, and no fine, penalty, or administrative charge, other than reasonable and customary charges for towing and storage, shall be imposed by any governmental agency on the company which rented or leased the vehicle, unless the seizing agency establishes by preponderance of the evidence that the renter or lessor had actual knowledge, at the time the vehicle was rented or leased, that the vehicle was being employed or was likely to be employed in criminal activity. When a vehicle that is rented or leased from a company engaged in the business of renting or leasing vehicles is seized under the Florida Contraband Forfeiture Act, upon learning the address or phone number of the company, the seizing law enforcement agency shall, as soon as practicable, inform the company that the vehicle has been seized and is available for the company to take possession upon payment of the reasonable and customary charges for towing and storage.

(7) Any interest in, title to, or right to property titled or registered jointly by the use of the conjunctives "and," "and/or," or "or" held

by a coowner, other than property held jointly between husband and wife, may not be forfeited unless the seizing agency establishes by a preponderance of the evidence that the coowner either knew, or had reason to know, after reasonable inquiry, that the property was employed or was likely to be employed in criminal activity. When the interests of each culpable coowner are forfeited, any remaining coowners shall be afforded the opportunity to purchase the forfeited interest in, title to, or right to the property from the seizing law enforcement agency. If any remaining coowner does not purchase such interest, the seizing agency may hold the property in coownership, sell its interest in the property, liquidate its interest in the property, or dispose of its interest in the property in any other reasonable manner.

(8) It is an affirmative defense to a forfeiture proceeding that the nexus between the property sought to be forfeited and the commission of any underlying violation was incidental or entirely accidental. The value of the property sought to be forfeited in proportion to any other factors must not be considered in any determination as to this affirmative defense.

932.704. Forfeiture proceedings.

(1) It is the policy of this state that law enforcement agencies shall utilize the provisions of the Florida Contraband Forfeiture Act to deter and prevent the continued use of contraband articles for criminal purposes while protecting the proprietary interests of innocent owners and lienholders and to authorize such law enforcement agencies to use the proceeds collected under the Florida Contraband Forfeiture Act as supplemental funding for authorized purposes. The potential for obtaining revenues from forfeitures must not override fundamental considerations such as public safety, the safety of law enforcement officers, or the investigation and prosecution of criminal activity. It is also the policy of this state that law enforcement agencies ensure that, in all seizures made under the Florida Contraband Forfeiture Act, their officers adhere to federal and state constitutional limitations regarding an individual's right to be free from unreasonable searches and seizures, including, but not limited to, the illegal use of stops based on a pretext, coercive-consent searches, or a search based solely upon an individual's race or ethnicity.

(2) In each judicial circuit, all civil forfeiture cases shall be heard before a circuit court judge of the civil division, if a civil division has been established. The Florida Rules of Civil Procedure shall govern forfeiture proceedings under the Florida Contraband Forfeiture Act unless otherwise specified under the Florida Contraband Forfeiture Act.

(3) Any trial on the ultimate issue of forfeiture shall be decided by a jury, unless such right is waived by the claimant through a written waiver or on the record before the court conducting the forfeiture proceeding.

(4) The seizing agency shall promptly proceed against the contraband article by filing a complaint in the circuit court within the jurisdiction where the seizure or the offense occurred.

(5) (a) The complaint shall be styled, "In RE: FORFEITURE OF" (followed by the name or description of the property). The complaint shall contain a brief jurisdictional statement, a description of the subject matter of the proceeding, and a statement of the facts sufficient to state a cause of action that would support a final judgment of forfeiture. The complaint must be accompanied by a verified supporting affidavit.

(b) If no person entitled to notice requests an adversarial preliminary hearing, as provided in § 932.703(2)(a), the court, upon receipt of the complaint, shall review the complaint and the verified supporting affidavit to determine whether there was probable cause for the seizure. Upon a finding of probable cause, the court shall enter an order showing the probable cause finding.

(c) The court shall require any claimant who desires to contest the forfeiture to file and serve upon the attorney representing the seizing agency any responsive pleadings and affirmative defenses within 20 days after receipt of the complaint and probable cause finding.

(6) (a) If the property is required by law to be titled or registered, or if the owner of the property is known in fact to the seizing agency, or if the seized property is subject to a perfected security interest in accordance with the Uniform Commercial Code, chapter 679, the attorney for the seizing agency shall serve the forfeiture complaint as an original service of process under the Florida Rules of Civil Procedure and other applicable law to each person having an ownership or security interest in the property. The seizing agency shall also publish, in accordance with chapter 50, notice of the forfeiture complaint once each week for 2 consecutive weeks in a newspaper of general circulation, as defined in § 165.031, in the county where the seizure occurred.

(b) The complaint must, in addition to stating that which is required by § 932.703(2)(a) and (b), as appropriate, describe the property; state the county, place, and date of seizure; state the name of the law enforcement agency holding the seized property; and state the name of the court in which the complaint will be filed.

(c) The seizing agency shall be obligated to make a diligent search and inquiry as to the owner of the subject property, and if, after such diligent search and inquiry, the seizing agency is unable to ascertain any person entitled to notice, the actual notice requirements by mail shall not be applicable.

(7) When the claimant and the seizing law enforcement agency agree to settle the forfeiture action prior to the conclusion of the forfeiture proceeding, the settlement agreement shall be reviewed, unless such review is waived by the claimant in writing, by the court or a mediator or arbitrator agreed upon by the claimant and the seizing law enforcement agency. If the claimant is unrepresented, the settlement agreement must include a provision that the claimant has freely and voluntarily agreed to enter into the settlement without benefit of counsel.

(8) Upon clear and convincing evidence that the contraband article was being used in violation of the Florida Contraband Forfeiture Act, the court shall order the seized property forfeited to the seizing law enforcement agency. The final order of forfeiture by the court shall perfect in the law enforcement agency right, title, and interest in and to such property, subject only to the rights and interests of bona fide lienholders, and shall relate back to the date of seizure.

(9) (a) When the claimant prevails at the conclusion of the forfeiture proceeding, if the seizing agency decides not to appeal, the seized property shall be released immediately to the person entitled to possession of the property as determined by the court. Under such circumstances, the seizing agency shall not assess any towing charges, storage fees, administrative costs, or maintenance costs against the claimant with respect to the seized property or the forfeiture proceeding.

(b) When the claimant prevails at the conclusion of the forfeiture proceeding, any decision to appeal must be made by the chief administrative official of the seizing agency, or his or her designee. The trial court shall require the seizing agency to pay to the claimant the reasonable loss of value of the seized property when the claimant prevails at trial or on appeal and the seizing agency retained the seized property during the trial or appellate process. The trial court shall also require the seizing agency to pay to the claimant any loss of income directly attributed to the continued seizure of income-producing property during the trial or appellate process. If the claimant prevails on appeal, the seizing agency shall immediately release the seized property to the person entitled to possession of the property as determined by the court, pay any cost as assessed by the court, and may not assess any towing charges, storage fees, administrative costs, or maintenance costs against the claimant with respect to the seized property or the forfeiture proceeding.

(10) The court shall award reasonable attorney's fees and costs, up to a limit of $1,000, to the claimant at the close of the adversarial preliminary hearing if the court makes a finding of no probable cause. When the claimant prevails, at the close of forfeiture proceedings and any appeal, the court shall award reasonable trial attorney's fees and costs to the claimant if the court finds that the seizing agency has not proceeded at any stage of the proceedings in good faith or that the seizing agency's action which precipitated the forfeiture proceedings was a gross abuse of the agency's discretion. The court may order the seizing agency to pay the awarded attorney's fees and costs from the appropriate contraband forfeiture trust fund. Nothing in this subsection precludes any party from electing to seek attorney's fees and costs under chapter 57 or other applicable law.

(11) (a) The Department of Law Enforcement, in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, shall develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the Florida Contraband Forfeiture Act. Each state or local law enforcement agency that seizes property for the purpose of forfeiture shall periodically review seizures of assets made by the agency's law enforcement officers, settlements, and forfeiture proceedings initiated by the agency, to determine whether such seizures, settlements, and forfeitures comply with the Florida Contraband Forfeiture Act and the guidelines adopted under this subsection. The determination of whether an agency will file a civil forfeiture action must be the sole responsibility of the head of the agency or his or her designee.

(b) The determination of whether to seize currency must be made by supervisory per-

sonnel. The agency's legal counsel must be notified as soon as possible.

932.7055. Disposition of liens and forfeited property.

(1) When a seizing agency obtains a final judgment granting forfeiture of real property or personal property, it may elect to:

(a) Retain the property for the agency's use;

(b) Sell the property at public auction or by sealed bid to the highest bidder, except for real property which should be sold in a commercially reasonable manner after appraisal by listing on the market; or

(c) Salvage, trade, or transfer the property to any public or nonprofit organization.

(2) Notwithstanding subsection (1), a seizing agency must destroy any image and the medium on which the image is recorded, including, but not limited to, a photograph, video tape, diskette, compact disc, or fixed disk made in violation of § 810.145 when the image and the medium on which it is recorded is no longer needed for an official purpose. The agency may not sell or retain any image.

(3) If the forfeited property is subject to a lien preserved by the court as provided in § 932.703(6)(b), the agency shall:

(a) Sell the property with the proceeds being used towards satisfaction of any liens; or

(b) Have the lien satisfied prior to taking any action authorized by subsection (1).

(4) The proceeds from the sale of forfeited property shall be disbursed in the following priority:

(a) Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.

(b) Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.

(c) Payment of court costs incurred in the forfeiture proceeding.

(d) [1]

Notwithstanding any other provision of this subsection, and for the 2013-2014 fiscal year only, the funds in a special law enforcement trust fund established by the governing body of a municipality may be expended to reimburse the general fund of the municipality for moneys advanced from the general fund to the special law enforcement trust fund before October 1, 2001. This paragraph expires July 1, 2014.

(5) (a) If the seizing agency is a county or municipal agency, the remaining proceeds shall be deposited in a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality. Such proceeds and interest earned therefrom shall be used for school resource officer, crime prevention, safe neighborhood, drug abuse education and prevention programs, or for other law enforcement purposes, which include defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for use in law enforcement vehicles, and providing matching funds to obtain federal grants. The proceeds and interest may not be used to meet normal operating expenses of the law enforcement agency.

(b) These funds may be expended upon request by the sheriff to the board of county commissioners or by the chief of police to the governing body of the municipality, accompanied by a written certification that the request complies with the provisions of this subsection, and only upon appropriation to the sheriff's office or police department by the board of county commissioners or the governing body of the municipality.

(c) An agency or organization, other than the seizing agency, that wishes to receive such funds shall apply to the sheriff or chief of police for an appropriation and its application shall be accompanied by a written certification that the moneys will be used for an authorized purpose. Such requests for expenditures shall include a statement describing anticipated recurring costs for the agency for subsequent fiscal years. An agency or organization that receives money pursuant to this subsection shall provide an accounting for such moneys and shall furnish the same reports as an agency of the county or municipality that receives public funds. Such funds may be expended in accordance with the following procedures:

1. Such funds may be used only for school resource officer, crime prevention, safe neighborhood, drug abuse education, or drug prevention programs or such other law enforcement purposes as the board of county commissioners or governing body of the municipality deems appropriate.

2. Such funds shall not be a source of revenue to meet normal operating needs of the law enforcement agency.

3. After July 1, 1992, and during every fiscal year thereafter, any local law enforcement agency that acquires at least $15,000 pursuant to the Florida Contraband Forfeiture Act within a fiscal year must expend or donate no less than 15 percent of such proceeds for the support or operation of any

drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program(s). The local law enforcement agency has the discretion to determine which program(s) will receive the designated proceeds.

Notwithstanding the drug abuse education, drug treatment, drug prevention, crime prevention, safe neighborhood, or school resource officer minimum expenditures or donations, the sheriff and the board of county commissioners or the chief of police and the governing body of the municipality may agree to expend or donate such funds over a period of years if the expenditure or donation of such minimum amount in any given fiscal year would exceed the needs of the county or municipality for such program(s). Nothing in this section precludes the expenditure or donation of forfeiture proceeds in excess of the minimum amounts established herein.

(6) If the seizing agency is a state agency, all remaining proceeds shall be deposited into the General Revenue Fund. However, if the seizing agency is:

(a) The Department of Law Enforcement, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the Forfeiture and Investigative Support Trust Fund as provided in § 943.362 or into the department's Federal Law Enforcement Trust Fund as provided in § 943.365, as applicable.

(b) The Division of Alcoholic Beverages and Tobacco, the proceeds accrued pursuant to the Florida Contraband Forfeiture Act shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund or into the department's Federal Law Enforcement Trust Fund as provided in § 561.027, as applicable.

(c) The Department of Highway Safety and Motor Vehicles, the proceeds accrued pursuant to the Florida Contraband Forfeiture Act shall be deposited into the Department of Highway Safety and Motor Vehicles Law Enforcement Trust Fund as provided in § 932.705(1)(a) or into the department's Federal Law Enforcement Trust Fund as provided in § 932.705(1)(b), as applicable.

(d) The Fish and Wildlife Conservation Commission, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the State Game Trust Fund as provided in §§ 379.338, 379.339, and 379.3395 or into the Marine Resources Conservation Trust Fund as provided in § 379.337.

(e) A state attorney's office acting within its judicial circuit, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the State Attorney's Forfeiture and Investigative Support Trust Fund to be used for the investigation of crime and prosecution of criminals within the judicial circuit.

(f) A school board security agency employing law enforcement officers, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the School Board Law Enforcement Trust Fund.

(g) One of the State University System police departments acting within the jurisdiction of its employing state university, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into that state university's special law enforcement trust fund.

(h) The Department of Agriculture and Consumer Services, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the Agricultural Law Enforcement Trust Fund or into the department's Federal Law Enforcement Trust Fund as provided in § 570.205, as applicable.

(i) The Department of Military Affairs, the proceeds accrued from federal forfeiture sharing pursuant to 21 U.S.C. §§ 881(e)(1)(A) and (3), 18 U.S.C. § 981(e)(2), and 19 U.S.C. § 1616a shall be deposited into the Armory Board Trust Fund and used for purposes authorized by such federal provisions based on the department's budgetary authority or into the department's Federal Law Enforcement Trust Fund as provided in § 250.175, as applicable.

(j) The Medicaid Fraud Control Unit of the Department of Legal Affairs, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the Department of Legal Affairs Grants and Donations Trust Fund to be used for investigation and prosecution of Medicaid fraud, abuse, neglect, and other related cases by the Medicaid Fraud Control Unit.

(k) The Division of State Fire Marshal in the Department of Financial Services, the proceeds accrued under the Florida Contraband Forfeiture Act shall be deposited into the Insurance Regulatory Trust Fund to be used for the purposes of arson suppression, arson investigation, and the funding of anti-arson rewards.

(l) The Division of Insurance Fraud of the Department of Financial Services, the proceeds accrued pursuant to the provisions of

the Florida Contraband Forfeiture Act shall be deposited into the Insurance Regulatory Trust Fund as provided in § 626.9893 or into the Department of Financial Services' Federal Law Enforcement Trust Fund as provided in § 17.43, as applicable.

(7) If more than one law enforcement agency is acting substantially to effect the forfeiture, the court having jurisdiction over the forfeiture proceedings shall, upon motion, equitably distribute all proceeds and other property among the seizing agencies.

(8) Upon the sale of any motor vehicle, vessel, aircraft, real property, or other property requiring a title, the appropriate agency shall issue a title certificate to the purchaser. Upon the request of any law enforcement agency which elects to retain titled property after forfeiture, the appropriate state agency shall issue a title certificate for such property to said law enforcement agency.

(9) Neither the law enforcement agency nor the entity having budgetary control over the law enforcement agency shall anticipate future forfeitures or proceeds therefrom in the adoption and approval of the budget for the law enforcement agency.

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STATE LOTTERIES

24.116. Unlawful purchase of lottery tickets; penalty.

(1) No person who is less than 18 years of age may purchase a lottery ticket; however, this shall not prohibit the purchase of a lottery ticket for the purpose of making a gift to a minor.

(2) No officer or employee of the department or any relative living in the same household with such officer or employee may purchase a lottery ticket.

(3) No officer or employee of any vendor under contract with the department for a major procurement, relative living in the same household with such officer or employee, or immediate supervisor of such officer or employee may purchase a lottery ticket if the officer or employee is involved in the direct provision of goods or services to the department or has access to information made confidential by the department.

(4) Any person who violates this section is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

24.117. Unlawful sale of lottery tickets; penalty.

Any person who knowingly:

(1) Sells a state lottery ticket when not authorized by the department or this act to engage in such sale;

(2) Sells a state lottery ticket to a minor; or

(3) Sells a state lottery ticket at any price other than that established by the department;

is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

24.118. Other prohibited acts; penalties.

(1) UNLAWFUL EXTENSIONS OF CREDIT.—Any retailer who extends credit or lends money to a person for the purchase of a lottery ticket is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. This subsection shall not be construed to prohibit the purchase of a lottery ticket through the use of a credit or charge card or other instrument issued by a bank, savings association, credit union, or charge card company or by a retailer pursuant to part II of chapter 520, provided that any such purchase from a retailer shall be in addition to the purchase of goods and services other than lottery tickets having a cost of no less than $20.

(2) UNLAWFUL ASSIGNMENT OR TRANSFER OF RIGHT TO CLAIM PRIZE.—Any person who induces another to assign or transfer his or her right to claim a prize, who offers for sale his or her right to claim a prize, or who offers for compensation to claim the prize of another is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) COUNTERFEIT OR ALTERED TICKETS.—Any person who:

(a) Knowingly presents a counterfeit or altered state lottery ticket;

(b) Knowingly transfers a counterfeit or altered state lottery ticket to another to present for payment;

(c) With intent to defraud, falsely makes, alters, forges, passes, or counterfeits a state lottery ticket; or

(d) Files with the department a claim for payment based upon facts alleged by the claimant which facts are untrue and known by the claimant to be untrue when the claim is made;

is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) BREACH OF CONFIDENTIALITY.—Any person who, with intent to defraud or with intent to provide a financial or other advantage to himself, herself, or another, knowingly and willfully discloses any information relating to the lottery designated as confidential and exempt from the provisions of § 119.07(1) pursuant to this act is guilty of a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) UNLAWFUL REPRESENTATION.—

(a) Any person who uses point-of-sale materials issued by the department or otherwise holds himself or herself out as a retailer without being authorized by the department to act as a retailer is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(b) Any person who without being authorized by the department in writing uses the term "Florida Lottery," "State Lottery," "Florida State Lottery," or any similar term in the title or name of any charitable or commercial enterprise, product, or service is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 39
PROCEEDINGS RELATING TO CHILDREN

39.205. Penalties relating to reporting of child abuse, abandonment, or neglect.

(1) A person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. A judge subject to discipline pursuant to § 12, Art. V of the Florida Constitution shall not be subject to criminal prosecution when the information was received in the course of official duties.

(2) Unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist, a person who is 18 years of age or older and lives in the same house or living unit as a child who is known or suspected to be a victim of child abuse, neglect of a child, or aggravated child abuse, and knowingly and willfully fails to report the child abuse commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in § 1000.21 or § 1005.02, whose administrators knowingly and willfully, upon receiving information from faculty, staff, or other institution employees, fail to report known or suspected child abuse, abandonment, or neglect committed on the property of the university, college, or school, or during an event or function sponsored by the university, college, or school, or who knowingly and willfully prevent another person from doing so, shall be subject to fines of $1 million for each such failure.

(a) A Florida College System institution subject to a fine shall be assessed by the State Board of Education.

(b) A state university subject to a fine shall be assessed by the Board of Governors.

(c) A nonpublic college, university, or school subject to a fine shall be assessed by the Commission for Independent Education.

(4) Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in § 1000.21 or § 1005.02, whose law enforcement agency fails to report known or suspected child abuse, abandonment, or neglect committed on the property of the university, college, or school, or during an event or function sponsored by the university, college, or school, shall be subject to fines of $1 million for each such failure assessed in the same manner as subsection (3).

(5) Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in § 1000.21 or § 1005.02, shall have the right to challenge the determination that the institution acted knowingly and willfully under subsection (3) or subsection (4) in an administrative hearing pursuant to § 120.57; however, if it is found that actual knowledge and information of known or suspected child abuse was in fact received by the institution's administrators and was not reported, a presumption of a knowing and willful act will be established.

(6) A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline or in the records of any child abuse, abandonment, or neglect case, except as provided in this chapter, commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(7) The department shall establish procedures for determining whether a false report of child abuse, abandonment, or neglect has been made and for submitting all identifying information relating to such a report to the appropriate law enforcement agency and shall report annually to the Legislature the number of reports referred.

(8) If the department or its authorized agent has determined during the course of its investigation that a report is a false report, the department may discontinue all investigative activities and shall, with the consent of the alleged perpetrator, refer the report to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in § 39.01. During the pendency of the investigation, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning children in that same family in accordance with § 39.301. If the law enforcement agency believes that there are indicators of abuse, abandonment, or neglect, it must immediately notify the department, which must ensure the safety of the children. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report,

it must refer the case to the appropriate state attorney for prosecution.

(9) A person who knowingly and willfully makes a false report of child abuse, abandonment, or neglect, or who advises another to make a false report, is guilty of a felony of the third degree, punishable as provided in § 775.082 or § 775.083. Anyone making a report who is acting in good faith is immune from any liability under this subsection.

(10) The State Board of Education shall adopt rules to implement this section as it relates to Florida College System institutions; the Commission for Independent Education shall adopt rules to implement this section as it relates to nonpublic colleges, universities, and schools; and the Board of Governors shall adopt regulations to implement this section as it relates to state universities.

CHAPTER 95
LIMITATIONS OF ACTIONS; ADVERSE POSSESSION

95.18. Real property actions; adverse possession without color of title.

(1) When the possessor has been in actual continued possession of real property for 7 years under a claim of title exclusive of any other right, but not founded on a written instrument, judgment, or decree, or when those under whom the possessor claims meet these criteria, the property actually possessed is held adversely if the person claiming adverse possession:

(a) Paid, subject to § 197.3335, all outstanding taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality within 1 year after entering into possession;

(b) Made a return, as required under subsection (3), of the property by proper legal description to the property appraiser of the county where it is located within 30 days after complying with paragraph (a); and

(c) Has subsequently paid, subject to § 197.3335, all taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality for all remaining years necessary to establish a claim of adverse possession.

(2) For the purpose of this section, property is deemed to be possessed if the property has been:

(a) Protected by substantial enclosure; or

(b) Cultivated, maintained, or improved in a usual manner.

(3) A person claiming adverse possession under this section must make a return of the property by providing to the property appraiser a uniform return on a form provided by the Department of Revenue. The return must include all of the following:

(a) The name and address of the person claiming adverse possession.

(b) The date that the person claiming adverse possession entered into possession of the property.

(c) A full and complete legal description of the property that is subject to the adverse possession claim.

(d) A notarized attestation clause that states:

UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING RETURN AND THAT THE FACTS STATED IN IT ARE TRUE AND CORRECT. I FURTHER ACKNOWLEDGE THAT THE RETURN DOES NOT CREATE ANY INTEREST ENFORCEABLE BY LAW IN THE DESCRIBED PROPERTY.

(e) A description of the use of the property by the person claiming adverse possession.

(f) A receipt to be completed by the property appraiser.

(g) Dates of payment by the possessor of all outstanding taxes and matured installments of special improvement liens levied against the property by the state, county, or municipality under paragraph (1)(a).

(h) The following notice provision at the top of the first page, printed in at least 12-point uppercase and boldfaced type:

THIS RETURN DOES NOT CREATE ANY INTEREST ENFORCEABLE BY LAW IN THE DESCRIBED PROPERTY.

The property appraiser shall refuse to accept a return if it does not comply with this subsection. The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under §§ 120.536(1) and 120.54(4) for the purpose of implementing this subsection. The emergency rules shall remain in effect for 6 months after adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

(4) Upon the submission of a return, the property appraiser shall:

(a) Send, via regular mail, a copy of the return to the owner of record of the property that is subject to the adverse possession

claim, as identified by the property appraiser's records.

(b) Inform the owner of record that, under § 197.3335, any tax payment made by the owner of record before April 1 following the year in which the tax is assessed will have priority over any tax payment made by an adverse possessor.

(c) Add a notation at the beginning of the first line of the legal description on the tax roll that an adverse possession claim has been submitted.

(d) Maintain the return in the property appraiser's records.

(5) (a) If a person makes a claim of adverse possession under this section against a portion of a parcel of property identified by a unique parcel identification number in the property appraiser's records:

1. The person claiming adverse possession shall include in the return submitted under subsection (3) a full and complete legal description of the property sufficient to enable the property appraiser to identify the portion of the property subject to the adverse possession claim.

2. The property appraiser may refuse to accept the return if the portion of the property subject to the claim cannot be identified by the legal description provided in the return, and the person claiming adverse possession must obtain a survey of the portion of the property subject to the claim in order to submit the return.

(b) Upon submission of the return, the property appraiser shall follow the procedures under subsection (4), and may not create a unique parcel identification number for the portion of property subject to the claim.

(c) The property appraiser shall assign a fair and just value to the portion of the property, as provided in § 193.011, and provide this value to the tax collector to facilitate tax payment under § 197.3335(3).

(6) (a) If a person makes a claim of adverse possession under this section against property to which the property appraiser has not assigned a parcel identification number:

1. The person claiming adverse possession must include in the return submitted under subsection (3) a full and complete legal description of the property which is sufficient to enable the property appraiser to identify the property subject to the adverse possession claim.

2. The property appraiser may refuse to accept a return if the property subject to the claim cannot be identified by the legal description provided in the return, and the person claiming adverse possession must obtain a survey of the property subject to the claim in order to submit the return.

(b) Upon submission of the return, the property appraiser shall:

1. Assign a parcel identification number to the property and assign a fair and just value to the property as provided in § 193.011;

2. Add a notation at the beginning of the first line of the legal description on the tax roll that an adverse possession claim has been submitted; and

3. Maintain the return in the property appraiser's records.

(7) A property appraiser must remove the notation to the legal description on the tax roll that an adverse possession claim has been submitted and shall remove the return from the property appraiser's records if:

(a) The person claiming adverse possession notifies the property appraiser in writing that the adverse possession claim is withdrawn;

(b) The owner of record provides a certified copy of a court order, entered after the date the return was submitted to the property appraiser, establishing title in the owner of record;

(c) The property appraiser receives a certified copy of a recorded deed, filed after the date of the submission of the return, from the person claiming adverse possession to the owner of record transferring title of property along with a legal description describing the same property subject to the adverse possession claim; or

(d) The owner of record or the tax collector provides to the property appraiser a receipt demonstrating that the owner of record has paid the annual tax assessment for the property subject to the adverse possession claim during the period that the person is claiming adverse possession.

(8) The property appraiser shall include a clear and obvious notation in the legal description of the parcel information of any public searchable property database maintained by the property appraiser that an adverse possession return has been submitted to the property appraiser for a particular parcel.

(9) A person who occupies or attempts to occupy a residential structure solely by claim of adverse possession under this section prior to making a return as required under subsection (3), commits trespass under § 810.08.

(10) A person who occupies or attempts to occupy a residential structure solely by claim of adverse possession under this section and

offers the property for lease to another commits theft under § 812.014.

CHAPTER 210
TAX ON TOBACCO PRODUCTS

210.18. Penalties for tax evasion; reports by sheriffs.

(1) Any person who possesses or transports any unstamped packages of cigarettes upon the public highways, roads, or streets in the state for the purpose of sale; or who sells or offers for sale unstamped packages of cigarettes in violation of the provisions of this part; or who willfully attempts in any manner to evade or defeat any tax imposed by this part, or the payment thereof, is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Any person who has been convicted of a violation of any provision of the cigarette tax law and who is thereafter convicted of a further violation of the cigarette tax law is, upon conviction of such further offense, guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) Except as otherwise provided in this section, any person who fails, neglects, or refuses to comply with, or violates the provisions of, this part or the rules adopted by the division under this part commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Any person who has been convicted of a violation of any provision of the cigarette tax law and who is thereafter convicted of a further violation of the cigarette tax law is, upon conviction of such further offense, guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Any person who falsely or fraudulently makes, forges, alters, or counterfeits any stamp prescribed by the division under the provisions of this part; or causes or procures to be falsely or fraudulently made, forged, altered, or counterfeited any such stamp; or knowingly and willfully utters, purchases, passes or tenders as true any such false, altered, or counterfeited stamp; or, with the intent to defraud the state, fails to comply with any other requirement of this part commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) (a) Any person or corporation that owns or is in possession of any cigarettes upon which a tax is imposed by the cigarette law, or would be imposed if such cigarettes were manufactured in or brought into this state in accordance with the regulatory provisions of the cigarette law, and upon which such tax has not been paid is, in addition to the fines and penalties otherwise provided in the cigarette law, personally liable for the amount of the tax imposed on such cigarettes; and the division may collect such tax from such person or corporation by suit or by restitution if the taxpayer is convicted, found guilty, or pleads nolo contendere or guilty to any crime under this chapter. This paragraph is applicable even if adjudication is withheld.

(b) This subsection does not apply to a manufacturer or distributor licensed under the cigarette law, to a state bonded warehouse, or to a person possessing not in excess of three cartons of such cigarettes, which cigarettes were purchased by such possessor outside the state in accordance with the laws of the place where purchased and brought into this state by such possessor. The burden of proof that such cigarettes were purchased outside the state and in accordance with the laws of the place where purchased shall in all cases be upon the possessor of such cigarettes.

(5) (a) All cigarettes on which taxes are imposed by the cigarette law, or would be imposed if such cigarettes were manufactured in or brought into this state in accordance with the regulatory provisions of such law, which are found in the possession or custody or within the control of any person for the purpose of being sold or removed by him or her in fraud of the cigarette law or with design to evade payment of such taxes may be seized by the division or any supervisor, sheriff, deputy sheriff, or other law enforcement agent and shall be forfeited to the state.

(b) This subsection does not apply to a person possessing not in excess of three cartons of cigarettes, which cigarettes were purchased by such possessor outside the state in accordance with the laws of the place where purchased and brought into this state by such possessor.

(6) (a) Every person, firm, or corporation, other than a licensee under the provisions of this part, who possesses, removes, deposits, or conceals, or aids in the possessing, removing, depositing, or concealing of, any unstamped cigarettes is presumed to have knowledge that they have not been taxed and commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) This section does not apply to a person possessing not in excess of three cartons of such cigarettes purchased by such possessor outside the state in accordance with the laws

of the place where purchased and brought into this state by such possessor. The burden of proof that such cigarettes were purchased outside the state and in accordance with the laws of the place where purchased shall in all cases be upon the possessor of such cigarettes.

(7) Any sheriff, deputy sheriff, police officer, or state law enforcement officer, upon the seizure of any unstamped cigarettes under this section, shall promptly report such seizure to the division or its representative, together with a description of all such unstamped cigarettes seized, so that the state may be kept informed as to the size and magnitude of the illicit cigarette business. The division shall keep records showing the number of seizures and seized cigarettes reported to, or seized by, the division.

(8) (a) It is unlawful for any person to conspire with any other person or persons to do any act in violation of the provisions of this part, when any one or more of such persons does or commits any act to effect the object of the conspiracy.

(b) Any person who violates the provisions of this subsection:

1. If the act conspired to be done would constitute a misdemeanor, is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

2. If the act conspired to be done would constitute a felony, is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(9) Notwithstanding any other provision of law, the sale or possession for sale of counterfeit cigarettes by any person or by a manufacturer, importer, distributing agent, wholesale dealer, or retail dealer shall result in the seizure of the product and related machinery by the division or any law enforcement agency.

(10) It is unlawful to sell or possess with the intent to sell counterfeit cigarettes, as defined in § 210.01(22).

(a) A person who does not hold a permit or holds a retail permit under the provisions of this chapter and who violates this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, and is subject to the imposition of fines and additional penalties as follows:

1.-2. [Intentionally omitted.]

(b) A person who holds a permit, other than a retail permit, under the provisions of this chapter and who violates this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, and is subject to the imposition of fines and additional penalties as follows:

1.-2. [Intentionally omitted.]

For purposes of this subsection, any counterfeit cigarettes seized by the division shall be destroyed.

(11) The division shall create a toll-free number for reporting violations of this part. Upon a determination that a violation has occurred, the informant who provided the information that led to the determination shall be paid a reward of up to 50 percent of the fine levied and paid under this section. A notice must be conspicuously displayed in every location where cigarettes are sold which contains the following provision in conspicuous type: "NOTICE TO CUSTOMER: FLORIDA LAW PROHIBITS THE POSSESSION OR SALE OF UNSTAMPED CIGARETTES. REPORT VIOLATIONS TO (TOLL-FREE NUMBER). YOU MAY BE ELIGIBLE FOR A CASH REWARD." This notice must be provided at the expense of the retail dealer.

210.1801. Exempt cigarettes for members of recognized Indian tribes.

(1) Notwithstanding any provision of this chapter to the contrary, a member of an Indian tribe recognized in this state who purchases cigarettes on an Indian reservation for his or her own use is exempt from paying a cigarette tax and surcharge. However, such member purchasing cigarettes outside of an Indian reservation or a nontribal member purchasing cigarettes on an Indian reservation is not exempt from paying the cigarette tax or surcharge when purchasing cigarettes within this state. Accordingly, the tax and surcharge shall apply to all cigarettes sold on an Indian reservation to a nontribal member, and evidence of such tax or surcharge shall be by means of an affixed cigarette tax and surcharge stamp.

(2) In order to ensure an adequate quantity of cigarettes on Indian reservations which may be purchased by tribal members who are exempt from the cigarette tax and surcharge, the division shall provide recognized Indian tribes within this state with Indian-tax-and-surcharge-exemption coupons as set forth in this section. A reservation cigarette seller shall present such Indian-tax-and-surcharge-exemption coupons to a wholesale dealer licensed in this state in order to purchase stamped cigarettes that are exempt from the imposition of the cigarette tax and surcharge. A tribal member may purchase cigarettes that are exempt from the cigarette tax and surcharge from a reservation cigarette seller even though such cigarettes

have an affixed cigarette tax-and-surcharge stamp.

(3) Indian-tax-and-surcharge-exemption coupons shall be provided to the recognized governing body of each Indian tribe to ensure that each Indian tribe can obtain cigarettes that are exempt from the tax and surcharge which are for the use of the tribe or its members. The Indian-tax-and-surcharge-exemption coupons shall be provided to the Indian tribes quarterly. It is intended that each Indian tribe will distribute the Indian-tax-and-surcharge-exemption coupons to reservation cigarette sellers on such tribe's reservation. Only Indian tribes or reservation cigarette sellers on their reservations may redeem such Indian-tax-and-surcharge-exemption coupons pursuant to this section.

(a) The number of Indian-tax-and-surcharge-exemption coupons to be given to the recognized governing body of each Indian tribe shall be based upon the probable demand of the tribal members on the tribe's reservation plus the number needed for official tribal use. The annual total number of Indian-tax-and-surcharge-exemption coupons to be given to the recognized governing body of each Indian tribe shall be calculated by multiplying the number of members of the tribe times five packs of cigarettes times 365.

(b) Each wholesale dealer shall keep records of transactions involving Indian-tax-and-surcharge-exemption coupons and shall submit appropriate documentation to the division when claiming a refund as set forth in this section. Documentation must contain at least the following information:

1. The identity of the Indian tribe from which an Indian-tax-and-surcharge-exemption coupon is received;

2. The identity and the quantity of the product for which an Indian-tax-and-surcharge-exemption coupon is provided;

3. The date of issuance and the date of expiration of the Indian-tax-and-surcharge-exemption coupon; and

4. Any other information as the division may deem appropriate.

(4) (a) An Indian tribe may purchase cigarettes for its own official use from a wholesale dealer without payment of the cigarette tax and surcharge to the extent that the Indian tribe provides the wholesale dealer with Indian-tax-and-surcharge-exemption coupons entitling the Indian tribe to purchase such quantities of cigarettes as allowed by each Indian-tax-and-surcharge-exemption coupon without paying the cigarette tax and surcharge.

(b) A tribal member may purchase cigarettes for his or her own use without payment of the cigarette tax and surcharge if the tribal member makes such purchase on a qualified reservation.

(c) A reservation cigarette seller may purchase cigarettes for resale without payment of the cigarette tax from a wholesale dealer licensed pursuant to this chapter:

1. If the reservation cigarette seller brings the cigarettes or causes them to be delivered onto a qualified reservation for resale on the reservation;

2. To the extent that the reservation cigarette seller provides the wholesale dealer with Indian-tax-and-surcharge-exemption coupons entitling the reservation cigarette seller to purchase such quantities of cigarettes as allowed on each Indian-tax-and-surcharge-exemption coupon without paying the cigarette tax and surcharge; and

3. If the cigarettes are affixed with a cigarette tax and surcharge stamp.

(d) A wholesale dealer may not collect the cigarette tax and surcharge from any purchaser if the purchaser gives the dealer Indian-tax-and-surcharge-exemption coupons that entitle the purchaser to purchase such quantities of cigarettes as allowed on each such Indian-tax-and-surcharge-exemption coupon without paying the cigarette tax and surcharge.

(5) A wholesale dealer who has one or more Indian-tax-and-surcharge-exemption coupons may file a claim for a refund with respect to any cigarette tax previously paid on cigarettes that the wholesale dealer sold without collecting the tax because the dealer accepted an Indian-tax-and-surcharge-exemption coupon from a purchaser pursuant to this section.

(6) If an Indian tribe enters into an agreement with the state and the Legislature approves such agreement regarding the sale and distribution of cigarettes on the tribe's reservation, the terms of the agreement take precedence over the provisions of this section and exempt the tribe from the tax and surcharge if the tax and surcharge are specifically addressed in the agreement. The sale or distribution, including transportation, of any cigarettes to the tribe's reservation shall be in accordance with the provisions of the agreement. The agreement must provide for revenue sharing between the tribe and the state relating to the imposition and collection of the taxes imposed by §§ 210.02 and 210.30 and the surcharges imposed by §§ 210.011 and 210.276 and must, at a minimum, pro-

vide for the state to receive as revenue sharing from the tribe the full amounts of the surcharges imposed by §§ 210.011 and 210.276.

CHAPTER 311
SEAPORT PROGRAMS AND FACILITIES

311.12. Seaport security.

(1) SECURITY STANDARDS.—

(a) A seaport may implement security measures that are more stringent, more extensive, or supplemental to the applicable federal security regulations, including federal facility security assessment requirements under 33 C.F.R. § 105.305.

(b) The provisions of § 790.251 are not superseded, preempted, or otherwise modified in any way by the provisions of this section.

(2) SECURITY PLAN.—

(a) Each seaport listed in § 311.09 shall adopt and maintain a security plan specific to that seaport which provides for a secure seaport infrastructure that promotes the safety and security of state residents and visitors and the flow of legitimate trade and travel.

(b) Each seaport shall periodically revise the seaport's security plan based on the seaport's ongoing assessment of security risks, the risks of terrorist activities, and the specific and identifiable needs of the seaport for ensuring that the seaport is in substantial compliance with applicable federal security regulations, including federal facility security assessment requirements under 33 C.F.R. § 105.305.

(3) SECURE AND RESTRICTED AREAS.—Each seaport listed in § 311.09 must clearly designate in seaport security plans, and clearly identify with appropriate signs and markers on the premises of a seaport, all secure and restricted areas as defined by 33 C.F.R. part 105.

(a) 1. All seaport employees and other persons working at the seaport who have regular access to secure or restricted areas must comply with federal access control regulations as prescribed in this section.

2. All persons and objects in secure and restricted areas are subject to search by a sworn state-certified law enforcement officer, a Class D seaport security officer certified under Maritime Transportation Security Act of 2002 guidelines, or an employee of the seaport security force certified under the Maritime Transportation Security Act of 2002 guidelines.

3. Persons found in these areas without the proper permission are subject to the trespass provisions of §§ 810.08 and 810.09.

(b) The seaport must provide clear notice of the prohibition against possession of concealed weapons and other contraband material on the premises of the seaport. Any person in a restricted area who has in his or her possession a concealed weapon, or who operates or has possession or control of a vehicle in or upon which a concealed weapon is placed or stored, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. This paragraph does not apply to active-duty certified federal or state law enforcement personnel or persons so designated by the seaport director in writing.

(c) During a period of high terrorist threat level, as designated by the United States Department of Homeland Security, the management or controlling authority of the port may temporarily designate any part of the seaport property as a secure or restricted area. The duration of such designation is limited to the period in which the high terrorist threat level is in effect or a port emergency exists.

(4) ACCESS TO SECURE AND RESTRICTED AREAS.—

(a) Any person seeking authorization for unescorted access to secure and restricted areas of a seaport must possess a valid federal Transportation Worker Identification Credential (TWIC).

(b) A seaport may not charge a fee for the administration or production of any access control credential that requires or is associated with a fingerprint-based background check, in addition to the fee for the federal TWIC. Beginning July 1, 2013, a seaport may not charge a fee for a seaport-specific access credential issued in addition to the federal TWIC, except under the following circumstances:

1. The individual seeking to gain secured access is a new hire as defined under 33 C.F.R. § 105; or

2. The individual has lost or misplaced his or her federal TWIC.

CHAPTER 323
WRECKER OPERATORS

323.002. County and municipal wrecker operator systems; penalties for operation outside of system.

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

(a) "Authorized wrecker operator" means any wrecker operator who has been desig-

nated as part of the wrecker operator system established by the governmental unit having jurisdiction over the scene of a wrecked or disabled vehicle.

(b) "Unauthorized wrecker operator" means any wrecker operator who has not been designated as part of the wrecker operator system established by the governmental unit having jurisdiction over the scene of a wrecked or disabled vehicle.

(c) "Wrecker operator system" means a system for the towing or removal of wrecked, disabled, or abandoned vehicles, similar to the Florida Highway Patrol wrecker operator system described in § 321.051(2), under which a county or municipality contracts with one or more wrecker operators for the towing or removal of wrecked, disabled, or abandoned vehicles from accident scenes, streets, or highways. A wrecker operator system shall include using a method for apportioning the towing assignments among the eligible wrecker operators through the creation of geographic zones, a rotation schedule, or a combination of these methods.

(2) In any county or municipality that operates a wrecker operator system:

(a) It is unlawful for an unauthorized wrecker operator or its employees or agents to monitor police radio for communications between patrol field units and the dispatcher in order to determine the location of a wrecked or disabled vehicle for the purpose of driving by the scene of such vehicle in a manner described in paragraph (b) or paragraph (c). Any person who violates this paragraph commits a noncriminal violation, punishable as provided in § 775.083.

(b) It is unlawful for an unauthorized wrecker operator to drive by the scene of a wrecked or disabled vehicle before the arrival of an authorized wrecker operator, initiate contact with the owner or operator of such vehicle by soliciting or offering towing services, and tow such vehicle. Any person who violates this paragraph commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(c) When an unauthorized wrecker operator drives by the scene of a wrecked or disabled vehicle and the owner or operator initiates contact by signaling the wrecker operator to stop and provide towing services, the unauthorized wrecker operator must disclose in writing to the owner or operator of the vehicle his or her full name and driver license number, that he or she is not the authorized wrecker operator who has been designated as part of the wrecker operator system, that the motor vehicle is not being towed for the owner's or operator's insurance company or lienholder, whether he or she has in effect an insurance policy providing at least $300,000 of liability insurance and at least $50,000 of on-hook cargo insurance, and the maximum charges for towing and storage which will apply before the vehicle is connected to the towing apparatus. Any person who violates this paragraph commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(d) At the scene of a wrecked or disabled vehicle, it is unlawful for a wrecker operator to falsely identify himself or herself as being part of the wrecker operator system. Any person who violates this paragraph is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.[1]

(3) This section does not prohibit, or in any way prevent, the owner or operator of a vehicle involved in an accident or otherwise disabled from contacting any wrecker operator for the provision of towing services, whether the wrecker operator is an authorized wrecker operator or not.

[1]Section 65, ch. 2013-160, purported to amend subsection (2), but did not publish paragraph (d). Absent affirmative evidence of legislative intent to repeal it, paragraph (d) is published here, pending clarification by the Legislature.

CHAPTER 327
VESSEL SAFETY

327.02. Definitions.

As used in this chapter and in chapter 328, unless the context clearly requires a different meaning, the term:

(1) "Airboat" means a vessel that is primarily designed for use in shallow waters and powered by an internal combustion engine with an airplane-type propeller mounted above the stern and used to push air across a set of rudders.

(2) "Alien" means a person who is not a citizen of the United States.

(3) "Boating accident" means a collision, accident, or casualty involving a vessel in or upon, or entering into or exiting from, the water, including capsizing, collision with another vessel or object, sinking, personal injury, death, disappearance of any person from on board under circumstances which indicate the possibility of death or injury, or property damage to any vessel or dock.

(4) "Canoe" means a light, narrow vessel with curved sides and with both ends pointed. A canoe-like vessel with a transom may

not be excluded from the definition of a canoe if the width of its transom is less than 45 percent of the width of its beam or it has been designated as a canoe by the United States Coast Guard.

(5) "Commercial vessel" means:

(a) Any vessel primarily engaged in the taking or landing of saltwater fish or saltwater products or freshwater fish or freshwater products, or any vessel licensed pursuant to § 379.361 from which commercial quantities of saltwater products are harvested, from within and without the waters of this state for sale either to the consumer, retail dealer, or wholesale dealer.

(b) Any other vessel, except a recreational vessel as defined in this section.

(6) "Commission" means the Fish and Wildlife Conservation Commission.

(7) "Dealer" means any person authorized by the Department of Revenue to buy, sell, resell, or otherwise distribute vessels. Such person shall have a valid sales tax certificate of registration issued by the Department of Revenue and a valid commercial or occupational license required by any county, municipality, or political subdivision of the state in which the person operates.

(8) "Division" means the Division of Law Enforcement of the Fish and Wildlife Conservation Commission.

(9) "Documented vessel" means a vessel for which a valid certificate of documentation is outstanding pursuant to 46 C.F.R. part 67.

(10) "Floating structure" means a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term "floating structure" includes, but is not limited to, each entity used as a residence, place of business or office with public access, hotel or motel, restaurant or lounge, clubhouse, meeting facility, storage or parking facility, mining platform, dredge, dragline, or similar facility or entity represented as such. Floating structures are expressly excluded from the definition of the term "vessel" provided in this section. Incidental movement upon water or resting partially or entirely on the bottom shall not, in and of itself, preclude an entity from classification as a floating structure.

(11) "Florida Intracoastal Waterway" means the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section (using Gulf of Mexico); the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.

(12) "Homemade vessel" means any vessel built after October 31, 1972, for which a federal hull identification number is not required to be assigned by the manufacturer pursuant to federal law, or any vessel constructed or assembled prior to November 1, 1972, by other than a licensed manufacturer for his or her own use or the use of a specific person. A vessel assembled from a manufacturer's kit or constructed from an unfinished manufactured hull shall be considered to be a homemade vessel if such a vessel is not required to have a hull identification number assigned by the United States Coast Guard. A rebuilt or reconstructed vessel shall in no event be construed to be a homemade vessel.

(13) "Houseboat" means any vessel which is used primarily as a residence for a minimum of 21 days during any 30-day period, in a county of this state, and this residential use of the vessel is to the preclusion of the use of the vessel as a means of transportation.

(14) "Length" means the measurement from end to end over the deck parallel to the centerline excluding sheer.

(15) "Lien" means a security interest which is reserved or created by a written agreement recorded with the Department of Highway Safety and Motor Vehicles pursuant to § 328.15 which secures payment or performance of an obligation and is generally valid against third parties.

(16) "Lienholder" means a person holding a security interest in a vessel, which interest is recorded with the Department of Highway Safety and Motor Vehicles pursuant to § 328.15.

(17) "Live-aboard vessel" means:

(a) Any vessel used solely as a residence and not for navigation;

(b) Any vessel represented as a place of business or a professional or other commercial enterprise; or

(c) Any vessel for which a declaration of domicile has been filed pursuant to § 222.17.

A commercial fishing boat is expressly excluded from the term "live-aboard vessel."

(18) "Livery vessel" means any vessel leased, rented, or chartered to another for consideration.

(19) "Manufactured vessel" means any vessel built after October 31, 1972, for which a federal hull identification number is required pursuant to federal law, or any vessel constructed or assembled prior to November 1, 1972, by a duly licensed manufacturer.

(20) "Marina" means a licensed commercial facility which provides secured public moorings or dry storage for vessels on a leased basis. A commercial establishment authorized by a licensed vessel manufacturer as a dealership shall be considered a marina for nonjudicial sale purposes.

(21) "Marine sanitation device" means any equipment other than a toilet, for installation on board a vessel, which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage. Marine sanitation device Types I, II, and III shall be defined as provided in 33 C.F.R. part 159.

(22) "Marker" means any channel mark or other aid to navigation, information or regulatory mark, isolated danger mark, safe water mark, special mark, inland waters obstruction mark, or mooring buoy in, on, or over the waters of the state or the shores thereof, and includes, but is not limited to, a sign, beacon, buoy, or light.

(23) "Motorboat" means any vessel equipped with machinery for propulsion, irrespective of whether the propulsion machinery is in actual operation.

(24) "Muffler" means an automotive-style sound-suppression device or system designed to effectively abate the sound of exhaust gases emitted from an internal combustion engine and prevent excessive sound when installed on such an engine.

(25) "Navigation rules" means:

(a) For vessels on waters outside of established navigational lines of demarcation as specified in 33 C.F.R. part 80, the International Navigational Rules Act of 1977, 33 U.S.C. § 1602, as amended, including the appendix and annexes thereto, through October 1, 2012.

(b) For vessels on all waters not outside of such established lines of demarcation, the Inland Navigational Rules Act of 1980, 33 C.F.R. parts 83-90, as amended, through October 1, 2012.

(26) "Nonresident" means a citizen of the United States who has not established residence in this state and has not continuously resided in this state for 1 year and in one county for the 6 months immediately preceding the initiation of a vessel titling or registration action.

(27) "Operate" means to be in charge of or in command of or in actual physical control of a vessel upon the waters of this state, or to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

(28) "Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person, reserved or created by agreement and securing payment of performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(29) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(30) "Personal watercraft" means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(31) "Portable toilet" means a device consisting of a lid, seat, containment vessel, and support structure that is specifically designed to receive, retain, and discharge human waste and that is capable of being removed from a vessel by hand.

(32) "Prohibited activity" means such activity as will impede or disturb navigation or creates a safety hazard on waterways of this state.

(33) "Racing shell," "rowing scull," or "racing kayak" means a manually propelled vessel which is recognized by national or international racing associations for use in competitive racing and in which all occupants, with the exception of a coxswain, if one is provided, row, scull, or paddle and which is not designed to carry and does not carry any equipment not solely for competitive racing.

(34) "Recreational vessel" means any vessel:

(a) Manufactured and used primarily for noncommercial purposes; or

(b) Leased, rented, or chartered to a person for the person's noncommercial use.

(35) "Registration" means a state operating license on a vessel which is issued with an identifying number, an annual certificate of registration, and a decal designating the year for which a registration fee is paid.

(36) "Resident" means a citizen of the United States who has established residence in this state and has continuously resided in this state for 1 year and in one county for the 6 months immediately preceding the initiation of a vessel titling or registration action.

(37) "Sailboat" means any vessel whose sole source of propulsion is the wind.

(38) "Unclaimed vessel" means any undocumented vessel, including its machinery, rigging, and accessories, which is in the physical possession of any marina, garage, or repair shop for repairs, improvements, or other work with the knowledge of the vessel owner and for which the costs of such services have been unpaid for a period in excess of 90 days from the date written notice of the completed work is given by the marina, garage, or repair shop to the vessel owner.

(39) "Vessel" is synonymous with boat as referenced in § 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(40) "Waters of this state" means any navigable waters of the United States within the territorial limits of this state, and the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers, and canals under the jurisdiction of this state.

327.30. Collisions, accidents, and casualties.

(1) It is the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he or she can do so without serious danger to the operator's own vessel, crew, and passengers, if any, to render to other persons affected by the collision, accident, or other casualty such assistance as is practicable and necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, and also to give his or her name, address, and identification of his or her vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty. The operator of a vessel involved in an accident with an unattended vessel shall take all reasonable steps to locate and notify the owner or person in charge of such vessel of the accident, furnishing to such owner his or her name, address, and registration number and reporting as required under this section.

(2) In the case of collision, accident, or other casualty involving a vessel in or upon or entering into or exiting from the water, including capsizing, collision with another vessel or object, sinking, personal injury requiring medical treatment beyond immediate first aid, death, disappearance of any person from on board under circumstances which indicate the possibility of death or injury, or damage to any vessel or other property in an apparent aggregate amount of at least $2,000, the operator shall without delay, by the quickest means available give notice of the accident to one of the following agencies: the Division of Law Enforcement of the Fish and Wildlife Conservation Commission; the sheriff of the county within which the accident occurred; or the police chief of the municipality within which the accident occurred, if applicable.

(3) The statutory duty of a person to make a report or give information to a law enforcement officer making a written report relating to an accident does not extend to information that would violate the privilege of such person against self-incrimination.

(4) Each coroner or other official performing like functions, upon learning of the death of a person in his or her jurisdiction as a result of a boating accident, shall immediately notify the nearest office of the Department of Law Enforcement.

(5) It is unlawful for a person operating a vessel involved in an accident or injury to leave the scene of the accident or injury without giving all possible aid to all persons involved and making a reasonable effort to locate the owner or persons affected and subsequently complying with and notifying the appropriate law enforcement official as required under this section. Any person who violates this subsection with respect to an accident resulting in personal injury commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Any person who violates this subsection with respect to an accident resulting in property damage only commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(6) Any law enforcement officer who investigates a boating collision or accident may arrest or cite the operator of any vessel involved in the accident or collision when, based upon personal investigation, the officer has probable cause to believe that the operator has

committed any offense in connection with the accident or collision.

327.302. Accident report forms.

(1) The commission shall prepare and, upon request, supply to police departments, sheriffs, and other appropriate agencies or individuals forms for accident reports as required in this chapter, suitable with respect to the persons required to make such reports and the purposes to be served. The forms must call for sufficiently detailed information to disclose, with reference to a boating accident, the cause and conditions existing at the time of the accident and the persons and vessels involved. Accident report forms may call for the policy numbers of liability insurance and the names of carriers covering any vessel involved in an accident required to be reported under this chapter.

(2) Every accident report required to be made in writing must be made on the appropriate form approved by the commission and must contain all the information required therein unless not available. Notwithstanding any other provisions of this section, an accident report produced electronically by a law enforcement officer must, at a minimum, contain the same information as is required on those forms approved by the commission.

327.33. Reckless or careless operation of vessel.

(1) It is unlawful to operate a vessel in a reckless manner. A person is guilty of reckless operation of a vessel who operates any vessel, or manipulates any water skis, aquaplane, or similar device, in willful or wanton disregard for the safety of persons or property at a speed or in a manner as to endanger, or likely to endanger, life or limb, or damage the property of, or injure any person. Reckless operation of a vessel includes, but is not limited to, a violation of § 327.331(6). Any person who violates a provision of this subsection commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) Any person operating a vessel upon the waters of this state shall operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of any person. The failure to operate a vessel in a manner described in this subsection constitutes careless operation. However, vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel shall, absent negligence, not constitute damage or endangerment to property. Any person who violates the provisions of this subsection commits a noncriminal violation as defined in § 775.08.

(3) Each person operating a vessel upon the waters of this state shall comply with the navigation rules.

(a) A person who violates the navigation rules and the violation results in a boating accident causing serious bodily injury as defined in § 327.353 or death, but the violation does not constitute reckless operation of a vessel, commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(b) A person who violates the navigation rules and the violation does not constitute reckless operation of a vessel commits a noncriminal violation as defined in § 775.08, punishable as provided in § 327.73.

(c) Law enforcement vessels may deviate from the navigational rules when such diversion is necessary to the performance of their duties and when such deviation may be safely accomplished.

(4) Unless otherwise provided in this chapter, the ascertainment of fault in vessel operations and boating accidents shall be determined according to the navigation rules.

327.34. Incapacity of operator.

It is unlawful for the owner of any vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such vessel under the prevailing circumstances. Nothing in this section shall be construed to prohibit operation of boats by paraplegics who are licensed to operate motor vehicles on the highways.

327.35. Boating under the influence; penalties; "designated drivers".

(1) A person is guilty of the offense of boating under the influence and is subject to punishment as provided in subsection (2) if the person is operating a vessel within this state and:

(a) The person is under the influence of alcoholic beverages, any chemical substance set forth in § 877.111, or any substance controlled under chapter 893, when affected to the extent that the person's normal faculties are impaired;

(b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or

(c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

(2) (a) Except as provided in paragraph (b), subsection (3), or subsection (4), any person who is convicted of a violation of subsection (1) shall be punished:

1. By a fine of:

a. Not less than $500 or more than $1,000 for a first conviction.

b. Not less than $1,000 or more than $2,000 for a second conviction; and

2. By imprisonment for:

a. Not more than 6 months for a first conviction.

b. Not more than 9 months for a second conviction.

(b) 1. Any person who is convicted of a third violation of this section for an offense that occurs within 10 years after a prior conviction for a violation of this section commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

2. Any person who is convicted of a third violation of this section for an offense that occurs more than 10 years after the date of a prior conviction for a violation of this section shall be punished by a fine of not less than $2,000 or more than $5,000 and by imprisonment for not more than 12 months.

3. Any person who is convicted of a fourth or subsequent violation of this section, regardless of when any prior conviction for a violation of this section occurred, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

However, the fine imposed for such fourth or subsequent violation may not be less than $2,000.

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vessel; and

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

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

2. Serious bodily injury to another, as defined in § 327.353, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

3. The death of any human being commits BUI manslaughter, and commits:

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

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

I. At the time of the accident, the person knew, or should have known, that the accident occurred; and

II. The person failed to give information and render aid as required by § 327.30.

This sub-subparagraph does not require that the person knew that the accident resulted in injury or death.

(4) Any person who is convicted of a violation of subsection (1) and who has a blood-alcohol level or breath-alcohol level of 0.15 or higher, or any person who is convicted of a violation of subsection (1) and who at the time of the offense was accompanied in the vessel by a person under the age of 18 years, shall be punished:

(a) By a fine of:

1. Not less than $1,000 or more than $2,000 for a first conviction.

2. Not less than $2,000 or more than $4,000 for a second conviction.

3. Not less than $4,000 for a third or subsequent conviction.

(b) By imprisonment for:

1. Not more than 9 months for a first conviction.

2. Not more than 12 months for a second conviction.

For the purposes of this subsection, only the instant offense is required to be a violation of subsection (1) by a person who has a blood-alcohol level or breath-alcohol level of 0.15 or higher.

(5) In addition to any sentence or fine, the court shall place any offender convicted of violating this section on monthly reporting probation and shall require attendance at a substance abuse course specified by the court; and the agency conducting the course may refer the offender to an authorized service provider for substance abuse evaluation and treatment, in addition to any sentence or fine imposed under this section. The offender shall assume reasonable costs for such education, evaluation, and treatment, with completion of all such education, evaluation, and treatment being a condition of reporting probation. Treatment resulting from a psychosocial evaluation may not be waived without a supporting psychosocial evaluation conducted by an agency appointed by the court and with access to the original evaluation. The offender shall bear the cost of this procedure. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I-V of § 893.03.

(6) With respect to any person convicted of a violation of subsection (1), regardless of any other penalty imposed:

(a) For the first conviction, the court shall place the defendant on probation for a period not to exceed 1 year and, as a condition of such probation, shall order the defendant to participate in public service or a community work project for a minimum of 50 hours. The court must also, as a condition of probation, order the impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e) or paragraph (f). The total period of probation and incarceration may not exceed 1 year.

(b) For the second conviction for an offense that occurs within a period of 5 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 10 days. The court must also, as a condition of probation, order the impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 30 days or for the unexpired term of any lease or rental agreement that expires within 30 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e) or paragraph (f). At least 48 hours of confinement must be consecutive.

(c) For the third or subsequent conviction for an offense that occurs within a period of 10 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 30 days. The court must also, as a condition of probation, order the impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e) or paragraph (f). At least 48 hours of confinement must be consecutive.

(d) The court must at the time of sentencing the defendant issue an order for the impoundment or immobilization of a vessel. Within 7 business days after the date that the court issues the order of impoundment, and once again 30 business days before the actual impoundment or immobilization of the vessel, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of each vessel, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vessel.

(e) A person who owns but was not operating the vessel when the offense occurred may submit to the court a police report indicating that the vessel was stolen at the time of the offense or documentation of having purchased the vessel after the offense was committed from an entity other than the defendant or the defendant's agent. If the court finds that the vessel was stolen or that the sale was not made to circumvent the order and allow the defendant continued access to the vessel, the order must be dismissed and the owner of the vessel will incur no costs. If the court denies the request to dismiss the order of impoundment or immobilization, the petitioner may request an evidentiary hearing.

(f) A person who owns but was not operating the vessel when the offense occurred, and whose vessel was stolen or who purchased the vessel after the offense was committed directly from the defendant or the defendant's agent, may request an evidentiary hearing to determine whether the impoundment or immobilization should occur. If the court finds that either the vessel was stolen or the purchase was made without knowledge of the offense, that the purchaser had no relationship to the defendant other than through the transaction, and that such purchase would not circumvent the order and allow the defendant continued access to the vessel, the order must be dismissed and the owner of the vessel will incur no costs.

(g) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the vessel or, if the vessel is leased or rented, by the person leasing or renting the vessel, unless the impoundment or immobilization order is dismissed.

(h) The person who owns a vessel that is impounded or immobilized under this paragraph, or a person who has a lien of record against such a vessel and who has not requested a review of the impoundment pursuant to paragraph (e) or paragraph (f), may, within 10 days after the date that person has knowledge of the location of the vessel, file a complaint in the county in which the owner resides to determine whether the vessel was wrongfully taken or withheld from the owner or lienholder. Upon the filing of a complaint, the owner or lienholder may have the vessel released by posting with the court a bond or other adequate security equal to the amount of the costs and fees for impoundment or immobilization, including towing or storage, to ensure the payment of the costs and fees if the owner or lienholder does not prevail. When the bond is posted and the fee is paid as set forth in § 28.24, the clerk of the court shall issue a certificate releasing the vessel. At the time of release, after reasonable inspection, the owner or lienholder must give a receipt to the towing or storage company indicating any loss or damage to the vessel or to the contents of the vessel.

(i) A defendant, in the court's discretion, may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced pursuant to this section in a residential alcoholism treatment program or a residential drug abuse treatment program. Any time spent in such a program must be credited by the court toward the term of imprisonment.

For the purposes of this section, any conviction for a violation of § 316.193, a previous conviction for the violation of former § 316.1931, former § 860.01, or former § 316.028, or a previous conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, driving with an unlawful breath-alcohol level, or any other similar alcohol-related or drug-related traffic offense, is also considered a previous conviction for violation of this section.

(7) A conviction under this section does not bar any civil suit for damages against the person so convicted.

(8) A person who is arrested for a violation of this section may not be released from custody:

(a) Until the person is no longer under the influence of alcoholic beverages, any chemical substance set forth in § 877.111, or any substance controlled under chapter 893 and affected to the extent that his or her normal faculties are impaired;

(b) Until the person's blood-alcohol level or breath-alcohol level is less than 0.05; or

(c) Until 8 hours have elapsed from the time the person was arrested.

(9) Notwithstanding any other provision of this section, for any person convicted of a violation of subsection (1), in addition to the fines set forth in subsections (2) and (4), an additional fine of $60 shall be assessed and collected in the same manner as the fines set forth in subsections (2) and (4). All fines collected under this subsection shall be remitted by the clerk of the court to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Program Trust Fund and used for the purposes set forth in § 381.79, after 5 percent is deducted therefrom by the clerk of the court for administrative costs.

(10) It is the intent of the Legislature to encourage boaters to have a "designated driver" who does not consume alcoholic beverages.

327.352. Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.

(1) (a) 1. The Legislature declares that the operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the incidence of boating while impaired or intoxicated be established. Therefore, any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by so operating such vessel, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was operating the vessel within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in a civil penalty of $500, and shall also be told that if he or she

refuses to submit to a lawful test of his or her breath and he or she has been previously fined for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. Any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by so operating such vessel, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in § 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was operating a vessel within this state while under the influence of chemical substances or controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine will result in a civil penalty of $500, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine and he or she has been previously fined for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

(b) 1. The blood-alcohol level must be based upon grams of alcohol per 100 milliliters of blood. The breath-alcohol level must be based upon grams of alcohol per 210 liters of breath.

2. An analysis of a person's breath, in order to be considered valid under this section, must have been performed substantially according to methods approved by the Department of Law Enforcement. Any insubstantial differences between approved techniques and actual testing procedures in any individual case do not render the test or test results invalid.

3. The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322. The program shall:

a. Establish uniform criteria for the issuance of permits to breath test operators, agency inspectors, instructors, blood analysts, and instruments.

b. Have the authority to permit breath test operators, agency inspectors, instructors, blood analysts, and instruments.

c. Have the authority to discipline and suspend, revoke, or renew the permits of breath test operators, agency inspectors, instructors, blood analysts, and instruments.

d. Establish uniform requirements for instruction and curricula for the operation and inspection of approved instruments.

e. Have the authority to specify one approved curriculum for the operation and inspection of approved instruments.

f. Establish a procedure for the approval of breath test operator and agency inspector classes.

g. Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322.

h. With the approval of the executive director of the Department of Law Enforcement, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as are necessary, expedi-

ent, or incidental to the performance of duties.

i. Issue final orders which include findings of fact and conclusions of law and which constitute final agency action for the purpose of chapter 120.

j. Enforce compliance with the provisions of this section through civil or administrative proceedings.

k. Make recommendations concerning any matter within the purview of this section, this chapter, chapter 316, or chapter 322.

l. Promulgate rules for the administration and implementation of this section, including definitions of terms.

m. Consult and cooperate with other entities for the purpose of implementing the mandates of this section.

n. Have the authority to approve the type of blood test utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322.

o. Have the authority to specify techniques and methods for breath alcohol testing and blood testing utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322.

p. Have the authority to approve repair facilities for the approved breath test instruments, including the authority to set criteria for approval.

Nothing in this section shall be construed to supersede provisions in this chapter and chapters 316 and 322. The specifications in this section are derived from the power and authority previously and currently possessed by the Department of Law Enforcement and are enumerated to conform with the mandates of chapter 99-379, Laws of Florida.

(c) Any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by operating such vessel, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was operating a vessel while under the influence of alcoholic beverages or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle. The blood test shall be performed in a reasonable manner. Any person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. Any person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in a civil penalty of $500 and that a refusal to submit to a lawful test of his or her blood, if he or she has previously been fined for refusal to submit to any lawful test of his or her breath, urine, or blood, is a misdemeanor. The refusal to submit to a blood test upon the request of a law enforcement officer shall be admissible in evidence in any criminal proceeding.

(d) If the arresting officer does not request a chemical or physical breath test of the person arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages or controlled substances, the person may request the arresting officer to have a chemical or physical test made of the arrested person's breath or a test of the urine or blood for the purpose of determining the alcoholic content of the person's blood or breath or the presence of chemical substances or controlled substances; and, if so requested, the arresting officer shall have the test performed.

(e) 1. The tests determining the weight of alcohol in the defendant's blood or breath shall be administered at the request of a law enforcement officer substantially in accordance with rules of the Department of Law Enforcement. However, the failure of a law enforcement officer to request the withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

2. Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining its alcoholic content or the presence of chemical substances or controlled substances therein. However, the failure of a law enforcement officer to request the withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

3. The person tested may, at his or her own expense, have a physician, registered

nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person of his or her own choosing administer an independent test in addition to the test administered at the direction of the law enforcement officer for the purpose of determining the amount of alcohol in the person's blood or breath or the presence of chemical substances or controlled substances at the time alleged, as shown by chemical analysis of his or her blood or urine, or by chemical or physical test of his or her breath. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of the test taken at the direction of the law enforcement officer. The law enforcement officer shall not interfere with the person's opportunity to obtain the independent test and shall provide the person with timely telephone access to secure the test, but the burden is on the person to arrange and secure the test at the person's own expense.

4. Upon the request of the person tested, full information concerning the results of the test taken at the direction of the law enforcement officer shall be made available to the person or his or her attorney. Full information is limited to the following:

a. The type of test administered and the procedures followed.

b. The time of the collection of the blood or breath sample analyzed.

c. The numerical results of the test indicating the alcohol content of the blood and breath.

d. The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test.

e. If the test was administered by means of a breath testing instrument, the date of performance of the most recent required inspection of such instrument.

Full information does not include manuals, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information does not include information in the possession of the manufacturer of the test instrument.

5. A hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer does not incur any civil or criminal liability as a result of the withdrawal or analysis of a blood or urine specimen, or the chemical or physical test of a person's breath pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

(2) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(3) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information relating to the alcoholic content of the blood or breath or the presence of chemical substances or controlled substances in the blood obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of § 327.35 upon request for such information.

327.35215. Penalty for failure to submit to test.

(1) A person who is lawfully arrested for an alleged violation of § 327.35 and who refuses to submit to a blood test, breath test, or urine test pursuant to § 327.352 is subject to a civil penalty of $500.

(2) When a person refuses to submit to a blood test, breath test, or urine test pursuant to § 327.352, a law enforcement officer who is authorized to make arrests for violations of this chapter shall file with the clerk of the court, on a form provided by the department, a certified statement that probable cause existed to arrest the person for a violation of § 327.35 and that the person refused to submit to a test as required by § 327.352. Along with the statement, the officer must also submit a sworn statement on a form provided by the department that the person has been advised of both the penalties for failure to submit to the blood, breath, or urine test and the procedure for requesting a hearing.

(3) A person who has been advised of the penalties pursuant to subsection (2) may, within 30 days afterwards, request a hearing before a county court judge. A request for a hearing tolls the period for payment of the civil penalty, and, if assessment of the civil penalty is sustained by the hearing and any subsequent judicial review, the civil penalty must be paid within 30 days after final disposition. The clerk of the court shall notify

the department of the final disposition of all actions filed under this section.

(4) It is unlawful for any person who has not paid a civil penalty imposed pursuant to this section, or who has not requested a hearing with respect to the civil penalty, within 30 calendar days after receipt of notice of the civil penalty to operate a vessel upon the waters of this state. Violation of this subsection is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(5) Moneys collected by the clerk of the court pursuant to this section shall be disposed of in the following manner:

(a) If the arresting officer was employed or appointed by a state law enforcement agency, the moneys shall be deposited into the Marine Resources Conservation Trust Fund and used to directly enhance the ability of law enforcement officers to perform law enforcement functions on state waters.

(b) If the arresting officer was employed or appointed by a county or municipal law enforcement agency, the moneys shall be deposited into the law enforcement trust fund of that agency.

327.353. Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.

(1) (a) If a law enforcement officer has probable cause to believe that a vessel operated by a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being, a law enforcement officer shall require the person operating or in actual physical control of the vessel to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in § 877.111 or any substance controlled under chapter 893. The law enforcement officer may use reasonable force if necessary to require the person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding § 327.352, the testing required by this paragraph need not be incidental to a lawful arrest of the person.

(b) The term "serious bodily injury" means an injury to any person, including the operator, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(2) (a) Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances or controlled substances therein. However, the failure of a law enforcement officer to request the withdrawal of blood shall not affect the admissibility of a test of blood withdrawn for medical purposes.

(b) A chemical analysis of the person's blood to determine the alcoholic content thereof must have been performed substantially in accordance with methods approved by the Department of Law Enforcement and by an individual possessing a valid permit issued by the department for this purpose. The Department of Law Enforcement may approve satisfactory techniques or methods, ascertain the qualifications and competence of individuals to conduct such analyses, and issue permits that are subject to termination or revocation at the discretion of the department. Insubstantial differences between approved methods or techniques and actual testing procedures, or any insubstantial defects concerning the permit issued by the department, in any individual case, do not render the test or test results invalid.

(c) A hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer shall not incur any civil or criminal liability as a result of the withdrawal or analysis of a blood specimen pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

(3) (a) Any criminal charge resulting from the incident giving rise to the officer's demand for testing shall be tried concurrently with a charge of any violation arising out of the same incident, unless, in the discretion of the court, such charges should be tried separately. If the charges are tried separately, the fact that the person refused, resisted, obstructed, or opposed testing is admissible at the trial of the criminal offense which gave rise to the demand for testing.

(b) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance are not admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(4) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information relating to the alcoholic content of the blood or the presence of chemical substances or controlled substances in the blood obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of § 327.35 upon request for such information.

327.354. Presumption of impairment; testing methods.

(1) It is unlawful and punishable as provided in § 327.35 for any person who is under the influence of alcoholic beverages or controlled substances, when affected to the extent that the person's normal faculties are impaired or to the extent that the person is deprived of full possession of normal faculties, to operate any vessel within this state. Such normal faculties include, but are not limited to, the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies, and, in general, normally perform the many mental and physical acts of daily life.

(2) At the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while operating a vessel while under the influence of alcoholic beverages or controlled substances, when affected to the extent that the person's normal faculties were impaired or to the extent that he or she was deprived of full possession of his or her normal faculties, the results of any test administered in accordance with § 327.352 or § 327.353 and this section are admissible into evidence when otherwise admissible, and the amount of alcohol in the person's blood or breath at the time alleged, as shown by chemical analysis of the person's blood, or by chemical or physical test of the person's breath, gives rise to the following presumptions:

(a) If there was at that time a blood-alcohol level or breath-alcohol level of 0.05 or less, it is presumed that the person was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(b) If there was at that time a blood-alcohol level or breath-alcohol level in excess of 0.05 but less than 0.08, that fact does not give rise to any presumption that the person was or was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired but may be considered with other competent evidence in determining whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(c) If there was at that time a blood-alcohol level or breath-alcohol level of 0.08 or higher, that fact is prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired. Any person who operates a vessel and who has a blood-alcohol level or breath-alcohol level of 0.08 or higher is guilty of operating a vessel with an unlawful blood-alcohol level or breath-alcohol level.

The presumptions provided in this subsection do not limit the introduction of any other competent evidence bearing upon the question of whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(3) A chemical analysis of a person's blood to determine alcoholic content or a chemical or physical test of a person's breath, in order to be considered valid under this section, must have been performed substantially in accordance with methods approved by the Department of Law Enforcement and by an individual possessing a valid permit issued by the department for this purpose. Insubstantial differences between approved techniques and actual testing procedures or insubstantial defects concerning the permit issued by the department, in any individual case, do not render the test or test results invalid. The Department of Law Enforcement may approve satisfactory techniques or methods, ascertain the qualifications and competence of individuals to conduct such analyses, and issue permits subject to termination or revocation in accordance with rules adopted by the department.

(4) Any person charged with a violation of § 327.35 is entitled to trial by jury according to the Florida Rules of Criminal Procedure.

(5) An affidavit containing the results of any test of a person's blood or breath to determine its alcohol content, as authorized by § 327.352 or § 327.353, is admissible in evidence under the exception to the hearsay rule in § 90.803(8) for public records and reports. The affidavit is admissible without further authentication and is presumptive proof of

the results of an authorized test to determine alcohol content of the blood or breath if the affidavit discloses:

(a) The type of test administered and the procedures followed;

(b) The time of the collection of the blood or breath sample analyzed;

(c) The numerical results of the test indicating the alcohol content of the blood or breath;

(d) The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test; and

(e) If the test was administered by means of a breath testing instrument, the date of performance of the most recent required maintenance on such instrument.

The Department of Law Enforcement shall provide a form for the affidavit. Admissibility of the affidavit does not abrogate the right of the person tested to subpoena the person who administered the test for examination as an adverse witness at a civil or criminal trial or other proceeding.

327.355. Operation of vessels by persons under 21 years of age who have consumed alcoholic beverages.

(1) (a) Notwithstanding § 327.35, it is unlawful for a person under the age of 21 who has a breath-alcohol level of 0.02 or higher to operate or be in actual physical control of a vessel.

(b) A law enforcement officer who has probable cause to believe that a vessel is being operated by or is in the actual physical control of a person who is under the age of 21 while under the influence of alcoholic beverages or who has any breath-alcohol level may lawfully detain such a person and may request that person to submit to a test to determine his or her breath-alcohol level. If the person under the age of 21 refuses to submit to such testing, the law enforcement officer shall warn the person that failure to submit to the breath test will result in the required performance of 50 hours of public service and that his or her vessel operating privilege will be suspended until the public service is performed. Failure or refusal to submit to a breath test after this warning is a violation of this section.

(2) Any person under the age of 21 who accepts the privilege extended by the laws of this state of operating a vessel upon the waters of this state, by so operating such vessel, is deemed to have expressed his or her consent to the provisions of this section.

(3) A breath test to determine breath-alcohol level pursuant to this section may be conducted as authorized by § 316.1932 or § 327.352, or by a preliminary alcohol screening test device listed in the United States Department of Transportation's conforming-product list of evidential breath-measurement devices. The reading from such a device is admissible in evidence in any trial or hearing.

(4) A violation of this section is a noncriminal infraction, and being detained pursuant to this section does not constitute an arrest. This section does not bar prosecution under § 327.35, and the penalties provided herein shall be imposed in addition to any other penalty provided for boating under the influence or for refusal to submit to testing.

(5) Any person who is convicted of a violation of subsection (1) shall be punished as follows:

(a) The court shall order the defendant to participate in public service or a community work project for a minimum of 50 hours;

(b) The court shall order the defendant to refrain from operating any vessel until the 50 hours of public service or community work has been performed; and

(c) Enroll in, attend, and successfully complete a boating safety course that meets minimum standards established by the department by rule.

(6) For the purposes of this section, "conviction" means a finding of guilt or the acceptance of a plea of guilty or nolo contendere, regardless of whether or not adjudication was withheld. Notwithstanding the provisions of § 948.01, no court may suspend, defer, or withhold imposition of sentence for any violation of this section. Any person who operates any vessel on the waters of this state while his or her vessel operating privilege is suspended pursuant to this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

327.36. Mandatory adjudication; prohibition against accepting plea to lesser included offense.

(1) Notwithstanding the provisions of § 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of § 327.35, for manslaughter resulting from the operation of a vessel, or for vessel homicide.

(2) (a) No trial judge may accept a plea of guilty to a lesser offense from a person who is charged with a violation of § 327.35, manslaughter resulting from the operation of a vessel, or vessel homicide and who has been

given a breath or blood test to determine blood or breath alcohol content, the results of which show a blood-alcohol level or breath-alcohol level of 0.15 or more.

(b) A trial judge may not accept a plea of guilty to a lesser offense from a person charged with a felony violation of § 327.35, manslaughter resulting from the operation of a vessel, or vessel homicide.

327.37. Water skis, parasails, and aquaplanes regulated.

(1) (a) A person may not operate a vessel on any waters of this state towing a person on water skis, or an aquaplane, or similar device unless there is in such vessel a person, in addition to the operator, in a position to observe the progress of the person being towed, or the vessel is equipped with a wide-angle rear view mirror mounted in such manner as to permit the operator of the vessel to observe the progress of the person being towed. This subsection does not apply to class A motorboats operated by the person being towed and designed to be incapable of carrying the operator in the motorboat.

(b) A person may not operate a vessel on any waters of this state towing a person attached to a parasail or similar device unless there is a person in the vessel, in addition to the operator, in a position to observe the progress of the person being towed. A wide-angle rear view mirror is not acceptable for this purpose.

(2) (a) A person may not engage in water skiing, parasailing, aquaplaning, or any similar activity at any time between the hours from one-half hour after sunset to one-half hour before sunrise.

(b) A person may not engage in water skiing, parasailing, aquaplaning, or any similar activity unless such person is wearing a noninflatable type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard.

(3) The provisions of subsections (1) and (2) do not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in an official regatta, boat race, marine parade, tournament, or exhibition held pursuant to § 327.48.

(4) A person may not operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, parasail, aquaplane, innertube, sled, or similar device may be affected or controlled, in such a way as to cause the water skis, parasail, aquaplane, innertube, sled, or similar device or any person thereon to collide or strike against or be likely to collide or strike against any vessel, bridge, wharf, pier, dock, buoy, platform, piling, channel marker, or other object, except slalom buoys, ski jumps, or like objects used normally in competitive or recreational skiing.

(5) A person may not operate any vessel towing a parasail or engage in parasailing within 100 feet of the marked channel of the Florida Intracoastal Waterway.

327.38. Skiing prohibited while intoxicated or under influence of drugs.

No person shall manipulate any water skis, aquaplane, or similar device from a vessel while intoxicated or under the influence of any narcotic drug, barbiturate, or marihuana, to the extent that the person's normal faculties are impaired.

327.39. Personal watercraft regulated.

(1) A person may not operate a personal watercraft unless each person riding on or being towed behind such vessel is wearing a type I, type II, type III, or type V personal flotation device, other than an inflatable device, approved by the United States Coast Guard.

(2) A person operating a personal watercraft equipped by the manufacturer with a lanyard type engine cutoff switch must attach such lanyard to his or her person, clothing, or personal flotation device as is appropriate for the specific vessel.

(3) A person may not operate a personal watercraft at any time between the hours from one-half hour after sunset to one-half hour before sunrise. However, an agent or employee of a fire or emergency rescue service is exempt from this subsection while performing his or her official duties.

(4) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, and swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel, as provided in § 327.33(1). Any person operating a personal watercraft must comply with the provisions of § 327.33.

(5) No person under the age of 14 shall operate any personal watercraft on the waters of this state.

(6) (a) It is unlawful for the owner of any personal watercraft or any person having charge over or control of a personal watercraft to authorize or knowingly permit the same to be operated by a person under 14 years of age in violation of this section.

(b) 1. It is unlawful for the owner of any leased, hired, or rented personal watercraft, or any person having charge over or control of a leased, hired, or rented personal watercraft, to authorize or knowingly permit the watercraft to be operated by any person who has not received instruction in the safe handling of personal watercraft, in compliance with rules established by the commission.

2. Any person receiving instruction in the safe handling of personal watercraft pursuant to a program established by rule of the commission must provide the owner of, or person having charge of or control over, a leased, hired, or rented personal watercraft with a written statement attesting to the same.

3. The commission shall have the authority to establish rules pursuant to chapter 120 prescribing the instruction to be given, which shall take into account the nature and operational characteristics of personal watercraft and general principles and regulations pertaining to boating safety.

(c) Any person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(7) This section does not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with § 327.48.

327.395. Boating safety identification cards.

(1) A person born on or after January 1, 1988, may not operate a vessel powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel photographic identification and a boater safety identification card issued by the commission which shows that he or she has:

(a) Completed a commission-approved boater education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administrators;

(b) Passed a course equivalency examination approved by the commission; or

(c) Passed a temporary certificate examination developed or approved by the commission.

(2) Any person may obtain a boater safety identification card by complying with the requirements of this section.

(3) Any commission-approved boater education or boater safety course, course-equivalency examination developed or approved by the commission, or temporary certificate examination developed or approved by the commission must include a component regarding diving vessels, awareness of divers in the water, divers-down flags, and the requirements of § 327.331.

(4) The commission may appoint liveries, marinas, or other persons as its agents to administer the course, course equivalency examination, or temporary certificate examination and issue identification cards under guidelines established by the commission. An agent must charge the $2 examination fee, which must be forwarded to the commission with proof of passage of the examination and may charge and keep a $1 service fee.

(5) An identification card issued to a person who has completed a boating education course or a course equivalency examination is valid for life. A card issued to a person who has passed a temporary certification examination is valid for 12 months from the date of issuance.

(6) A person is exempt from subsection (1) if he or she:

(a) Is licensed by the United States Coast Guard to serve as master of a vessel.

(b) Operates a vessel only on a private lake or pond.

(c) Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel.

(d) Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the requirements of subsection (1).

(e) Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale meeting the requirements of § 328.46(1).

(f) Is operating a vessel within 90 days after completing the requirements of paragraph (1)(a) or paragraph (1)(b) and has a photographic identification card and a boater

education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination.

(g) Is exempted by rule of the commission.

(7) A person who operates a vessel in violation of subsection (1) commits a noncriminal infraction, punishable as provided in § 327.73.

(8) The commission shall design forms and adopt rules to administer this section. Such rules shall include provision for educational and other public and private entities to offer the course and administer examinations.

(9) The commission shall institute and coordinate a statewide program of boating safety instruction and certification to ensure that boating courses and examinations are available in each county of the state.

(10) The commission is authorized to establish and to collect a $2 examination fee to cover administrative costs.

(11) The commission is authorized to adopt rules pursuant to chapter 120 to implement the provisions of this section.

(12) This section may be cited as the "Osmany 'Ozzie' Castellanos Boating Safety Education Act."

327.42. Mooring to or damaging of uniform waterway markers prohibited.

(1) No person shall moor or fasten a vessel to a lawfully placed uniform waterway marker, except in case of emergency or with the written consent of the marker's owner.

(2) No person shall willfully damage, alter, or move a lawfully placed uniform waterway marker.

327.44. Interference with navigation.

No person shall anchor, operate, or permit to be anchored, except in case of emergency, or operated a vessel or carry on any prohibited activity in a manner which shall unreasonably or unnecessarily constitute a navigational hazard or interfere with another vessel. Anchoring under bridges or in or adjacent to heavily traveled channels shall constitute interference if unreasonable under the prevailing circumstances.

327.46. Boating-restricted areas.

(1) Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on the waters of this state for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards.

(a) The commission may establish boating-restricted areas by rule pursuant to chapter 120.

(b) Municipalities and counties have the authority to establish the following boating-restricted areas by ordinance:

1. An ordinance establishing an idle speed, no wake boating-restricted area, if the area is:

a. Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.

b. Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.

c. Inside or within 300 feet of any lock structure.

2. An ordinance establishing a slow speed, minimum wake boating-restricted area if the area is:

a. Within 300 feet of any bridge fender system.

b. Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.

c. On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.

d. On a lake or pond of less than 10 acres in total surface area.

3. An ordinance establishing a vessel-exclusion zone if the area is:

a. Designated as a public bathing beach or swim area.

b. Within 300 feet of a dam, spillway, or flood control structure.

(c) Municipalities and counties have the authority to establish by ordinance the following other boating-restricted areas:

1. An ordinance establishing an idle speed, no wake boating-restricted area, if the area is within 300 feet of a confluence of wa-

ter bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway.

2. An ordinance establishing a slow speed, minimum wake, or numerical speed limit boating-restricted area if the area is:

a. Within 300 feet of a confluence of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway.

b. Subject to unsafe levels of vessel traffic congestion.

c. Subject to hazardous water levels or currents, or containing other navigational hazards.

d. An area that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate to present a significant risk of collision or a significant threat to boating safety.

3. An ordinance establishing a vessel-exclusion zone if the area is reserved exclusively:

a. As a canoe trail or otherwise limited to vessels under oars or under sail.

b. For a particular activity and user group separation must be imposed to protect the safety of those participating in such activity.

Any of the ordinances adopted pursuant to this paragraph shall not take effect until the commission has reviewed the ordinance and determined by substantial competent evidence that the ordinance is necessary to protect public safety pursuant to this paragraph. Any application for approval of an ordinance shall be reviewed and acted upon within 90 days after receipt of a completed application. Within 30 days after a municipality or county submits an application for approval to the commission, the commission shall advise the municipality or county as to what information, if any, is needed to deem the application complete. An application shall be considered complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. The commission's action on the application shall be subject to review under chapter 120. The commission shall initiate rulemaking no later than January 1, 2010, to provide criteria and procedures for reviewing applications and procedures for providing for public notice and participation pursuant to this paragraph.

(2) Each such boating-restricted area shall be developed in consultation and coordination with the governing body of the county or municipality in which the boating-restricted area is located and, when the boating-restricted area is to be on the navigable waters of the United States, with the United States Coast Guard and the United States Army Corps of Engineers.

(3) It is unlawful for any person to operate a vessel in a prohibited manner or to carry on any prohibited activity, as defined in this chapter, within a boating-restricted area which has been clearly marked by regulatory markers as authorized under this chapter.

(4) Restrictions in a boating-restricted area established pursuant to this section shall not apply in the case of an emergency or to a law enforcement, firefighting, or rescue vessel owned or operated by a governmental entity.

327.461. Safety zones, security zones, regulated navigation areas, and naval vessel protection zones; prohibited entry; penalties.

(1) (a) A person may not knowingly operate a vessel, or authorize the operation of a vessel, in violation of the restrictions of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as defined in and established pursuant to 33 C.F.R. part 165.

(b) The intent of this section is to provide for state and local law enforcement agencies to operate in federally designated exclusion zones specified in paragraph (a). State and local law enforcement personnel may enforce these zones at the request of a federal authority if necessary to augment federal law enforcement efforts and if there is a compelling need to protect the residents and infrastructure of this state. Requests for state and local law enforcement personnel to enforce these zones must be made to the Department of Law Enforcement through the Florida Mutual Aid Plan described in § 23.1231.

(2) A person who knowingly operates a vessel, or authorizes the operation of a vessel, in violation of the restrictions of such a safety zone, security zone, regulated navigation area, or naval vessel protection zone commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) A person who continues to operate, or authorize the operation of, a vessel in violation of the restrictions of such a safety zone, security zone, regulated navigation area, or naval vessel protection zone after being

warned against doing so, or who refuses to leave or otherwise cease violating the restrictions of such a safety zone, security zone, regulated navigation area, or naval vessel protection zone after having been ordered to do so by a law enforcement officer or by competent military authority, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) A person who knowingly enters a safety zone, security zone, regulated navigation area, or naval vessel protection zone by swimming, diving, wading, or other similar means commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(5) A person who remains within or reenters such a safety zone, security zone, regulated navigation area, or naval vessel protection zone after being warned not to do so, or who refuses to leave or otherwise cease violating such a safety zone, security zone, regulated navigation area, or naval vessel protection zone after having been ordered to do so by a law enforcement officer or by competent military authority, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(6) Each incursion into such a safety zone, security zone, regulated navigation area, or naval vessel protection zone is considered a separate offense.

(7) An entry into such a safety zone, security zone, regulated navigation area, or naval vessel protection zone that has been authorized by the captain of the port or the captain's designee is not a violation of this section.

327.50. Vessel safety regulations; equipment and lighting requirements.

(1) (a) The owner and operator of every vessel on the waters of this state shall carry, store, maintain, and use safety equipment in accordance with current United States Coast Guard safety equipment requirements as specified in the Code of Federal Regulations, unless expressly exempted by the department.

(b) No person shall operate a vessel less than 26 feet in length on the waters of this state unless every person under 6 years of age on board the vessel is wearing a type I, type II, or type III Coast Guard approved personal flotation device while such vessel is underway. For the purpose of this section, "underway" shall mean at all times except when a vessel is anchored, moored, made fast to the shore, or aground.

(2) No person shall operate a vessel on the waters of this state unless said vessel is equipped with properly serviceable lights and shapes required by the navigation rules.

(3) The use of sirens or flashing, occulting, or revolving lights on any vessel is prohibited, except as expressly provided in the navigation rules or annexes thereto.

327.54. Liveries; safety regulations; penalty.

(1) A livery may not knowingly lease, hire, or rent a vessel to any person:

(a) When the number of persons intending to use the vessel exceeds the number considered to constitute a maximum safety load for the vessel as specified on the authorized persons capacity plate of the vessel.

(b) When the horsepower of the motor exceeds the capacity of the vessel.

(c) When the vessel does not contain the required safety equipment required under § 327.50.

(d) When the vessel is not seaworthy.

(e) When the vessel is equipped with a motor of 10 horsepower or greater, unless the livery provides prerental or preride instruction that includes, but need not be limited to:

1. Operational characteristics of the vessel to be rented.

2. Safe vessel operation and vessel right-of-way.

3. The responsibility of the vessel operator for the safe and proper operation of the vessel.

4. Local characteristics of the waterway where the vessel will be operated.

Any person delivering the information specified in this paragraph must have successfully completed a boater safety course approved by the National Association of State Boating Law Administrators and this state.

(f) Unless the livery displays boating safety information in a place visible to the renting public. The commission shall prescribe by rule pursuant to chapter 120, the contents and size of the boating safety information to be displayed.

(2) A livery may not knowingly lease, hire, or rent any vessel powered by a motor of 10 horsepower or greater to any person who is required to comply with § 327.395, unless such person presents to the livery photographic identification and a valid boater safety identification card as required under § 327.395(1), or meets the exemption provided under § 327.395(6)(f).

(3) If a vessel is unnecessarily overdue, the livery shall notify the proper authorities.

(4) (a) A livery may not knowingly lease, hire, or rent a personal watercraft to any person who is under 18 years of age.

(b) A livery may not knowingly lease, hire, or rent a personal watercraft to any person who has not received instruction in the safe handling of personal watercraft, in compliance with rules established by the commission pursuant to chapter 120.

(c) Any person receiving instruction in the safe handling of personal watercraft pursuant to a program established by rule of the commission must provide the livery with a written statement attesting to the same.

(5) A livery may not lease, hire, or rent any personal watercraft or offer to lease, hire, or rent any personal watercraft unless the livery first obtains and carries in full force and effect a policy from a licensed insurance carrier in this state, insuring against any accident, loss, injury, property damage, or other casualty caused by or resulting from the operation of the personal watercraft. The insurance policy shall provide coverage of at least $500,000 per person and $1 million per event. The livery must have proof of such insurance available for inspection at the location where personal watercraft are being leased, hired, or rented, or offered for lease, hire, or rent, and shall provide to each renter the insurance carrier's name and address and the insurance policy number.

(6) Any person convicted of violating this section commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

327.56. Safety and marine sanitation equipment inspections; qualified.

(1) No officer shall board any vessel to make a safety or marine sanitation equipment inspection if the owner or operator is not aboard. When the owner or operator is aboard, an officer may board a vessel with consent or when the officer has probable cause or knowledge to believe that a violation of a provision of this chapter has occurred or is occurring. An officer may board a vessel when the operator refuses or is unable to display the safety or marine sanitation equipment required by law, if requested to do so by a law enforcement officer, or when the safety or marine sanitation equipment to be inspected is permanently installed and is not visible for inspection unless the officer boards the vessel.

(2) Inspection of floating structures for compliance with this section shall be as provided in § 403.091.

327.58. Jurisdiction.

The safety regulations included under this chapter shall apply to all vessels, except as specifically excluded, operating upon the waters of this state.

327.65. Muffling devices.

(1) The exhaust of every internal combustion engine used on any vessel operated on the waters of this state shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. The use of cutouts is prohibited, except for vessels competing in a regatta or official boat race, and for such vessels while on trial runs.

(2) (a) Any county wishing to impose additional noise pollution and exhaust regulations on vessels may, pursuant to § 327.60(2), adopt by county ordinance the following regulations:

1. No person shall operate or give permission for the operation of any vessel on the waters of any county or on a specified portion of the waters of any county, including the Florida Intracoastal Waterway, which has adopted the provisions of this section in such a manner as to exceed the following sound levels at a distance of 50 feet from the vessel: for all vessels, a maximum sound level of 90 dB A.

2. Any person who refuses to submit to a sound level test when requested to do so by a law enforcement officer is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(b) The following words and phrases, when used in this section, shall have the meanings respectively assigned to them in this subsection.

1. "dB A" means the composite abbreviation for the A-weighted sound level and the unit of sound level, the decibel.

2. "Sound level" means the A-weighted sound pressure level measured with fast response using an instrument complying with the specification for sound level meters of the American National Standards Institute, Inc., or its successor bodies, except that only a weighting and fast dynamic response need be provided.

327.66. Carriage of gasoline on vessels.

(1) (a) A person shall not:

1. Possess or operate any vessel that has been equipped with tanks, bladders, drums, or other containers designed or intended to hold gasoline, or install or maintain such containers in a vessel, if such containers do

not conform to federal regulations or have not been approved by the United States Coast Guard by inspection or special permit.

2. Transport any gasoline in an approved portable container when the container is in a compartment that is not ventilated in strict compliance with United States Coast Guard regulations pertaining to ventilation of compartments containing gasoline tanks.

(b) A person who violates paragraph (a) commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) (a) Gasoline possessed or transported in violation of this section and all containers holding such gasoline are declared to be a public nuisance. A law enforcement agency discovering gasoline possessed or transported in violation of paragraph (1)(a) shall abate the nuisance by removing the gasoline and containers from the vessel and from the waters of this state. A law enforcement agency that removes gasoline or containers pursuant to this subsection may elect to:

1. Retain the property for the agency's own use;

2. Transfer the property to another unit of state or local government;

3. Donate the property to a charitable organization; or

4. Sell the property at public sale pursuant to § 705.103.

(b) A law enforcement agency that seizes gasoline or containers pursuant to this subsection shall remove and reclaim, recycle, or otherwise dispose of the gasoline as soon as practicable in a safe and proper manner.

(3) All conveyances, vessels, vehicles, and other equipment described in paragraph (1)(a) or used in the commission of a violation of paragraph (1)(a), other than gasoline or containers removed as provided in subsection (2), are declared to be contraband.

(a) Upon conviction of a person arrested for a violation of paragraph (1)(a), the judge shall issue an order adjudging and ordering that all conveyances, vessels, vehicles, and other equipment used in the violation shall be forfeited to the arresting agency. The requirement for a conviction before forfeiture of property establishes to the exclusion of any reasonable doubt that the property was used in connection with the violation resulting in the conviction, and the procedures of chapter 932 do not apply to any forfeiture of property under this subsection following a conviction.

(b) In the absence of an arrest or conviction, any such conveyance, vessel, vehicle, or other equipment used in violation of paragraph (1)(a) shall be subject to seizure and forfeiture as provided by the Florida Contraband Forfeiture Act.

(c) As used in this subsection, the term "conviction" means a finding of guilt or the acceptance of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld or whether imposition of sentence is withheld, deferred, or suspended.

(4) All costs incurred by the law enforcement agency in the removal of any gasoline, gasoline container, other equipment, or vessel as provided in this section shall be recoverable against the owner thereof. Any person who neglects or refuses to pay such amount shall not be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until the costs have been paid.

(5) Foreign flagged vessels entering United States waters and waters of this state in compliance with 19 U.S.C. § 1433 are exempt from this section.

327.70. Enforcement of this chapter and chapter 328.

(1) This chapter and chapter 328 shall be enforced by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in § 943.10, all of whom may order the removal of vessels deemed to be an interference or a hazard to public safety, enforce the provisions of this chapter and chapter 328, or cause any inspections to be made of all vessels in accordance with this chapter and chapter 328.

(2) (a) Noncriminal violations of the following statutes may be enforced by a uniform boating citation mailed to the registered owner of an unattended vessel anchored, aground, or moored on the waters of this state:

1. Section 327.33(3)(b), relating to navigation rules.

2. Section 327.44, relating to interference with navigation.

3. Section 327.50(2), relating to required lights and shapes.

4. Section 327.53, relating to marine sanitation.

5. Section 328.48(5), relating to display of decal.

6. Section 328.52(2), relating to display of number.

(b) Citations issued to livery vessels under this subsection shall be the responsibility of the lessee of the vessel if the livery has included a warning of this responsibility as

a part of the rental agreement and has provided to the agency issuing the citation the name, address, and date of birth of the lessee when requested by that agency. The livery is not responsible for the payment of citations if the livery provides the required warning and lessee information.

(3) Such officers shall have the power and duty to issue such orders and to make such investigations, reports, and arrests in connection with any violation of the provisions of this chapter and chapter 328 as are necessary to effectuate the intent and purpose of this chapter and chapter 328.

(4) The Fish and Wildlife Conservation Commission or any other law enforcement agency may make any investigation necessary to secure information required to carry out and enforce the provisions of this chapter and chapter 328.

327.72. Penalties.

Any person failing to comply with the provisions of this chapter or chapter 328 not specified in § 327.73 or not paying the civil penalty specified in § 327.73 within 30 days, except as otherwise provided in this chapter or chapter 328, commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

327.73. Noncriminal infractions.

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(a) Section 328.46, relating to operation of unregistered and unnumbered vessels.

(b) Section 328.48(4), relating to display of number and possession of registration certificate.

(c) Section 328.48(5), relating to display of decal.

(d) Section 328.52(2), relating to display of number.

(e) Section 328.54, relating to spacing of digits and letters of identification number.

(f) Section 328.60, relating to military personnel and registration of vessels.

(g) Section 328.72(13), relating to operation with an expired registration.

(h) Section 327.33(2), relating to careless operation.

(i) Section 327.37, relating to water skiing, aquaplaning, parasailing, and similar activities.

(j) Section 327.44, relating to interference with navigation.

(k) Violations relating to boating-restricted areas and speed limits:

1. Established by the commission or by local governmental authorities pursuant to § 327.46.

2. Speed limits established pursuant to § 379.2431(2).

(l) Section 327.48, relating to regattas and races.

(m) Section 327.50(1) and (2), relating to required safety equipment, lights, and shapes.

(n) Section 327.65, relating to muffling devices.

(o) Section 327.33(3)(b), relating to a violation of navigation rules:

1. That does not result in an accident; or

2. That results in an accident not causing serious bodily injury or death, for which the penalty is:

a. For a first offense, up to a maximum of $250.

b. For a second offense, up to a maximum of $750.

c. For a third or subsequent offense, up to a maximum of $1,000.

(p) Section 327.39(1), (2), (3), and (5), relating to personal watercraft.

(q) Section 327.53(1), (2), and (3), relating to marine sanitation.

(r) Section 327.53(4), (5), and (7), relating to marine sanitation, for which the civil penalty is $250.

(s) Section 327.395, relating to boater safety education.

(t) Section 327.52(3), relating to operation of overloaded or overpowered vessels.

(u) Section 327.331, relating to divers-down flags, except for violations meeting the requirements of § 327.33.

(v) Section 327.391(1), relating to the requirement for an adequate muffler on an airboat.

(w) Section 327.391(3), relating to the display of a flag on an airboat.

(x) Section 253.04(3)(a), relating to carelessly causing seagrass scarring, for which the civil penalty upon conviction is:

1. For a first offense, $50.

2. For a second offense occurring within 12 months after a prior conviction, $250.

3. For a third offense occurring within 36 months after a prior conviction, $500.

4. For a fourth or subsequent offense occurring within 72 months after a prior conviction, $1,000.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The

civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

(2) Any person cited for an infraction under this section may:

(a) Post a bond, which shall be equal in amount to the applicable civil penalty; or

(b) Sign and accept a citation indicating a promise to appear.

The officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(3) Any person who willfully refuses to post a bond or accept and sign a summons is guilty of a misdemeanor of the second degree.

(4) Any person charged with a noncriminal infraction under this section may:

(a) Pay the civil penalty, either by mail or in person, within 30 days of the date of receiving the citation; or,

(b) If he or she has posted bond, forfeit bond by not appearing at the designated time and location.

If the person cited follows either of the above procedures, he or she shall be deemed to have admitted the noncriminal infraction and to have waived the right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings. If a person who is cited for a violation of § 327.395 can show a boating safety identification card issued to that person and valid at the time of the citation, the clerk of the court may dismiss the case and may assess a dismissal fee of up to $10. If a person who is cited for a violation of § 328.72(13) can show proof of having a registration for that vessel which was valid at the time of the citation, the clerk may dismiss the case and may assess the dismissal fee.

(5)-(11) [Intentionally omitted.]

327.74. Uniform boating citations.

(1) The commission shall prepare, and supply to every law enforcement agency in this state which enforces the laws of this state regulating the operation of vessels, an appropriate form boating citation containing a notice to appear (which shall be issued in prenumbered books with citations in quintuplicate) and meeting the requirements of this chapter or any laws of this state regulating boating, which form shall be consistent with the state's county court rules and the procedures established by the commission.

(2) Courts, enforcement agencies, and the commission are jointly responsible to account for all uniform boating citations in accordance with the procedures promulgated by the commission.

(3) Every law enforcement officer, upon issuing a boating citation to an alleged violator of any provision of the boating laws of this state or any boating ordinance of any municipality, shall deposit the original and one copy of such boating citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau within 5 days after issuance to the violator.

(4) The chief administrative officer of every law enforcement agency shall require the return to him or her of the commission record copy of every boating citation issued by an officer under his or her supervision to an alleged violator of any boating law or ordinance and all copies of every boating citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator.

(5) Upon the deposit of the original and one copy of such boating citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau as aforesaid, the original or copy of such boating citation may be disposed of only by trial in the court or other official action by a judge of the court, including forfeiture of the bail, or by the deposit of sufficient bail with, or payment of a fine to, the traffic violations bureau by the person to whom such boating citation has been issued by the law enforcement officer.

(6) The chief administrative officer shall transmit, on a form approved by the commission, the commission record copy of the uniform boating citation to the commission within 5 days after submission of the original and one copy to the court. A copy of such transmittal shall also be provided to the court having jurisdiction for accountability purposes.

(7) It is unlawful and official misconduct for any law enforcement officer or other officer or public employee to dispose of a boating citation or copies thereof or of the record of the issuance of the same in a manner other than as required in this section.

(8) Such citations shall not be admissible evidence in any trial.

(9) If a uniform boating citation has not been issued with respect to a criminal boating offense, and the prosecution is by affidavit, information, or indictment, the prosecutor shall direct the arresting officer to prepare a citation. In the absence of an arresting officer, the prosecutor shall prepare the citation. For the purpose of this subsection, the term "arresting officer" means the law enforcement officer who apprehended or took into custody the alleged offender.

(10) Upon final disposition of any alleged offense for which a uniform boating citation has been issued, the court shall, within 10 days, certify said disposition to the commission.

CHAPTER 328
VESSELS: TITLE CERTIFICATES; LIENS; REGISTRATION

328.03. Certificate of title required.

(1) Each vessel that is operated, used, or stored on the waters of this state must be titled by this state pursuant to this chapter, unless it is:

(a) A vessel operated, used, or stored exclusively on private lakes and ponds;

(b) A vessel owned by the United States Government;

(c) A non-motor-powered vessel less than 16 feet in length;

(d) A federally documented vessel;

(e) A vessel already covered by a registration number in full force and effect which was awarded to it pursuant to a federally approved numbering system of another state or by the United States Coast Guard in a state without a federally approved numbering system, if the vessel is not located in this state for a period in excess of 90 consecutive days;

(f) A vessel from a country other than the United States temporarily used, operated, or stored on the waters of this state for a period that is not in excess of 90 days;

(g) An amphibious vessel for which a vehicle title is issued by the Department of Highway Safety and Motor Vehicles;

(h) A vessel used solely for demonstration, testing, or sales promotional purposes by the manufacturer or dealer; or

(i) A vessel owned and operated by the state or a political subdivision thereof.

(2) A person shall not operate, use, or store a vessel for which a certificate of title is required unless the owner has received from the Department of Highway Safety and Motor Vehicles a valid certificate of title for such vessel. However, such vessel may be operated, used, or stored for a period of up to 180 days after the date of application for a certificate of title while the application is pending.

(3) A person shall not sell, assign, or transfer a vessel titled by the state without delivering to the purchaser or transferee a valid certificate of title with an assignment on it showing the transfer of title to the purchaser or transferee. A person shall not purchase or otherwise acquire a vessel required to be titled by the state without obtaining a certificate of title for the vessel in his or her name. The purchaser or transferee shall, within 30 days after a change in vessel ownership, file an application for a title transfer with the county tax collector. An additional $10 fee shall be charged against the purchaser or transferee if he or she files a title transfer application after the 30-day period. The county tax collector shall be entitled to retain $5 of the additional amount.

(4) A certificate of title is prima facie evidence of the ownership of the vessel. A certificate of title is good for the life of the vessel so long as the certificate is owned or held by the legal holder. If a titled vessel is destroyed or abandoned, the owner, with the consent of any recorded lienholders, shall, within 30 days after the destruction or abandonment, surrender to the department for cancellation any and all title documents. If a titled vessel is insured and the insurer has paid the owner for the total loss of the vessel, the insurer shall obtain the title to the vessel and, within 30 days after receiving the title, forward the title to the Department of Highway Safety and Motor Vehicles for cancellation. The insurer may retain the certificate of title when payment for the loss was made because of the theft of the vessel.

(5) The Department of Highway Safety and Motor Vehicles shall provide labeled places on the title where the seller's price shall be indicated when a vessel is sold and where a selling dealer shall record his or her valid sales tax certificate of registration number.

(6) (a) The Department of Highway Safety and Motor Vehicles shall charge a fee of $5.25 for issuing each certificate of title. The tax collector shall be entitled to retain $3.75 of the fee.

(b) Beginning July 1, 1996, the Department of Highway Safety and Motor Vehicles shall use security procedures, processes, and materials in the preparation and issuance of each certificate of title to prohibit, to the ex-

tent possible, a person's ability to alter, counterfeit, duplicate, or modify the certificate.

(7) The Department of Highway Safety and Motor Vehicles shall charge a fee of $4 in addition to that charged in subsection (6) for each initial certificate of title issued for a vessel previously registered outside this state.

(8) The Department of Highway Safety and Motor Vehicles shall make regulations necessary and convenient to carry out the provisions of this chapter.

328.05. Crimes relating to certificates of title to, or other indicia of ownership of, vessels; penalties.

(1) It is unlawful for any person to procure or attempt to procure a certificate of title or duplicate certificate of title to a vessel, or to pass or attempt to pass a certificate of title or duplicate certificate of title to a vessel or any assignment thereof, if such person knows or has reason to believe that such vessel is stolen. Any person who violates any provision of this subsection is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) It is unlawful for any person, knowingly and with intent to defraud, to have in his or her possession, sell, offer to sell, counterfeit, or supply a blank, forged, fictitious, counterfeit, stolen, or fraudulently or unlawfully obtained certificate of title, duplicate certificate of title, registration, bill of sale, or other indicia of ownership of a vessel or to conspire to do any of the foregoing. Any person who violates any provision of this subsection is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) It is unlawful:

(a) To alter or forge any certificate of title to a vessel or any assignment thereof or any cancellation of any lien on a vessel.

(b) To retain or use such certificate, assignment, or cancellation knowing that it has been altered or forged.

(c) To use a false or fictitious name, give a false or fictitious address, or make any false statement in any application or affidavit required under the provisions of this chapter or in a bill of sale or sworn statement of ownership or otherwise commit a fraud in any application.

(d) To knowingly obtain goods, services, credit, or money by means of an invalid, duplicate, fictitious, forged, counterfeit, stolen, or unlawfully obtained certificate of title, registration, bill of sale, or other indicia of ownership of a vessel.

(e) To knowingly obtain goods, services, credit, or money by means of a certificate of title to a vessel which certificate is required by law to be surrendered to the department.

Any person who violates any provision of this subsection is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. A violation of any provision of this subsection with respect to any vessel shall constitute such vessel as contraband which may be seized by a law enforcement agency, or the division, and which shall be subject to forfeiture pursuant to §§ 932.701-932.704.

(4) This section is not exclusive of any other penalties prescribed by any existing or future laws for the larceny or unauthorized taking of vessels, but is supplementary thereto.

328.07. Hull identification number required.

(1) No person shall operate, use, or store on the waters of this state a vessel the construction of which began after October 31, 1972, for which the department has issued a certificate of title or which is required by law to be registered, unless the vessel displays the assigned hull identification number affixed by the manufacturer as required by the United States Coast Guard or by the department for a homemade vessel or other vessel for which a hull identification number is not required by the United States Coast Guard. The hull identification number must be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outermost starboard side at the end of the hull that bears the rudder or other steering mechanism, above the waterline of the vessel in such a way that alteration, removal, or replacement would be obvious and evident. The characters of the hull identification number must be no less than 12 in number and no less than one-fourth inch in height.

(2) No person shall operate, use, or store on the waters of this state a vessel the construction of which was completed before November 1, 1972, for which the department has issued a certificate of title or which is required by law to be registered, unless the vessel displays a hull identification number. The hull identification number shall be clearly imprinted in the transom or on the hull by stamping, impressing, or marking with pressure. In lieu of imprinting, the hull identification number may be displayed on a plate in a permanent manner. A vessel for which the manufacturer has provided no hull iden-

tification number or a homemade vessel shall be assigned a hull identification number by the department which shall be affixed to the vessel pursuant to this section.

(3) (a) No person, firm, association, or corporation shall destroy, remove, alter, cover, or deface the hull identification number or hull serial number, or plate bearing such number, of any vessel, except to make necessary repairs which require the removal of the hull identification number and immediately upon completion of such repairs shall reaffix the hull identification number in accordance with subsection (2).

(b) If any of the hull identification numbers required by the United States Coast Guard for a vessel manufactured after October 31, 1972, do not exist or have been altered, removed, destroyed, covered, or defaced or the real identity of the vessel cannot be determined, the vessel may be seized as contraband property by a law enforcement agency or the division, and shall be subject to forfeiture pursuant to §§ 932.701-932.706. Such vessel may not be sold or operated on the waters of the state unless the division receives a request from a law enforcement agency providing adequate documentation or is directed by written order of a court of competent jurisdiction to issue to the vessel a replacement hull identification number which shall thereafter be used for identification purposes. No vessel shall be forfeited under the Florida Contraband Forfeiture Act when the owner unknowingly, inadvertently, or neglectfully altered, removed, destroyed, covered, or defaced the vessel hull identification number.

(4) (a) It is unlawful for any person to knowingly possess, manufacture, sell or exchange, offer to sell or exchange, supply in blank, or give away any counterfeit manufacturer's vessel hull identification number plate or decal or any manufacturer's vessel hull identification plate or decal which is assigned to another vessel to be used for the purpose of identification of any vessel; to authorize, direct, aid in exchange, or give away such counterfeit manufacturer's vessel hull identification number plate or decal or any manufacturer's vessel hull identification number plate or decal which is assigned to another vessel; or to conspire to do any of the foregoing. However, nothing in this subsection shall be applicable to any approved hull identification number plate or decal issued as a replacement by the manufacturer, the department, or another state.

(b) It is unlawful for any person to knowingly buy, sell, offer for sale, receive, dispose of, conceal, or have in his or her possession any vessel or part thereof on which the assigned identification number has been altered, removed, destroyed, covered, or defaced or maintain such vessel in any manner which conceals or misrepresents the true identity of the vessel.

(c) Any person who violates any provision of this subsection is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) The failure to have the hull identification number clearly displayed in compliance with this section shall be probable cause for any Division of Law Enforcement officer or other authorized law enforcement officer to make further inspection of the vessel in question to ascertain the true identity thereof.

(6) Each vessel manufactured after the effective date of this act for sale in the state shall have a hull identification number displayed prior to sale or delivery for sale in accordance with the regulations set forth in 33 C.F.R. part 181. The hull identification number shall not be altered or replaced by the manufacturer or manufacturer's representative for the purpose of upgrading the model year of a vessel after being offered for sale or delivered to any dealer.

(7) No person or firm shall assign the same hull identification number to more than one vessel.

328.13. Manufacturer's statement of origin to be furnished.

(1) Any person selling a new vessel in this state shall furnish a manufacturer's statement of origin to the purchaser of the vessel. The statement shall be signed and dated by an authorized representative of the manufacturer and shall indicate the complete name and address of the purchaser. The statement shall provide a complete description of the vessel, which shall include, but is not limited to, the hull identification number, hull length, hull material, type of propulsion, and model year of the vessel. The statement of origin shall be in English or accompanied by an English translation if the vessel was purchased outside the United States, and shall contain as many assignments thereon as may be necessary to show title in the name of the purchaser.

(2) It is unlawful for a vessel manufacturer, manufacturer's representative, or dealer to issue a manufacturer's certificate of origin describing a vessel, knowing that such description is false or that the vessel described

does not exist or for any person to obtain or attempt to obtain such manufacturer's certificate of origin knowing the description is false or having reason to believe the vessel does not exist. Any person who violates any provision of this subsection is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

328.46. Operation of registered vessels.

(1) Every vessel that is required to be registered and that is being operated, used, or stored on the waters of this state shall be registered and numbered within 30 days after purchase by the owner except as specifically exempt. During this 30-day period, the operator is required to have aboard the vessel and available for inspection a bill of sale. The bill of sale for the vessel shall serve as the temporary certificate of number that is required by federal law and must contain the following information:

(a) Make of the vessel.

(b) Length of the vessel.

(c) Type of propulsion.

(d) Hull identification number.

(e) A statement declaring Florida to be the state where the vessel is principally used.

(f) Name of the purchaser.

(g) Address of the purchaser, including ZIP code.

(h) Signature of the purchaser.

(i) Name of the seller.

(j) Signature of the seller.

(k) Date of the sale of the vessel. The date of sale shall also serve as the date of issuance of the temporary certificate of number.

(l) Notice to the purchaser and operator that the temporary authority to use the vessel on the waters of this state is invalid after 30 days following the date of sale of the vessel.

(2) No person shall operate, use, or store or give permission for the operation, use, or storage of any such vessel on such waters unless:

(a) Such vessel is registered within 30 days after purchase by the owner and numbered with the identifying number set forth in the certificate of registration, displayed:

1. In accordance with § 328.48(4), except, if the vessel is an airboat, the registration number may be displayed on each side of the rudder; or

2. In accordance with 33 C.F.R. § 173.27, or with a federally approved numbering system of another state; and

(b) The certificate of registration or temporary certificate of number awarded to such vessel is in full force and effect.

328.48. Vessel registration, application, certificate, number, decal, duplicate certificate.

(1) (a) The owner of each vessel required by this law to pay a registration fee and secure an identification number shall file an application with the county tax collector. The application shall provide the owner's name and address; residency status; personal or business identification; and a complete description of the vessel, and shall be accompanied by payment of the applicable fee required in § 328.72. An individual applicant must provide a valid driver license or identification card issued by this state or another state or a valid passport. A business applicant must provide a federal employer identification number, if applicable, verification that the business is authorized to conduct business in the state, or a Florida city or county business license or number. Registration is not required for any vessel that is not used on the waters of this state.

(b) For purposes of registration, the owner may establish proof of ownership of the vessel by submitting with his or her application an executed bill of sale, a builder's contract, a manufacturer's statement of origin, a federal marine document, or any other document acceptable to the Department of Highway Safety and Motor Vehicles and presented at the time of registration to the agency issuing the registration certificate.

(2) Each vessel operated, used, or stored on the waters of this state must be registered as a commercial vessel or recreational vessel as defined in § 327.02, unless it is:

(a) A vessel operated, used, and stored exclusively on private lakes and ponds;

(b) A vessel owned by the United States Government;

(c) A vessel used exclusively as a ship's lifeboat; or

(d) A non-motor-powered vessel less than 16 feet in length or a non-motor-powered canoe, kayak, racing shell, or rowing scull, regardless of length.

(3) The Department of Highway Safety and Motor Vehicles shall issue certificates of registration and numbers for city, county, and state-owned vessels, charging only the service fees required in § 328.72(7) and (8), provided the vessels are used for purposes other than recreation.

(4) Each certificate of registration issued shall state among other items the numbers

awarded to the vessel, the hull identification number, the name and address of the owner, and a description of the vessel, except that certificates of registration for vessels constructed or assembled by the owner registered for the first time shall state all the foregoing information except the hull identification number. The numbers shall be placed on each side of the forward half of the vessel in such position as to provide clear legibility for identification, except, if the vessel is an airboat, the numbers may be placed on each side of the rudder. The numbers awarded to the vessel shall read from left to right and shall be in block characters of good proportion not less than 3 inches in height. The numbers shall be of a solid color which will contrast with the color of the background and shall be so maintained as to be clearly visible and legible; i.e., dark numbers on a light background or light numbers on a dark background. The certificate of registration shall be pocket-sized and shall be available for inspection on the vessel for which issued whenever such vessel is in operation.

(5) A decal signifying the year or years during which the certificate is valid shall be furnished by the Department of Highway Safety and Motor Vehicles with each registration certificate issued. The decal issued to an undocumented vessel shall be displayed by affixing it to the port (left) side of the vessel within 6 inches before or after the registration number. The decal issued to a documented vessel shall be placed on the port (left) side of the vessel and may be affixed to a window or the windshield on the port (left) side of the vessel in lieu of being placed on the hull. A decal issued to a dealer shall be affixed, with the registration number, to a removable sign pursuant to § 328.52(2). Any decal for a previous year shall be removed from a vessel operating on the waters of the state.

(6) When a vessel decal has been stolen, the owner of the vessel for which the decal was issued shall make application to the department for a replacement. The application shall contain the decal number being replaced and a statement that the item was stolen. If the application includes a copy of the police report prepared in response to a report of a stolen decal, such decal shall be replaced at no charge.

(7) Any decal lost in the mail may be replaced at no charge. The service charge shall not be applied to this replacement; however, the application for a replacement shall contain a statement of such fact, the decal number, and the date issued.

(8) Anyone guilty of falsely certifying any facts relating to application, certificate, transfer, number, decal, duplicate, or replacement certificates or any information required under this section shall be punished as provided under this chapter.

328.52. Special manufacturers' and dealers' number.

(1) The description of a vessel used for demonstration, sales promotional, or testing purposes by a manufacturer or dealer shall be omitted from the certificate of registration. In lieu of the description, the word "manufacturer" or "dealer," as appropriate, shall be plainly marked on the certificate.

(2) The manufacturer or dealer shall have the number awarded printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the vessel being demonstrated, promoted, or tested so long as the display meets the requirements of this chapter.

(3) A dealer registration shall not be issued to a manufacturer or a dealer pursuant to this chapter unless he or she provides to the county tax collector a copy of his or her current sales tax certificate of registration, if such certificate is required, from the Department of Revenue and a copy of his or her current commercial or occupational business license if such license is required by the local governmental entity in which the manufacturer or dealer operates a vessel.

(4) A manufacturer or dealer shall not use or authorize the use of any vessel registered pursuant to this section for other than demonstration, sales promotional, or testing purposes. Such vessel shall not be used for any commercial or other use not specifically authorized by this section.

328.54. Federal numbering system adopted.

(1) The vessel registration number issued shall be of the pattern prescribed by regulations of the United States Coast Guard and shall be divided into parts. The first part shall consist of the symbols identifying the state followed by a combination of numerals and letters which furnish individual vessel identification. The group of digits appearing between letters shall be separated from those letters by hyphens or equivalent spaces.

(2) The first part of the number shall be a symbol indicating Florida which shall be FL.

(3) The remainder of the vessel number shall consist of not more than four Arabic

numerals and two capital letters or not more than three Arabic numerals and three capital letters, in sequence, separated by a hyphen or equivalent space, in accordance with the serials, numerically and alphabetically.

(4) Since the letters I, O, and Q may be mistaken for Arabic numerals, all letter sequences using I, O, and Q shall be omitted. Objectionable words formed by the use of two or three letters shall not be used.

328.56. Vessel registration number.

Each vessel that is operated, used, or stored on the waters of this state must display a commercial or recreational Florida registration number, unless it is:

(1) A vessel operated, used, and stored exclusively on private lakes and ponds;

(2) A vessel owned by the United States Government;

(3) A vessel used exclusively as a ship's lifeboat;

(4) A non-motor-powered vessel less than 16 feet in length or a non-motor-powered canoe, kayak, racing shell, or rowing scull, regardless of length;

(5) A federally documented vessel;

(6) A vessel already covered by a registration number in full force and effect which has been awarded to it pursuant to a federally approved numbering system of another state or by the United States Coast Guard in a state without a federally approved numbering system, if the vessel has not been within this state for a period in excess of 90 consecutive days;

(7) A vessel operating under a valid temporary certificate of number;

(8) A vessel from a country other than the United States temporarily using the waters of this state; or

(9) An undocumented vessel used exclusively for racing.

328.58. Reciprocity of nonresident or alien vessels.

The owner of any vessel already covered by a registration number in full force and effect which has been awarded by:

(1) Another state pursuant to a federally approved numbering system of another state;

(2) The United States Coast Guard in a state without a federally approved numbering system; or

(3) The United States Coast Guard for a federally documented vessel with a valid registration in full force and effect from another state,

shall record the number with the Department of Highway Safety and Motor Vehicles prior to operating, using, or storing the vessel on the waters of this state in excess of the 90-day reciprocity period provided for in this chapter. Such recordation shall be pursuant to the procedure required for the award of an original registration number, except that no additional or substitute registration number shall be issued if the vessel owner maintains the previously awarded registration number in full force and effect.

328.60. Military personnel; registration; penalties.

Any military personnel on active duty in this state operating, using, or storing a vessel on the waters of this state that has a registration number in full force and effect which has been awarded to it pursuant to a federally approved numbering system of another state or by the United States Coast Guard in a state without a federally approved numbering system, or a federally documented vessel with a valid registration in full force and effect from another state shall not be required to register his or her vessel in this state while such certificate of registration remains valid; but, at the expiration of such registration certificate, all registration and titling shall be issued by this state. In the case of a federally documented vessel, the issuance of a title is not required by this chapter.

328.62. Only authorized number to be used.

No number other than the number awarded to a vessel or granted reciprocity pursuant to this chapter shall be painted, attached, or otherwise displayed on either side of the bow of such vessel.

328.64. Change of interest and address.

(1) The owner shall furnish the Department of Highway Safety and Motor Vehicles notice of the transfer of all or any part of his or her interest in a vessel registered or titled in this state pursuant to this chapter or of the destruction or abandonment of such vessel, within 30 days thereof, on a form prescribed by the department. Such transfer, destruction, or abandonment shall terminate the certificate for such vessel, except that in the case of a transfer of a part interest which does not affect the owner's right to operate such vessel, such transfer shall not terminate the certificate. The department shall provide the form for such notice and shall attach the form to every vessel title issued or reissued.

(2) Any holder of a certificate of registration shall notify the Department of Highway

Safety and Motor Vehicles or the county tax collector within 30 days, if his or her address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the department or such county tax collector with the new address. The department shall provide in its rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

328.78. Crimes relating to registration decals; penalties.

(1) It is unlawful for any person to make, alter, forge, counterfeit, or reproduce a Florida registration decal unless authorized by the Department of Highway Safety and Motor Vehicles.

(2) It is unlawful for any person knowingly to have in his or her possession a forged, counterfeit, or imitation Florida registration decal, or reproduction of a decal, unless possession by such person has been duly authorized by the Department of Highway Safety and Motor Vehicles.

(3) It is unlawful for any person to barter, trade, sell, supply, agree to supply, aid in supplying, or give away a Florida registration decal or to conspire to barter, trade, sell, supply, agree to supply, aid in supplying, or give away a registration decal, unless duly authorized to issue the decal by the Department of Highway Safety and Motor Vehicles, as provided in this chapter or in rules of the department.

(4) Any person who violates any of the provisions of this section is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

CHAPTER 329
AIRCRAFT: TITLE; REGISTRATION; LIENS

329.01. Recording instruments affecting civil aircraft.

No instrument which affects the title to or interest in any civil aircraft of the United States, or any portion thereof, is valid in respect to such aircraft, or portion thereof, against any person, other than the person by whom the instrument is made or given, the person's heirs or devisee, and any person having actual notice thereof, until such instrument is recorded in the office of the Federal Aviation Administrator of the United States, or such other office as is designated by the laws of the United States as the one in which such instruments should be filed. Every such instrument so recorded in such office is valid as to all persons without further recordation in any office of this state. Any instrument required to be recorded by the provisions of this section takes effect from the date of its recordation and not from the date of its execution.

329.10. Aircraft registration.

(1) It is unlawful for any person in this state to knowingly have in his or her possession an aircraft that is not registered in accordance with the regulations of the Federal Aviation Administration contained in Title 14, chapter 1, parts 47-49 of the Code of Federal Regulations.

(2) Any aircraft in or operated in this state that is found to be registered to a nonexistent person, firm, or corporation or to a firm, business, or corporation which is no longer a legal entity is in violation of this section. Any firm, business, or corporation that has no physical location or corporate officers or that has lapsed into an inactive state or been dissolved by order of the Secretary of State for a period of at least 90 days with no documented attempt to reinstate the firm, business, or corporation or to register its aircraft in the name of a real person or legal entity in accordance with Federal Aviation Administration regulations is in violation of this section.

(3) A person who knowingly supplies false information to a governmental entity in regard to the name, address, business name, or business address of the owner of an aircraft in or operated in the state is in violation of this section.

(4) It is a violation of this section for any person or corporate entity to knowingly supply false information to any governmental entity in regard to ownership by it or another firm, business, or corporation of an aircraft in or operated in this state if it is determined that such corporate entity or other firm, business, or corporation:

(a) Is not, or has never been, a legal entity in this state;

(b) Is not, or has never been, a legal entity in any other state; or

(c) Has lapsed into a state of no longer being a legal entity in this state as defined in chapter 607 or § 865.09, and no documented attempt has been made to correct such information with the governmental entity for a period of 90 days after the date on which such lapse took effect with the Secretary of State.

(5) This section does not apply to any aircraft registration or information supplied by a governmental entity in the course and scope of performing its lawful duties.

(6) (a) A violation of this section shall be deemed a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Any violation of this section shall constitute the aircraft to which it relates as contraband, and said aircraft may be seized as contraband by a law enforcement agency and shall be subject to forfeiture pursuant to §§ 932.701-932.704.

329.11. Aircraft identification numbers; penalties.

(1) (a) It is unlawful for any person, firm, association, or corporation to knowingly buy, sell, offer for sale, receive, dispose of, conceal, or have in his or her possession, or to endeavor to buy, sell, offer for sale, receive, dispose of, conceal, or possess, any aircraft or part thereof on which the assigned identification numbers do not meet the requirements of the federal aviation regulations.

(b) If any of the identification numbers required by this subsection have been knowingly omitted, altered, removed, destroyed, covered, or defaced, or the real identity of the aircraft cannot be determined due to an intentional act of the owner or possessor, the aircraft may be seized as contraband property by a law enforcement agency and shall be subject to forfeiture pursuant to §§ 932.701-932.704. Such aircraft may not be knowingly sold or operated from any airport, landing field, or other property or body of water where aircraft may land or take off in this state unless the Federal Aviation Administration has issued the aircraft a replacement identification number which shall thereafter be used for identification purposes.

(c) It is unlawful for any person to knowingly possess, manufacture, sell or exchange, offer to sell or exchange, supply in blank, or give away any counterfeit manufacturer's aircraft identification number plate or decal used for the purpose of identification of any aircraft; to authorize, direct, aid in exchange, or give away such counterfeit manufacturer's aircraft identification number plate or decal; or to conspire to do any of the foregoing.

(d) Any person who violates any provision of this subsection is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) The failure to have aircraft identification numbers clearly displayed on the aircraft and in compliance with federal aviation regulations is probable cause for any law enforcement officer in this state to make further inspection of the aircraft in question to ascertain its true identity. A law enforcement officer is authorized to inspect an aircraft for identification numbers:

(a) When it is located on public property; or

(b) Upon consent of the owner of the private property on which the aircraft is stored.

CHAPTER 339
TRANSPORTATION FINANCE AND PLANNING

339.28. Willful and malicious damage to boundary marks, guideposts, lampposts, etc. on transportation facility.

(1) Any person who willfully and maliciously damages, removes, or destroys any milestone, mileboard, or guideboard erected upon a highway or other public transportation facility, or willfully and maliciously defaces or alters the inscription on any such marker, or breaks or removes any lamp or lamppost or railing or post erected on any transportation facility, is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) Any person who violates the provisions of subsection (1) is civilly liable to the department for the actual damages which he or she caused, which damages may be recovered by suit and, when collected, shall be paid into the State Treasury to the credit of the State Transportation Trust Fund.

CHAPTER 365
USE OF TELEPHONES AND FACSIMILE MACHINES

365.16. Obscene or harassing telephone calls.

(1) Whoever:

(a) Makes a telephone call to a location at which the person receiving the call has a reasonable expectation of privacy; during such call makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, vulgar, or indecent; and by such call or such language intends to offend, annoy, abuse, threaten, or harass any person at the called number;

(b) Makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to annoy, abuse, threaten, or harass any person at the called number;

(c) Makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(d) Makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number,

is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) Whoever knowingly permits any telephone under his or her control to be used for any purpose prohibited by this section is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(3) Each telephone directory hereafter published for distribution to the members of the general public shall contain a notice which explains this law; such notice shall be printed in type which is no smaller than the smallest type on the same page and shall be preceded by the word "warning." The provisions of this section shall not apply to directories solely for business advertising purposes, commonly known as classified directories.

(4) Each telephone company in this state shall cooperate with the law enforcement agencies of this state in using its facilities and personnel to detect and prevent violations of this section.

(5) Nothing contained in this section shall apply to telephone calls made in good faith in the ordinary course of business or commerce.

365.172. Emergency communications number "E911."

(1) SHORT TITLE.—This section may be cited as the "Emergency Communications Number E911 Act."

(2)-(12) [Intentionally omitted.]

(13) MISUSE OF 911 OR E911 SYSTEM; PENALTY.—911 and E911 service must be used solely for emergency communications by the public. Any person who accesses the number 911 for the purpose of making a false alarm or complaint or reporting false information that could result in the emergency response of any public safety agency; any person who knowingly uses or attempts to use such service for a purpose other than obtaining public safety assistance; or any person who knowingly uses or attempts to use such service in an effort to avoid any charge for service, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. After being convicted of unauthorized use of such service four times, a person who continues to engage in such unauthorized use commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. In addition, if the value of the service or the service charge obtained in a manner prohibited by this subsection exceeds $100, the person committing the offense commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(14) [Intentionally omitted.]

CHAPTER 379
FISH AND WILDLIFE CONSERVATION

379.305. Rules and regulations; penalties.

(1) The Fish and Wildlife Conservation Commission may prescribe such other rules and regulations as it may deem necessary to prevent the escape of venomous reptiles or reptiles of concern, either in connection of construction of such cages or otherwise to carry out the intent of §§ 379.372-379.374.

(2) A person who knowingly releases a nonnative venomous reptile or reptile of concern to the wild or who through gross negligence allows a nonnative venomous reptile or reptile of concern to escape commits a Level Three violation, punishable as provided in § 379.4015.

379.3762. Personal possession of wildlife.

(1) It is unlawful for any person or persons to possess any wildlife as defined in this act, whether native to Florida or not, until she or he has obtained a permit as provided by this section from the Fish and Wildlife Conservation Commission.

(2) The classifications of types of wildlife and fees to be paid for permits for the personal possession of wildlife shall be as follows:

(a) Class I—Wildlife which, because of its nature, habits, or status, shall not be possessed as a personal pet.

(b) Class II—Wildlife considered to present a real or potential threat to human safety, the sum of $140 per annum.

(c) Class III—All other wildlife not included in Class I or Class II, for which a no-cost permit must be obtained from the commission.

(3) Any person, firm, corporation, or association exhibiting or selling wildlife and being duly permitted as provided by § 379.304 shall be exempt from the fee requirement to receive a permit under this section.

(4) This section shall not apply to the possession, control, care, and maintenance

of ostriches, emus, rheas, and bison domesticated and confined for commercial farming purposes, except those kept and maintained on hunting preserves or game farms or primarily for exhibition purposes in zoos, carnivals, circuses, and other such establishments where such species are kept primarily for display to the public.

(5) A person who violates this section is punishable as provided in § 379.4015.

379.401. Penalties and violations; civil penalties for noncriminal infractions; criminal penalties; suspension and forfeiture of licenses and permits.

(1) (a) LEVEL ONE VIOLATIONS.—A person commits a Level One violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to the filing of reports or other documents required to be filed by persons who hold recreational licenses and permits issued by the commission.

2. Rules or orders of the commission relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the commission.

3. Rules or orders of the commission relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by the commission.

4. Rules or orders of the commission relating to vessel size or specifying motor restrictions on specified water bodies.

5. Section 379.355, providing for special recreational spiny lobster licenses.

6. Section 379.354(1)-(15), providing for recreational licenses to hunt, fish, and trap.

7. Section 379.3581, providing hunter safety course requirements.

8. Section 379.3003, prohibiting deer hunting unless required clothing is worn.

(b) A person who commits a Level One violation commits a noncriminal infraction and shall be cited to appear before the county court.

(c) 1. The civil penalty for committing a Level One violation involving the license and permit requirements of § 379.354 is $50 plus the cost of the license or permit, unless subparagraph 2. applies.

2. The civil penalty for committing a Level One violation involving the license and permit requirements of § 379.354 is $100 plus the cost of the license or permit if the person cited has previously committed the same Level One violation within the preceding 36 months.

(d) 1. The civil penalty for any other Level One violation is $50 unless subparagraph 2. applies.

2. The civil penalty for any other Level One violation is $100 if the person cited has previously committed the same Level One violation within the preceding 36 months.

(e) A person cited for a Level One violation shall sign and accept a citation to appear before the county court. The issuing officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(f) A person cited for a Level One violation may pay the civil penalty by mail or in person within 30 days after receipt of the citation. If the civil penalty is paid, the person shall be deemed to have admitted committing the Level One violation and to have waived his or her right to a hearing before the county court. Such admission may not be used as evidence in any other proceedings except to determine the appropriate fine for any subsequent violations.

(g) A person who refuses to accept a citation, who fails to pay the civil penalty for a Level One violation, or who fails to appear before a county court as required commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(h) A person who elects to appear before the county court or who is required to appear before the county court shall be deemed to have waived the limitations on civil penalties provided under paragraphs (c) and (d). After a hearing, the county court shall determine if a Level One violation has been committed, and if so, may impose a civil penalty of not less than $50 for a first-time violation, and not more than $500 for subsequent violations. A person found guilty of committing a Level One violation may appeal that finding to the circuit court. The commission of a violation must be proved beyond a reasonable doubt.

(i) A person cited for violating the requirements of § 379.354 relating to personal possession of a license or permit may not be convicted if, prior to or at the time of a county court hearing, the person produces the required license or permit for verification by the hearing officer or the court clerk. The license or permit must have been valid at the time the person was cited. The clerk or hearing officer may assess a $10 fee for costs under this paragraph.

(2) (a) LEVEL TWO VIOLATIONS.—A person commits a Level Two violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.

2. Rules or orders of the commission establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.

3. Rules or orders of the commission prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.

4. Rules or orders of the commission relating to the feeding of wildlife, freshwater fish, or saltwater fish.

5. Rules or orders of the commission relating to landing requirements for freshwater fish or saltwater fish.

6. Rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.

7. Rules or orders of the commission relating to tagging requirements for wildlife and fur-bearing animals.

8. Rules or orders of the commission relating to the use of dogs for the taking of wildlife.

9. Rules or orders of the commission which are not otherwise classified.

10. Rules or orders of the commission prohibiting the unlawful use of finfish traps.

11. All prohibitions in this chapter which are not otherwise classified.

12. Section 379.33, prohibiting the violation of or noncompliance with commission rules.

13. Section 379.407(6), prohibiting the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.

14. Section 379.2421, prohibiting the obstruction of waterways with net gear.

15. Section 379.413, prohibiting the unlawful taking of bonefish.

16. Section 379.365(2)(a) and (b), prohibiting the possession or use of stone crab traps without trap tags and theft of trap contents or gear.

17. Section 379.366(4)(b), prohibiting the theft of blue crab trap contents or trap gear.

18. Section 379.3671(2)(c), prohibiting the possession or use of spiny lobster traps without trap tags or certificates and theft of trap contents or trap gear.

19. Section 379.357, prohibiting the possession of tarpon without purchasing a tarpon tag.

20. Rules or orders of the commission prohibiting the feeding or enticement of alligators or crocodiles.

21. Section 379.105, prohibiting the intentional harassment of hunters, fishers, or trappers.

(b) 1. A person who commits a Level Two violation but who has not been convicted of a Level Two or higher violation within the past 3 years commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

2. Unless the stricter penalties in subparagraph 3. or subparagraph 4. apply, a person who commits a Level Two violation within 3 years after a previous conviction for a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, with a minimum mandatory fine of $250.

3. Unless the stricter penalties in subparagraph 4. apply, a person who commits a Level Two violation within 5 years after two previous convictions for a Level Two or higher violation, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, with a minimum mandatory fine of $500 and a suspension of any recreational license or permit issued under § 379.354 for 1 year. Such suspension shall include the suspension of the privilege to obtain such license or permit and the suspension of the ability to exercise any privilege granted under any exemption in § 379.353.

4. A person who commits a Level Two violation within 10 years after three previous convictions for a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, with a minimum mandatory fine of $750 and a suspension of any recreational license or permit issued under § 379.354 for 3 years. Such suspension shall include the suspension of the privilege to obtain such license or permit and the suspension of the ability to exercise any privilege granted under § 379.353. If the recreational license or permit being suspended was an annual license or permit, any privileges under §§ 379.353 and 379.354 may not be acquired for a 3-year period following the date of the violation.

(3) (a) LEVEL THREE VIOLATIONS.—A person commits a Level Three violation if he or she violates any of the following provisions:

1. Rules or orders of the commission prohibiting the sale of saltwater fish.

2. Rules or orders of the commission prohibiting the illegal importation or possession of exotic marine plants or animals.

3. Section 379.407(2), establishing major violations.

4. Section 379.407(4), prohibiting the possession of certain finfish in excess of recreational daily bag limits.

5. Section 379.28, prohibiting the importation of freshwater fish.

6. Section 379.354(17), prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.

7. Section 379.3014, prohibiting the illegal sale or possession of alligators.

8. Section 379.404(1), (3), and (6), prohibiting the illegal taking and possession of deer and wild turkey.

9. Section 379.406, prohibiting the possession and transportation of commercial quantities of freshwater game fish.

(b) 1. A person who commits a Level Three violation but who has not been convicted of a Level Three or higher violation within the past 10 years commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

2. A person who commits a Level Three violation within 10 years after a previous conviction for a Level Three or higher violation commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, with a minimum mandatory fine of $750 and a suspension of any recreational license or permit issued under § 379.354 for the remainder of the period for which the license or permit was issued up to 3 years. Such suspension shall include the suspension of the privilege to obtain such license or permit and the ability to exercise any privilege granted under § 379.353. If the recreational license or permit being suspended was an annual license or permit, any privileges under §§ 379.353 and 379.354 may not be acquired for a 3-year period following the date of the violation.

3. A person who commits a violation of § 379.354(17) shall receive a mandatory fine of $1,000. Any privileges under §§ 379.353 and 379.354 may not be acquired for a 5-year period following the date of the violation.

(4) (a) LEVEL FOUR VIOLATIONS.—A person commits a Level Four violation if he or she violates any of the following provisions:

1. Section 379.365(2)(c), prohibiting criminal activities relating to the taking of stone crabs.

2. Section 379.366(4)(c), prohibiting criminal activities relating to the taking and harvesting of blue crabs.

3. Section 379.367(4), prohibiting the willful molestation of spiny lobster gear.

4. Section 379.3671(2)(c)5., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.

5. Section 379.354(16), prohibiting the making, forging, counterfeiting, or reproduction of a recreational license or possession of same without authorization from the commission.

6. Section 379.404(5), prohibiting the sale of illegally-taken deer or wild turkey.

7. Section 379.405, prohibiting the molestation or theft of freshwater fishing gear.

8. Section 379.409, prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.

(b) A person who commits a Level Four violation commits a felony of the third degree, punishable as provided in § 775.082 or § 775.083.

(5) VIOLATIONS OF CHAPTER.—Except as provided in this chapter:

(a) A person who commits a violation of any provision of this chapter commits, for the first offense, a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(b) A person who is convicted of a second or subsequent violation of any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(6) SUSPENSION OR FORFEITURE OF LICENSE.—The court may order the suspension or forfeiture of any license or permit issued under this chapter to a person who is found guilty of committing a violation of this chapter.

(7) CONVICTION DEFINED.—As used in this section, the term "conviction" means any judicial disposition other than acquittal or dismissal.

379.4015. Nonnative and captive wildlife penalties.

(1) LEVEL ONE.—Unless otherwise provided by law, the following classifications and penalties apply:

(a) A person commits a Level One violation if he or she violates any of the following provisions:

1. Rules or orders of the commission requiring free permits or other authorizations to possess captive wildlife.

2. Rules or orders of the commission relating to the filing of reports or other documents required of persons who are licensed to possess captive wildlife.

3. Rules or orders of the commission requiring permits to possess captive wildlife for which a fee is charged, when the person being charged was issued the permit and the permit has expired less than 1 year prior to the violation.

(b) Any person cited for committing any offense classified as a Level One violation commits a noncriminal infraction, punishable as provided in this section.

(c) Any person cited for committing a noncriminal infraction specified in paragraph (a) shall be cited to appear before the county court. The civil penalty for any noncriminal infraction is $50 if the person cited has not previously been found guilty of a Level One violation and $250 if the person cited has previously been found guilty of a Level One violation, except as otherwise provided in this subsection. Any person cited for failing to have a required permit or license shall pay an additional civil penalty in the amount of the license fee required.

(d) Any person cited for an infraction under this subsection may:

1. Post a bond, which shall be equal in amount to the applicable civil penalty; or

2. Sign and accept a citation indicating a promise to appear before the county court. The officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(e) Any person charged with a noncriminal infraction under this subsection may:

1. Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or

2. If the person has posted bond, forfeit bond by not appearing at the designated time and location.

(f) If the person cited follows either of the procedures in subparagraph (e)1. or subparagraph (e)2., he or she shall be deemed to have admitted the infraction and to have waived his or her right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings except to determine the appropriate fine for any subsequent violations.

(g) Any person who willfully refuses to post bond or accept and sign a summons commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Any person who fails to pay the civil penalty specified in this subsection within 30 days after being cited for a noncriminal infraction or to appear before the court pursuant to this subsection commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(h) Any person electing to appear before the county court or who is required to appear shall be deemed to have waived the limitations on the civil penalty specified in paragraph (c). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the court may impose a civil penalty not less than those amounts in paragraph (c) and not to exceed $500.

(i) At a hearing under this chapter, the commission of a charged infraction must be proved beyond a reasonable doubt.

(j) If a person is found by the hearing official to have committed an infraction, she or he may appeal that finding to the circuit court.

(2) LEVEL TWO.—Unless otherwise provided by law, the following classifications and penalties apply:

(a) A person commits a Level Two violation if he or she violates any of the following provisions:

1. Unless otherwise stated in subsection (1), rules or orders of the commission that require a person to pay a fee to obtain a permit to possess captive wildlife or that require the maintenance of records relating to captive wildlife.

2. Rules or orders of the commission relating to captive wildlife not specified in subsection (1) or subsection (3).

3. Rules or orders of the commission that require housing of wildlife in a safe manner when a violation results in an escape of wildlife other than Class I wildlife.

4. Rules or orders of the commission relating to wild animal life identified by commission rule as either conditional species or prohibited species.

5. Section 379.372, relating to capturing, keeping, possessing, transporting, or exhibiting venomous reptiles, reptiles of concern, conditional reptiles, or prohibited reptiles.

6. Section 379.373, relating to requiring a license or permit for the capturing, keeping, possessing, or exhibiting of venomous reptiles or reptiles of concern.

7. Section 379.374, relating to bonding requirements for public exhibits of venomous reptiles.

8. Section 379.305, relating to commission rules and regulations to prevent the escape of venomous reptiles or reptiles of concern.

9. Section 379.304, relating to exhibition or sale of wildlife.

10. Section 379.3761, relating to exhibition or sale of wildlife.

11. Section 379.3762, relating to personal possession of wildlife.

(b) A person who commits any offense classified as a Level Two violation and who has not been convicted of a Level Two or higher violation within the past 3 years commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(c) Unless otherwise stated in this subsection, a person who commits any offense classified as a Level Two violation within a 3-year period of any previous conviction of a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083 with a minimum mandatory fine of $250.

(d) Unless otherwise stated in this subsection, a person who commits any offense classified as a Level Two violation within a 5-year period of any two previous convictions of Level Two or higher violations commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, with a minimum mandatory fine of $500 and a suspension of all licenses issued under this chapter related to captive wildlife for 1 year.

(e) A person who commits any offense classified as a Level Two violation within a 10-year period of any three previous convictions of Level Two or higher violations commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, with a minimum mandatory fine of $750 and a suspension of all licenses issued under this chapter related to captive wildlife for 3 years.

(f) In addition to being subject to the penalties under paragraphs (b)-(e), a person who commits a Level Two violation that is a violation of § 379.372 or rules or orders relating to wild animal life identified as conditional or prohibited shall receive a minimum mandatory fine of $100 and immediately surrender the wildlife for which the violation was issued unless such person lawfully obtains a permit for possession.

(3) LEVEL THREE.—Unless otherwise provided by law, the following classifications and penalties apply:

(a) A person commits a Level Three violation if he or she violates any of the following provisions:

1. Rules or orders of the commission that require housing of wildlife in a safe manner when a violation results in an escape of Class I wildlife.

2. Rules or orders of the commission related to captive wildlife when the violation results in serious bodily injury to another person by captive wildlife that consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

3. Rules or orders of the commission relating to the use of gasoline or other chemical or gaseous substances on wildlife.

4. Rules or orders of the commission prohibiting the release of wildlife for which only conditional possession is allowed.

5. Rules or orders of the commission prohibiting knowingly entering false information on an application for a license or permit when the license or permit is to possess wildlife in captivity.

6. Rules or orders of the commission relating to the illegal importation and possession of nonnative marine plants and animals.

7. Rules or orders of the commission relating to the importation, possession, or release of fish and wildlife for which possession is prohibited.

8. Section 379.231, relating to illegal importation or release of nonnative wildlife.

9. Section 379.305, relating to release or escape of nonnative venomous reptiles or reptiles of concern.

(b) 1. A person who commits any offense classified as a Level Three violation and who has not been convicted of a Level Three or higher violation within the past 10 years commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

2. A person who commits any offense classified as a Level Three violation within a 10-year period of any previous conviction of a Level Three or higher violation commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, with a minimum mandatory fine of $750 and permanent revocation of all licenses or permits to possess captive wildlife issued under this chapter.

(4) LEVEL FOUR.—Unless otherwise provided by law, the following classifications and penalties apply:

(a) A person commits a Level Four violation if he or she violates any Level Three provision after the permanent revocation of a license or permit.

(b) A person who commits any offense classified as a Level Four violation commits a felony of the third degree, punishable as provided in § 775.082 or § 775.083.

(5) SUSPENSION OR REVOCATION OF LICENSE.—The court may order the suspension or revocation of any license or permit issued to a person to possess captive wildlife pursuant to this chapter if that person commits a criminal offense or a noncriminal infraction as specified under this section.

(6) CIVIL PENALTY.—

(a) In addition to other applicable penalties, the commission may impose against any person, party, firm, association, or corporation convicted of a criminal violation of any provision of § 379.231, § 379.372, § 379.3761, or § 379.3762 a civil penalty of not more than $5,000 for each animal, unless otherwise authorized pursuant to subparagraphs 1.-5. For all related violations attributable to a specific violator, the total civil penalty may not exceed $10,000 for each assessment for each animal.

1. The history of noncompliance of the violator for any previous violation of this chapter or rules or orders of the commission shall be considered in determining the amount of the civil penalty.

2. The direct economic benefit gained by the violator from the violation may be added to the scheduled civil penalty.

3. The costs incurred by the commission related to the escape, recovery, and care of the wildlife for which the violation was issued shall be added to the civil penalty.

4. The civil penalty assessed for a violation may not exceed $5,000 for each animal unless:

a. The violator has a history of noncompliance;

b. The economic benefit of the violation exceeds $5,000; or

c. The costs incurred by the commission related to the escape, recovery, and care of the wildlife for which the violation was issued exceeds $5,000.

5. The civil penalty assessed pursuant to this subsection may be reduced by the commission for mitigating circumstances, including good faith efforts to comply before or after discovery of the violations by the commission.

(b) The proceeds of all civil penalties collected pursuant to this subsection shall be deposited into the State Game Trust Fund and shall be used for management, administration, auditing, and research purposes.

(7) CONVICTION DEFINED.—For purposes of this section, the term "conviction" means any judicial disposition other than acquittal or dismissal.

(8) COMMISSION LIMITATIONS.—Nothing in this section shall limit the commission from suspending or revoking any license to possess wildlife in captivity by administrative action in accordance with chapter 120. For purposes of administrative action, a conviction of a criminal offense shall mean any judicial disposition other than acquittal or dismissal.

(9) ANNUAL REPORT.—By January 1 of each year, the commission shall submit to the President of the Senate and the Speaker of the House of Representatives a report listing each species identified by the commission as a conditional or prohibited species or a reptile of concern.

379.411. Killing or wounding of any species designated as endangered, threatened, or of special concern; criminal penalties.

It is unlawful for a person to intentionally kill or wound any fish or wildlife of a species designated by the Fish and Wildlife Conservation Commission as endangered, threatened, or of special concern, or to intentionally destroy the eggs or nest of any such fish or wildlife, except as provided for in the rules of the commission. Any person who violates this provision with regard to an endangered or threatened species is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

CHAPTER 381
PUBLIC HEALTH: GENERAL PROVISIONS

381.00787. Tattooing prohibited; penalty.

(1) A person may not tattoo the body of a minor child younger than 16 years of age unless the tattooing is performed for medical or dental purposes by a person licensed to practice medicine or dentistry under chapter 458, chapter 459, or chapter 466.

(2) A person may not tattoo the body of a minor child who is at least 16 years of age, but younger than 18 years of age, unless:

(a) The minor child is accompanied by his or her parent or legal guardian;

(b) The minor child and his or her parent or legal guardian each submit proof of his or her identity by producing a government-issued photo identification;

(c) The parent or legal guardian submits his or her written notarized consent in the format prescribed by the department;

(d) The parent or legal guardian submits proof that he or she is the parent or legal guardian of the minor child; and

(e) The tattooing is performed by a tattoo artist or guest tattoo artist licensed under §§ 381.00771-381.00791 or a person licensed to practice medicine or dentistry under chapter 458, chapter 459, or chapter 466.

(3) A person who violates this section commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. However, a person who tattoos the body of a minor child younger than 18 years of age does not violate this section, if:

(a) The person carefully inspects what appears to be a government-issued photo identification that represents that the minor child is 18 years of age or older.

(b) The minor child falsely represents himself or herself as being 18 years of age or older and presents a fraudulent identification.

(c) A reasonable person of average intelligence would believe that the minor child is 18 years of age or older and that the photo identification is genuine, was issued to the minor child, and truthfully represents the minor child's age.

CHAPTER 384
SEXUALLY TRANSMISSIBLE DISEASES

384.24. Unlawful acts.

(1) It is unlawful for any person who has chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, or syphilis, when such person knows he or she is infected with one or more of these diseases and when such person has been informed that he or she may communicate this disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual intercourse.

(2) It is unlawful for any person who has human immunodeficiency virus infection, when such person knows he or she is infected with this disease and when such person has been informed that he or she may communicate this disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual intercourse.

384.287. Screening for sexually transmissible disease.

(1) An officer as defined in § 943.10(14); support personnel as defined in § 943.10(11) who are employed by the Department of Law Enforcement, including, but not limited to, any crime scene analyst, forensic technologist, or crime lab analyst; firefighter as defined in § 633.102; or ambulance driver, paramedic, or emergency medical technician as defined in § 401.23, acting within the scope of employment, who comes into contact with a person in such a way that significant exposure, as defined in § 381.004, has occurred may request that the person be screened for a sexually transmissible disease that can be transmitted through a significant exposure.

(2) If the person will not voluntarily submit to screening, the officer, support personnel of the Department of Law Enforcement, firefighter, ambulance driver, paramedic, or emergency medical technician, or the employer of any of the employees described in subsection (1) acting on behalf of the employee, may seek a court order directing that the person who is the source of the significant exposure submit to screening. A sworn statement by a physician licensed under chapter 458 or chapter 459 that a significant exposure has occurred and that, in the physician's medical judgment, the screening is medically necessary to determine the course of treatment for the employee, constitutes probable cause for the issuance of the order by the court.

(3) In order to use the provisions of this section, the employee subjected to the significant exposure must also be screened for the same sexually transmissible diseases.

(4) All screenings must be conducted by the department or the department's authorized representative or by medical personnel at a facility designated by the court. The cost of screening shall be borne by the employer.

(5) Results of the screening are exempt from the requirements of § 384.29 solely for the purpose of releasing the results to the person who is the source of the significant exposure, to the person subjected to the significant exposure, to the physicians of the persons screened, and to the employer, if necessary for filing a worker's compensation

claim or any other disability claim based on the significant exposure.

(6) A person who receives the results of a test pursuant to this section, which results disclose human immunodeficiency virus infection and are otherwise confidential pursuant to law, shall maintain the confidentiality of the information received and the identity of the person tested as required by § 381.004. Violation of this subsection constitutes a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

384.34. Penalties.

(1) Any person who violates the provisions of § 384.24(1) commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) Any person who violates the provisions of § 384.26 or § 384.29 commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) Any person who maliciously disseminates any false information or report concerning the existence of any sexually transmissible disease commits a felony of the third degree, punishable as provided in §§ 775.082, 775.083, and 775.084.

(4) Any person who violates the provisions of the department's rules pertaining to sexually transmissible diseases may be punished by a fine not to exceed $500 for each violation. Any penalties enforced under this subsection shall be in addition to other penalties provided by this chapter. The department may enforce this section and adopt rules necessary to administer this section.

(5) Any person who violates § 384.24(2) commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Any person who commits multiple violations of § 384.24(2) commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(6) Any person who obtains information that identifies an individual who has a sexually transmissible disease, who knew or should have known the nature of the information and maliciously, or for monetary gain, disseminates this information or otherwise makes this information known to any other person, except by providing it either to a physician or nurse employed by the Department of Health or to a law enforcement agency, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

CHAPTER 386
PARTICULAR CONDITIONS AFFECTING PUBLIC HEALTH

386.041. Nuisances injurious to health.

(1) The following conditions existing, permitted, maintained, kept, or caused by any individual, municipal organization, or corporation, governmental or private, shall constitute prima facie evidence of maintaining a nuisance injurious to health:

(a) Untreated or improperly treated human waste, garbage, offal, dead animals, or dangerous waste materials from manufacturing processes harmful to human or animal life and air pollutants, gases, and noisome odors which are harmful to human or animal life.

(b) Improperly built or maintained septic tanks, water closets, or privies.

(c) The keeping of diseased animals dangerous to human health.

(d) Unclean or filthy places where animals are slaughtered.

(e) The creation, maintenance, or causing of any condition capable of breeding flies, mosquitoes, or other arthropods capable of transmitting diseases, directly or indirectly to humans.

(f) Any other condition determined to be a sanitary nuisance as defined in § 386.01.

(2) The Department of Health, its agents and deputies, or local health authorities are authorized to investigate any condition or alleged nuisance in any city, town, or place within the state, and if such condition is determined to constitute a sanitary nuisance, they may take such action to abate the said nuisance condition in accordance with the provisions of this chapter.

386.051. Nuisances injurious to health, penalty.

Any person found guilty of creating, keeping, or maintaining a nuisance injurious to health shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 394
MENTAL HEALTH

394.462. Transportation.

(1) TRANSPORTATION TO A RECEIVING FACILITY.—

(a) Each county shall designate a single law enforcement agency within the county,

or portions thereof, to take a person into custody upon the entry of an ex parte order or the execution of a certificate for involuntary examination by an authorized professional and to transport that person to the nearest receiving facility for examination. The designated law enforcement agency may decline to transport the person to a receiving facility only if:

1. The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and

2. The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.

3. The jurisdiction designated by the county may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:

a. From an insurance company, health care corporation, or other source, if the person receiving the transportation is covered by an insurance policy or subscribes to a health care corporation or other source for payment of such expenses.

b. From the person receiving the transportation.

c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

(b) Any company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transportation of patients.

(c) Any company that contracts with a governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of the patients.

(d) When a law enforcement officer takes custody of a person pursuant to this part, the officer may request assistance from emergency medical personnel if such assistance is needed for the safety of the officer or the person in custody.

(e) When a member of a mental health overlay program or a mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to § 394.463 and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or may call on the law enforcement agency or other transportation arrangement best suited to the needs of the patient.

(f) When any law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination under this part, the law enforcement officer shall transport the person to the nearest receiving facility for examination.

(g) When any law enforcement officer has arrested a person for a felony and it appears that the person meets the statutory guidelines for involuntary examination or placement under this part, such person shall first be processed in the same manner as any other criminal suspect. The law enforcement agency shall thereafter immediately notify the nearest public receiving facility, which shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide mental health examination and treatment to the person where he or she is held.

(h) If the appropriate law enforcement officer believes that a person has an emergency medical condition as defined in § 395.002, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.

(i) The costs of transportation, evaluation, hospitalization, and treatment incurred under this subsection by persons who have been arrested for violations of any state law or county or municipal ordinance may be recovered as provided in § 901.35.

(j) The nearest receiving facility must accept persons brought by law enforcement officers for involuntary examination.

(k) Each law enforcement agency shall develop a memorandum of understanding with each receiving facility within the law enforcement agency's jurisdiction which reflects a

single set of protocols for the safe and secure transportation of the person and transfer of custody of the person. These protocols must also address crisis intervention measures.

(l) When a jurisdiction has entered into a contract with an emergency medical transport service or a private transport company for transportation of persons to receiving facilities, such service or company shall be given preference for transportation of persons from nursing homes, assisted living facilities, adult day care centers, or adult family-care homes, unless the behavior of the person being transported is such that transportation by a law enforcement officer is necessary.

(m) Nothing in this section shall be construed to limit emergency examination and treatment of incapacitated persons provided in accordance with the provisions of § 401.445.

(2) TRANSPORTATION TO A TREATMENT FACILITY.—

(a) If neither the patient nor any person legally obligated or responsible for the patient is able to pay for the expense of transporting a voluntary or involuntary patient to a treatment facility, the governing board of the county in which the patient is hospitalized shall arrange for such required transportation and shall ensure the safe and dignified transportation of the patient. The governing board of each county is authorized to contract with private transport companies for the transportation of such patients to and from a treatment facility.

(b) Any company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transportation of patients.

(c) Any company that contracts with the governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of the patients.

(d) County or municipal law enforcement and correctional personnel and equipment shall not be used to transport patients adjudicated incapacitated or found by the court to meet the criteria for involuntary placement pursuant to § 394.467, except in small rural counties where there are no cost-efficient alternatives.

(3) TRANSFER OF CUSTODY.—Custody of a person who is transported pursuant to this part, along with related documentation, shall be relinquished to a responsible individual at the appropriate receiving or treatment facility.

(4) EXCEPTIONS.—An exception to the requirements of this section may be granted by the secretary of the department for the purposes of improving service coordination or better meeting the special needs of individuals. A proposal for an exception must be submitted by the district administrator after being approved by the governing boards of any affected counties, prior to submission to the secretary.

(a) A proposal for an exception must identify the specific provision from which an exception is requested; describe how the proposal will be implemented by participating law enforcement agencies and transportation authorities; and provide a plan for the coordination of services such as case management.

(b) The exception may be granted only for:

1. An arrangement centralizing and improving the provision of services within a district, which may include an exception to the requirement for transportation to the nearest receiving facility;

2. An arrangement by which a facility may provide, in addition to required psychiatric services, an environment and services which are uniquely tailored to the needs of an identified group of persons with special needs, such as persons with hearing impairments or visual impairments, or elderly persons with physical frailties; or

3. A specialized transportation system that provides an efficient and humane method of transporting patients to receiving facilities, among receiving facilities, and to treatment facilities.

(c) Any exception approved pursuant to this subsection shall be reviewed and approved every 5 years by the secretary.

394.463. Involuntary examination.

(1) CRITERIA.—A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

(a) 1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or

2. The person is unable to determine for himself or herself whether examination is necessary; and

(b) 1. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of

substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or

2. There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to the nearest receiving facility for involuntary examination. The order of the court shall be made a part of the patient's clinical record. No fee shall be charged for the filing of an order under this subsection. Any receiving facility accepting the patient based on this order must send a copy of the order to the Agency for Health Care Administration on the next working day. The order shall be valid only until executed or, if not executed, for the period specified in the order itself. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this report must send a copy of the report to the Agency for Health Care Administration on the next working day.

3. A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the nearest receiving facility for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this certificate must send a copy of the certificate to the Agency for Health Care Administration on the next working day.

(b) A person shall not be removed from any program or residential placement licensed under chapter 400 or chapter 429 and transported to a receiving facility for involuntary examination unless an ex parte order, a professional certificate, or a law enforcement officer's report is first prepared. If the condition of the person is such that preparation of a law enforcement officer's report is not practicable before removal, the report shall be completed as soon as possible after removal, but in any case before the person is transported to a receiving facility. A receiving facility admitting a person for involuntary examination who is not accompanied by the required ex parte order, professional certificate, or law enforcement officer's report shall notify the Agency for Health Care Administration of such admission by certified mail no later than the next working day. The provisions of this paragraph do not apply when transportation is provided by the patient's family or guardian.

(c) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may serve and execute such order on any day of the week, at any time of the day or night.

(d) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and to take custody of the person who is the subject of the ex parte order.

(e) The Agency for Health Care Administration shall receive and maintain the copies of ex parte orders, involuntary outpatient placement orders issued pursuant to § 394.4655, involuntary inpatient placement orders issued pursuant to § 394.467, profes-

sional certificates, and law enforcement officers' reports. These documents shall be considered part of the clinical record, governed by the provisions of § 394.4615. The agency shall prepare annual reports analyzing the data obtained from these documents, without information identifying patients, and shall provide copies of reports to the department, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

(f) A patient shall be examined by a physician or clinical psychologist at a receiving facility without unnecessary delay and may, upon the order of a physician, be given emergency treatment if it is determined that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist, a clinical psychologist, or, if the receiving facility is a hospital, the release may also be approved by an attending emergency department physician with experience in the diagnosis and treatment of mental and nervous disorders and after completion of an involuntary examination pursuant to this subsection. However, a patient may not be held in a receiving facility for involuntary examination longer than 72 hours.

(g) A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition specified in § 395.002 must be examined by a receiving facility within 72 hours. The 72-hour period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary outpatient placement pursuant to § 394.4655(1) or involuntary inpatient placement pursuant to § 394.467(1), the patient may be offered voluntary placement, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that the patient has been examined and does not meet the criteria for involuntary inpatient placement or involuntary outpatient placement must be entered into the patient's clinical record. Nothing in this paragraph is intended to prevent a hospital providing emergency medical services from appropriately transferring a patient to another hospital prior to stabilization, provided the requirements of § 395.1041(3)(c) have been met.

(h) One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist:

1. The patient must be examined by a designated receiving facility and released; or

2. The patient must be transferred to a designated receiving facility in which appropriate medical treatment is available. However, the receiving facility must be notified of the transfer within 2 hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist.

(i) Within the 72-hour examination period or, if the 72 hours ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;

2. The patient shall be released, subject to the provisions of subparagraph 1., for voluntary outpatient treatment;

3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient, and, if such consent is given, the patient shall be admitted as a voluntary patient; or

4. A petition for involuntary placement shall be filed in the circuit court when outpatient or inpatient treatment is deemed necessary. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. When a petition is to be filed for involuntary outpatient placement, it shall be filed by one of the petitioners specified in § 394.4655(3)(a). A petition for involuntary inpatient placement shall be filed by the facility administrator.

(3) NOTICE OF RELEASE.—Notice of the release shall be given to the patient's guardian or representative, to any person who executed a certificate admitting the patient to the receiving facility, and to any court which ordered the patient's evaluation.

CHAPTER 397
SUBSTANCE ABUSE SERVICES

397.675. Criteria for involuntary admissions, including protective custody, emergency admission, and other involuntary assessment, involuntary treatment, and alternative involuntary assessment for minors, for purposes of assessment and stabilization, and for involuntary treatment.

A person meets the criteria for involuntary admission if there is good faith reason to believe the person is substance abuse impaired and, because of such impairment:

(1) Has lost the power of self-control with respect to substance use; and either

(2) (a) Has inflicted, or threatened or attempted to inflict, or unless admitted is likely to inflict, physical harm on himself or herself or another; or

(b) Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that the person is incapable of appreciating his or her need for such services and of making a rational decision in regard thereto; however, mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services.

397.677. Protective custody; circumstances justifying.

A law enforcement officer may implement protective custody measures as specified in this part when a minor or an adult who appears to meet the involuntary admission criteria in § 397.675 is:

(1) Brought to the attention of law enforcement; or

(2) In a public place.

397.6771. Protective custody with consent.

A person in circumstances which justify protective custody, as described in § 397.677, may consent to be assisted by a law enforcement officer to his or her home, to a hospital, or to a licensed detoxification or addictions receiving facility, whichever the officer determines is most appropriate.

397.6772. Protective custody without consent.

(1) If a person in circumstances which justify protective custody as described in § 397.677 fails or refuses to consent to assistance and a law enforcement officer has determined that a hospital or a licensed detoxification or addictions receiving facility is the most appropriate place for the person, the officer may, after giving due consideration to the expressed wishes of the person:

(a) Take the person to a hospital or to a licensed detoxification or addictions receiving facility against the person's will but without using unreasonable force; or

(b) In the case of an adult, detain the person for his or her own protection in any municipal or county jail or other appropriate detention facility.

Such detention is not to be considered an arrest for any purpose, and no entry or other record may be made to indicate that the person has been detained or charged with any crime. The officer in charge of the detention facility must notify the nearest appropriate licensed service provider within the first 8 hours after detention that the person has been detained. It is the duty of the detention facility to arrange, as necessary, for transportation of the person to an appropriate licensed service provider with an available bed. Persons taken into protective custody must be assessed by the attending physician within the 72-hour period and without unnecessary delay, to determine the need for further services.

(2) The nearest relative of a minor in protective custody must be notified by the law enforcement officer, as must the nearest relative of an adult, unless the adult requests that there be no notification.

397.6775. Immunity from liability.

A law enforcement officer acting in good faith pursuant to this part may not be held criminally or civilly liable for false imprisonment.

CHAPTER 403
ENVIRONMENTAL CONTROL

403.413. Florida Litter Law.

(1) SHORT TITLE.—This section may be cited as the "Florida Litter Law."

(2) DEFINITIONS.—As used in this section:

(a) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly but does not include a parachute or any other device used primarily as safety equipment.

(b) "Commercial purpose" means for the purpose of economic gain.

(c) "Commercial vehicle" means a vehicle that is owned or used by a business, corporation, association, partnership, or sole propri-

etorship or any other entity conducting business for a commercial purpose.

(d) "Dump" means to dump, throw, discard, place, deposit, or dispose of.

(e) "Law enforcement officer" means any officer of the Florida Highway Patrol, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, or the Fish and Wildlife Conservation Commission. In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipal park or recreation department designated by the department head as a litter enforcement officer.

(f) "Litter" means any garbage; rubbish; trash; refuse; can; bottle; box; container; paper; tobacco product; tire; appliance; mechanical equipment or part; building or construction material; tool; machinery; wood; motor vehicle or motor vehicle part; vessel; aircraft; farm machinery or equipment; sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

(g) "Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor, or semitrailer combination or any other vehicle that is powered by a motor.

(h) "Person" means any individual, firm, sole proprietorship, partnership, corporation, or unincorporated association.

(i) "Vessel" means a boat, barge, or airboat or any other vehicle used for transportation on water.

(3) RESPONSIBILITY OF LOCAL GOVERNING BODY OF A COUNTY OR MUNICIPALITY.—The local governing body of a county or a municipality shall determine the training and qualifications of any employee of the county or municipality or any employee of the county or municipal park or recreation department designated to enforce the provisions of this section if the designated employee is not a regular law enforcement officer.

(4) DUMPING LITTER PROHIBITED.—Unless otherwise authorized by law or permit, it is unlawful for any person to dump litter in any manner or amount:

(a) In or on any public highway, road, street, alley, or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers or areas lawfully provided therefor. When any litter is thrown or discarded from a motor vehicle, the operator or owner of the motor vehicle, or both, shall be deemed in violation of this section;

(b) In or on any freshwater lake, river, canal, or stream or tidal or coastal water of the state, including canals. When any litter is thrown or discarded from a boat, the operator or owner of the boat, or both, shall be deemed in violation of this section; or

(c) In or on any private property, unless prior consent of the owner has been given and unless the dumping of such litter by such person will not cause a public nuisance or otherwise be in violation of any other state or local law, rule, or regulation.

(5) DUMPING RAW HUMAN WASTE PROHIBITED.—Unless otherwise authorized by law or permit, it is unlawful for any person to dump raw human waste from any train, aircraft, motor vehicle, or vessel upon the public or private lands or waters of the state.

(6) PENALTIES; ENFORCEMENT.—

(a) Any person who dumps litter in violation of subsection (4) in an amount not exceeding 15 pounds in weight or 27 cubic feet in volume and not for commercial purposes is guilty of a noncriminal infraction, punishable by a civil penalty of $100, from which $50 shall be deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to § 403.7095. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

(b) Any person who dumps litter in violation of subsection (4) in an amount exceeding 15 pounds in weight or 27 cubic feet in volume, but not exceeding 500 pounds in weight or 100 cubic feet in volume and not for commercial purposes is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. In addition, the court shall require the violator to pick up litter or perform other community service commensurate with the offense committed. Further, if the violation involves the use of a motor vehicle, upon a finding of guilt, whether or not adjudication is withheld or whether imposition of sentence is withheld, deferred, or suspended, the court shall forward a record of the finding to the Department of Highway Safety and Motor Vehicles, which shall record a penalty of three points on the violator's driver's license pursuant to the point system established by § 322.27.

(c) Any person who dumps litter in violation of subsection (4) in an amount exceed-

ing 500 pounds in weight or 100 cubic feet in volume or in any quantity for commercial purposes, or dumps litter which is a hazardous waste as defined in § 403.703, is guilty of a felony of the third degree, punishable as provided in § 775.082 or § 775.083. In addition, the court may order the violator to:

1. Remove or render harmless the litter that he or she dumped in violation of this section;

2. Repair or restore property damaged by, or pay damages for any damage arising out of, his or her dumping litter in violation of this section; or

3. Perform public service relating to the removal of litter dumped in violation of this section or to the restoration of an area polluted by litter dumped in violation of this section.

(d) A court may enjoin a violation of this section.

(e) A motor vehicle, vessel, aircraft, container, crane, winch, or machine used to dump litter that exceeds 500 pounds in weight or 100 cubic feet in volume is declared contraband and is subject to forfeiture in the same manner as provided in §§ 932.703 and 932.704.

(f) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or $200, whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees. A final judgment rendered in a criminal proceeding against a defendant under this section estops the defendant from asserting any issue in a subsequent civil action under this paragraph which he or she would be estopped from asserting if such judgment were rendered in the civil action unless the criminal judgment was based upon a plea of no contest or nolo contendere.

(g) For the purposes of this section, if a person dumps litter or raw human waste from a commercial vehicle, that person is presumed to have dumped the litter or raw human waste for commercial purposes.

(h) In the criminal trial of a person charged with violating this section, the state does not have the burden of proving that the person did not have the right or authority to dump the litter or raw human waste or that litter or raw human waste dumped on private property causes a public nuisance. The defendant has the burden of proving that he or she had authority to dump the litter or raw human waste and that the litter or raw human waste dumped does not cause a public nuisance.

(i) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(j) Any person who violates the provisions of subsection (5) is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083; provided, however, that any person who dumps more than 500 pounds or more than 100 cubic feet of raw human waste, or who dumps any quantity of such waste for commercial purposes, is guilty of a felony of the third degree, punishable as provided in paragraph (c).

(7) ENFORCEMENT BY CERTAIN COUNTY OR MUNICIPAL EMPLOYEES.—Employees of counties or municipalities whose duty it is to ensure code compliance or to enforce codes and ordinances may be designated by the governing body of the county or the municipality to enforce the provisions of this section. Designation of such employees shall not provide the employees with the authority to bear arms or to make arrests.

(8) ENFORCEMENT OF OTHER REGULATIONS.—This section does not limit the authority of any state or local agency to enforce other laws, rules, or ordinances relating to litter or solid waste management.

CHAPTER 406
MEDICAL EXAMINERS; DISPOSITION OF HUMAN REMAINS

406.11. Examinations, investigations, and autopsies.

(1) In any of the following circumstances involving the death of a human being, the medical examiner of the district in which the death occurred or the body was found shall determine the cause of death and shall, for that purpose, make or have performed such examinations, investigations, and autopsies as he or she shall deem necessary or as shall be requested by the state attorney:

(a) When any person dies in the state:

1. Of criminal violence.

2. By accident.

3. By suicide.

4. Suddenly, when in apparent good health.

5. Unattended by a practicing physician or other recognized practitioner.

6. In any prison or penal institution.

7. In police custody.

8. In any suspicious or unusual circumstance.

9. By criminal abortion.

10. By poison.

11. By disease constituting a threat to public health.

12. By disease, injury, or toxic agent resulting from employment.

(b) When a dead body is brought into the state without proper medical certification.

(c) When a body is to be cremated, dissected, or buried at sea.

(2) (a) The district medical examiner shall have the authority in any case coming under subsection (1) to perform, or have performed, whatever autopsies or laboratory examinations he or she deems necessary and in the public interest to determine the identification of or cause or manner of death of the deceased or to obtain evidence necessary for forensic examination.

[Remainder intentionally omitted.]

406.12. Duty to report; prohibited acts.

It is the duty of any person in the district where a death occurs, including all municipalities and unincorporated and federal areas, who becomes aware of the death of any person occurring under the circumstances described in § 406.11 to report such death and circumstances forthwith to the district medical examiner. Any person who knowingly fails or refuses to report such death and circumstances, who refuses to make available prior medical or other information pertinent to the death investigation, or who, without an order from the office of the district medical examiner, willfully touches, removes, or disturbs the body, clothing, or any article upon or near the body, with the intent to alter the evidence or circumstances surrounding the death, shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 415
ADULT PROTECTIVE SERVICES

415.102. Definitions of terms used in §§ 415.101-415.113.

As used in §§ 415.101-415.113, the term:

(1) "Abuse" means any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health. Abuse includes acts and omissions.

(2) "Activities of daily living" means functions and tasks for self-care, including ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.

(3) "Alleged perpetrator" means a person who has been named by a reporter as the person responsible for abusing, neglecting, or exploiting a vulnerable adult.

(4) "Capacity to consent" means that a vulnerable adult has sufficient understanding to make and communicate responsible decisions regarding the vulnerable adult's person or property, including whether or not to accept protective services offered by the department.

(5) "Caregiver" means a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person's guardian that a caregiver role exists. "Caregiver" includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of facilities as defined in subsection (9). For the purpose of departmental investigative jurisdiction, the term "caregiver" does not include law enforcement officers or employees of municipal or county detention facilities or the Department of Corrections while acting in an official capacity.

(6) "Deception" means a misrepresentation or concealment of a material fact relating to services rendered, disposition of property, or the use of property intended to benefit a vulnerable adult.

(7) "Department" means the Department of Children and Family Services.

(8) (a) "Exploitation" means a person who:

1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or

2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds,

assets, or property for the benefit of someone other than the vulnerable adult.

(b) "Exploitation" may include, but is not limited to:

1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;

2. Unauthorized taking of personal assets;

3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or

4. Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

(9) "Facility" means any location providing day or residential care or treatment for vulnerable adults. The term "facility" may include, but is not limited to, any hospital, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, residential facility licensed under chapter 393, adult day training center, or mental health treatment center.

(10) "False report" means a report of abuse, neglect, or exploitation of a vulnerable adult to the central abuse hotline which is not true and is maliciously made for the purpose of:

(a) Harassing, embarrassing, or harming another person;

(b) Personal financial gain for the reporting person;

(c) Acquiring custody of a vulnerable adult; or

(d) Personal benefit for the reporting person in any other private dispute involving a vulnerable adult.

The term "false report" does not include a report of abuse, neglect, or exploitation of a vulnerable adult which is made in good faith to the central abuse hotline.

(11) "Fiduciary relationship" means a relationship based upon the trust and confidence of the vulnerable adult in the caregiver, relative, household member, or other person entrusted with the use or management of the property or assets of the vulnerable adult. The relationship exists where there is a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the vulnerable adult. For the purposes of this part, a fiduciary relationship may be formed by an informal agreement between the vulnerable adult and the other person and does not require a formal declaration or court order for its existence. A fiduciary relationship includes, but is not limited to, court-appointed or voluntary guardians, trustees, attorneys, or conservators of a vulnerable adult's assets or property.

(12) "Guardian" means a person who has been appointed by a court to act on behalf of a person; a preneed guardian, as provided in chapter 744; or a health care surrogate expressly designated as provided in chapter 765.

(13) "In-home services" means the provision of nursing, personal care, supervision, or other services to vulnerable adults in their own homes.

(14) "Intimidation" means the communication by word or act to a vulnerable adult that that person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.

(15) "Lacks capacity to consent" means a mental impairment that causes a vulnerable adult to lack sufficient understanding or capacity to make or communicate responsible decisions concerning person or property, including whether or not to accept protective services.

(16) "Neglect" means the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. The term "neglect" also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. "Neglect" is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.

(17) "Obtains or uses" means any manner of:

(a) Taking or exercising control over property;

(b) Making any use, disposition, or transfer of property;

(c) Obtaining property by fraud, willful misrepresentation of a future act, or false promise; or

(d) 1. Conduct otherwise known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation;

conversion; or obtaining money or property by false pretenses, fraud, or deception; or

2. Other conduct similar in nature.

(18) "Position of trust and confidence" with respect to a vulnerable adult means the position of a person who:

(a) Is a parent, spouse, adult child, or other relative by blood or marriage;

(b) Is a joint tenant or tenant in common;

(c) Has a legal or fiduciary relationship, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator; or

(d) Is a caregiver or any other person who has been entrusted with or has assumed responsibility for the use or management of the vulnerable adult's funds, assets, or property.

(19) "Protective investigation" means acceptance of a report from the central abuse hotline alleging abuse, neglect, or exploitation as defined in this section; investigation of the report; determination as to whether action by the court is warranted; and referral of the vulnerable adult to another public or private agency when appropriate.

(20) "Protective investigator" means an authorized agent of the department who receives and investigates reports of abuse, neglect, or exploitation of vulnerable adults.

(21) "Protective services" means services to protect a vulnerable adult from further occurrences of abuse, neglect, or exploitation. Such services may include, but are not limited to, protective supervision, placement, and in-home and community-based services.

(22) "Protective supervision" means those services arranged for or implemented by the department to protect vulnerable adults from further occurrences of abuse, neglect, or exploitation.

(23) "Psychological injury" means an injury to the intellectual functioning or emotional state of a vulnerable adult as evidenced by an observable or measurable reduction in the vulnerable adult's ability to function within that person's customary range of performance and that person's behavior.

(24) "Records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, videotapes, or other material, regardless of physical form or characteristics, made or received pursuant to a protective investigation.

(25) "Sexual abuse" means acts of a sexual nature committed in the presence of a vulnerable adult without that person's informed consent. "Sexual abuse" includes, but is not limited to, the acts defined in § 794.011(1)(h), fondling, exposure of a vulnerable adult's sexual organs, or the use of a vulnerable adult to solicit for or engage in prostitution or sexual performance. "Sexual abuse" does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal caregiving action or appropriate display of affection.

(26) "Victim" means any vulnerable adult named in a report of abuse, neglect, or exploitation.

(27) "Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

(28) "Vulnerable adult in need of services" means a vulnerable adult who has been determined by a protective investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm.

415.103. Central abuse hotline.

(1) The department shall establish and maintain a central abuse hotline that receives all reports made pursuant to § 415.1034 in writing or through a single statewide toll-free telephone number. Any person may use the statewide toll-free telephone number to report known or suspected abuse, neglect, or exploitation of a vulnerable adult at any hour of the day or night, any day of the week. The central abuse hotline must be operated in such a manner as to enable the department to:

(a) Accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited.

(b) Determine whether the allegations made by the reporter require an immediate, 24-hour, or next-working-day response priority.

(c) When appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter's concerns.

(d) Immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline.

(e) Track critical steps in the investigative process to ensure compliance with all requirements for all reports.

(f) Maintain data to facilitate the production of aggregate statistical reports for moni-

toring patterns of abuse, neglect, or exploitation.

(g) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for vulnerable adults who have been subject to abuse, neglect, or exploitation.

(2) Upon receiving an oral or written report of known or suspected abuse, neglect, or exploitation of a vulnerable adult, the central abuse hotline must determine if the report requires an immediate onsite protective investigation. For reports requiring an immediate onsite protective investigation, the central abuse hotline must immediately notify the department's designated protective investigative district staff responsible for protective investigations to ensure prompt initiation of an onsite investigation. For reports not requiring an immediate onsite protective investigation, the central abuse hotline must notify the department's designated protective investigative district staff responsible for protective investigations in sufficient time to allow for an investigation to be commenced within 24 hours. At the time of notification of district staff with respect to the report, the central abuse hotline must also provide any known information on any previous report concerning a subject of the present report or any pertinent information relative to the present report or any noted earlier reports. If the report is of known or suspected abuse of a vulnerable adult by someone other than a relative, caregiver, or household member, the report shall be immediately transferred to the appropriate county sheriff's office.

(3) The department shall set standards, priorities, and policies to maximize the efficiency and effectiveness of the central abuse hotline.

415.104. Protective investigations of cases of abuse, neglect, or exploitation of vulnerable adults; transmittal of records to state attorney.

(1) The department shall, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, begin within 24 hours a protective investigation of the facts alleged therein. If a caregiver refuses to allow the department to begin a protective investigation or interferes with the conduct of such an investigation, the appropriate law enforcement agency shall be contacted for assistance. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement agency and state attorney shall be orally notified. The department and the law enforcement agency shall cooperate to allow the criminal investigation to proceed concurrently with, and not be hindered by, the protective investigation. The department shall make a preliminary written report to the law enforcement agencies within 5 working days after the oral report. The department shall, within 24 hours after receipt of the report, notify the appropriate Florida local advocacy council, or long-term care ombudsman council, when appropriate, that an alleged abuse, neglect, or exploitation perpetrated by a second party has occurred. Notice to the Florida local advocacy council or long-term care ombudsman council may be accomplished orally or in writing and shall include the name and location of the vulnerable adult alleged to have been abused, neglected, or exploited and the nature of the report.

(2) Upon commencing an investigation, the protective investigator shall inform all of the vulnerable adults and alleged perpetrators named in the report of the following:

(a) The names of the investigators and identifying credentials from the department.

(b) The purpose of the investigation.

(c) That the victim, the victim's guardian, the victim's caregiver, and the alleged perpetrator, and legal counsel for any of those persons, have a right to a copy of the report at the conclusion of the investigation.

(d) The name and telephone number of the protective investigator's supervisor available to answer questions.

(e) That each person has the right to obtain his or her own attorney.

Any person being interviewed by a protective investigator may be represented by an attorney, at the person's own expense, or may choose to have another person present. The other person present may not be an alleged perpetrator in any report currently under investigation. Before participating in such interview, the other person present shall execute an agreement to comply with the confidentiality requirements of §§ 415.101-415.113. The absence of an attorney or other person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons. In an investigative interview with a vulnerable adult, the protective investigator may conduct the interview with no other person present.

(3) For each report it receives, the department shall perform an onsite investigation to:

(a) Determine that the person is a vulnerable adult as defined in § 415.102.

(b) Determine whether the person is a vulnerable adult in need of services, as defined in § 415.102.

(c) Determine the composition of the family or household, including the name, address, date of birth, social security number, sex, and race of each person in the household.

(d) Determine whether there is an indication that a vulnerable adult is abused, neglected, or exploited.

(e) Determine the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof.

(f) Determine, if possible, the person or persons apparently responsible for the abuse, neglect, or exploitation, including name, address, date of birth, social security number, sex, and race.

(g) Determine the immediate and long-term risk to each vulnerable adult through utilization of standardized risk assessment instruments.

(h) Determine the protective, treatment, and ameliorative services necessary to safeguard and ensure the vulnerable adult's well-being and cause the delivery of those services.

(4) No later than 60 days after receiving the initial report, the designated protective investigative staff of the department shall complete the investigation and notify the guardian of the vulnerable adult, the vulnerable adult, and the caregiver of any recommendations of services to be provided to ameliorate the causes or effects of abuse, neglect, or exploitation.

(5) Whenever the law enforcement agency and the department have conducted independent investigations, the law enforcement agency shall, within 5 working days after concluding its investigation, report its findings to the state attorney and to the department.

(6) Upon receipt of a report which alleges that an employee or agent of the department acting in an official capacity has committed an act of abuse, neglect, or exploitation, the department shall commence, or cause to be commenced, a protective investigation and shall notify the state attorney in whose circuit the alleged abuse, neglect, or exploitation occurred.

(7) With respect to any case of reported abuse, neglect, or exploitation of a vulnerable adult, the department, when appropriate, shall transmit all relevant reports to the state attorney of the circuit where the incident occurred.

(8) Within 15 days after completion of the state attorney's investigation of a case reported to him or her pursuant to this section, the state attorney shall report his or her findings to the department and shall include a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

(9) The department shall not use a warning, reprimand, or disciplinary action against an employee, found in that employee's personnel records, as the sole basis for a finding of abuse, neglect, or exploitation.

415.1051. Protective services interventions when capacity to consent is lacking; nonemergencies; emergencies; orders; limitations.

(1) [Intentionally omitted.]

(2) EMERGENCY PROTECTIVE SERVICES INTERVENTION.—If the department has reasonable cause to believe that a vulnerable adult is suffering from abuse or neglect that presents a risk of death or serious physical injury to the vulnerable adult and that the vulnerable adult lacks the capacity to consent to emergency protective services, the department may take action under this subsection. If the vulnerable adult has the capacity to consent and refuses consent to emergency protective services, emergency protective services may not be provided.

(a) Emergency entry of premises.—If, upon arrival at the scene of the incident, consent is not obtained for access to the alleged victim for purposes of conducting a protective investigation under this subsection and the department has reason to believe that the situation presents a risk of death or serious physical injury, a representative of the department and a law enforcement officer may forcibly enter the premises. If, after obtaining access to the alleged victim, it is determined through a personal assessment of the situation that no emergency exists and there is no basis for emergency protective services intervention under this subsection, the department shall terminate the emergency entry.

(b) Emergency removal from premises.—If it appears that the vulnerable adult lacks the capacity to consent to emergency protective services and that the vulnerable adult, from the personal observations of the representative of the department and specified medical personnel or law enforcement officers, is likely to incur a risk of death or serious physical injury if such person is not im-

mediately removed from the premises, then the representative of the department shall transport or arrange for the transportation of the vulnerable adult to an appropriate medical or protective services facility in order to provide emergency protective services. Law enforcement personnel have a duty to transport when medical transportation is not available or needed and the vulnerable adult presents a threat of injury to self or others. If the vulnerable adult's caregiver or guardian is present, the protective investigator must seek the caregiver's or guardian's consent pursuant to subsection (4) before the vulnerable adult may be removed from the premises, unless the protective investigator suspects that the vulnerable adult's caregiver or guardian has caused the abuse, neglect, or exploitation. The department shall, within 24 hours after providing or arranging for emergency removal of the vulnerable adult, excluding Saturdays, Sundays, and legal holidays, petition the court for an order authorizing emergency protective services.

(c) Emergency medical treatment.—If, upon admission to a medical facility, it is the opinion of the medical staff that immediate medical treatment is necessary to prevent serious physical injury or death, and that such treatment does not violate a known health care advance directive prepared by the vulnerable adult, the medical facility may proceed with treatment to the vulnerable adult. If a person with legal authority to give consent for the provision of medical treatment to a vulnerable adult has not given or has refused to give such consent, examination and treatment must be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the emergency medical condition or to stabilize the patient pending court determination of the department's petition authorizing emergency protective services. Any person may seek an expedited judicial intervention under rule 5.900 of the Florida Probate Rules concerning medical treatment procedures.

(d) Emergency protective services petition.—A petition filed under this subsection must state the name, age, and address of the vulnerable adult and allege the facts constituting the emergency protective services intervention and subsequent removal of the vulnerable adult or provision of in-home services, the facts relating to the capacity of the vulnerable adult to consent to services, the efforts of the department to obtain consent, and the services needed or delivered.

(e) Notice.—Notice of the filing of the emergency protective services petition and a copy of the petition must be given to the vulnerable adult, to that person's spouse, to that person's guardian, if any, to legal counsel representing the vulnerable adult, and, when known, to adult children or next of kin of the vulnerable adult. Such notice must be given at least 24 hours before any hearing on the petition for emergency protective services.

(f) Hearing.—When emergency removal has occurred under this subsection, a hearing must be held within 4 days after the filing of the emergency protective services petition, excluding Saturday, Sunday, and legal holidays, to establish reasonable cause for grounds to continue emergency protective services.

1. The court shall determine, by clear and convincing evidence, whether an emergency existed which justified the emergency protective services intervention, whether the vulnerable adult is in need of emergency protective services, whether the vulnerable adult lacks the capacity to consent to emergency protective services, and whether:

a. Emergency protective services will continue with the consent of the vulnerable adult;

b. Emergency protective services will continue without the consent of the vulnerable adult; or

c. Emergency protective services will be discontinued.

2. The vulnerable adult has the right to be represented by legal counsel at the hearing. The court shall appoint legal counsel to represent a vulnerable adult who is without legal representation.

3. The department must make reasonable efforts to ensure the presence of the vulnerable adult at the hearing.

4. If an order to continue emergency protective services is issued, it must state the services to be provided and designate an individual or agency to be responsible for performing or obtaining the essential services, or otherwise consenting to protective services on behalf of the vulnerable adult.

(g) Continued emergency protective services.—

1. Not more than 60 days after the date of the order authorizing the provision of emergency protective services, the department shall petition the court to determine whether:

a. Emergency protective services will be continued with the consent of the vulnerable adult;

b. Emergency protective services will be continued for the vulnerable adult who lacks capacity;

c. Emergency protective services will be discontinued; or

d. A petition should be filed under chapter 744.

2. If it is decided to file a petition under chapter 744, for good cause shown, the court may order continued emergency protective services until a determination is made by the court.

3. If the department has a good faith belief that the vulnerable adult lacks the capacity to consent to protective services, the petition to determine incapacity under § 744.3201 may be filed by the department. Once the petition is filed, the department may not be appointed guardian and may not provide legal counsel for the guardian.

(h) Costs.—The costs of services ordered under this section must be paid by the perpetrator if the perpetrator is financially able to do so, or by third-party reimbursement, if available.

(3) PROTECTIVE SERVICES ORDER.—In ordering any protective services under this section, the court shall adhere to the following limitations:

(a) Only such protective services as are necessary to ameliorate the conditions creating the abuse, neglect, or exploitation may be ordered, and the court shall specifically designate the approved services in the order of the court.

(b) Protective services ordered may not include a change of residence, unless the court specifically finds such action is necessary to ameliorate the conditions creating the abuse, neglect, or exploitation and the court gives specific approval for such action in the order. Placement may be made to such facilities as adult family-care homes, assisted living facilities, or nursing homes, or to other appropriate facilities. Placement may not be made to facilities for the acutely mentally ill, except as provided in chapter 394.

(c) If an order to continue emergency protective services is issued, it must include the designation of an individual or agency to be responsible for performing or obtaining the essential services on behalf of the vulnerable adult or otherwise consenting to protective services on behalf of the vulnerable adult.

(4) PROTECTIVE SERVICES INTERVENTIONS WITH CAREGIVER OR GUARDIAN PRESENT.—

(a) When a vulnerable adult who lacks the capacity to consent has been identified as the victim, the protective investigator must first request consent from the caregiver or guardian, if present, before providing protective services or protective supervision, unless the protective investigator suspects that the caregiver or guardian has caused the abuse, neglect, or exploitation.

(b) If the caregiver or guardian agrees to engage or provide services designed to prevent further abuse, neglect, or exploitation, the department may provide protective supervision.

(c) If the caregiver or guardian refuses to give consent or later withdraws consent to agreed-upon services, or otherwise fails to provide needed care and supervision, the department may provide emergency protective services as provided in subsection (2). If emergency protective services are so provided, the department must then petition the court for an order to provide emergency protective services under subsection (3).

(5) INTERFERENCE WITH COURT-ORDERED PROTECTIVE SERVICES.—When a court order exists authorizing protective services for a vulnerable adult who lacks capacity to consent and any person interferes with the provision of such court-ordered protective services, the appropriate law enforcement agency shall enforce the order of the court.

(6) LIMITATIONS.—This section does not limit in any way the authority of the court or a criminal justice officer, or any other duly appointed official, to intervene in emergency circumstances under existing statutes. This section does not limit the authority of any person to file a petition for guardianship under chapter 744.

415.107. Confidentiality of reports and records.

(1) In order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable adult, all records concerning reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline, and all records generated as a result of such reports shall be confidential and exempt from § 119.07(1) and may not be disclosed except as specifically authorized by §§ 415.101-415.113.

(2) Upon the request of the committee chairperson, access to all records shall be

granted to staff of the legislative committees with jurisdiction over issues and services related to vulnerable adults, or over the department. All confidentiality provisions that apply to the Department of Children and Family Services continue to apply to the records made available to legislative staff under this subsection.

(3) Access to all records, excluding the name of the reporter which shall be released only as provided in subsection (6), shall be granted only to the following persons, officials, and agencies:

(a) Employees or agents of the department, the Agency for Persons with Disabilities, the Agency for Health Care Administration, or the Department of Elderly Affairs who are responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of nursing homes, assisted living facilities, adult day care centers, adult family-care homes, home care for the elderly, hospices, residential facilities licensed under chapter 393, or other facilities used for the placement of vulnerable adults.

(b) A criminal justice agency investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable adult.

(c) The state attorney of the judicial circuit in which the vulnerable adult resides or in which the alleged abuse, neglect, or exploitation occurred.

(d) Any victim, the victim's guardian, caregiver, or legal counsel, and any person who the department has determined might be abusing, neglecting, or exploiting the victim.

(e) A court, by subpoena, upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access must be limited to inspection in camera, unless the court determines that public disclosure of the information contained in such records is necessary for the resolution of an issue then pending before it.

(f) A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.

(g) Any appropriate official of the Florida advocacy council or long-term care ombudsman council investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable adult.

(h) Any appropriate official of the department, the Agency for Persons with Disabilities, the Agency for Health Care Administration, or the Department of Elderly Affairs who is responsible for:

1. Administration or supervision of the programs for the prevention, investigation, or treatment of abuse, neglect, or exploitation of vulnerable adults when carrying out an official function; or

2. Taking appropriate administrative action concerning an employee alleged to have perpetrated abuse, neglect, or exploitation of a vulnerable adult in an institution.

(i) Any person engaged in bona fide research or auditing. However, information identifying the subjects of the report must not be made available to the researcher.

(j) Employees or agents of an agency of another state that has jurisdiction comparable to the jurisdiction described in paragraph (a).

(k) The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed pursuant to § 447.207. Records may be released only after deletion of all information that specifically identifies persons other than the employee.

(l) Any person in the event of the death of a vulnerable adult determined to be a result of abuse, neglect, or exploitation. Information identifying the person reporting abuse, neglect, or exploitation shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

(4) The Department of Health, the Department of Business and Professional Regulation, and the Agency for Health Care Administration may have access to a report, excluding the name of the reporter, when considering disciplinary action against a licensee or certified nursing assistant pursuant to allegations of abuse, neglect, or exploitation.

(5) The department may release to any professional person such information as is necessary for the diagnosis and treatment of, and service delivery to, a vulnerable adult or the person perpetrating the abuse, neglect, or exploitation.

(6) The identity of any person reporting abuse, neglect, or exploitation of a vulnerable adult may not be released, without that person's written consent, to any person other than employees of the department responsible for protective services, the central abuse hotline, or the appropriate state attorney or law enforcement agency. This subsection grants protection only for the person who reported the abuse, neglect, or exploitation and protects only the fact that the person is the reporter. This subsection does not pro-

hibit the subpoena of a person reporting the abuse, neglect, or exploitation when deemed necessary by the state attorney or the department to protect a vulnerable adult who is the subject of a report, if the fact that the person made the report is not disclosed.

(7) For the purposes of this section, the term "access" means a visual inspection or copy of the hard-copy record maintained in the district.

(8) Information in the central abuse hotline may not be used for employment screening.

415.111. Criminal penalties.

(1) A person who knowingly and willfully fails to report a case of known or suspected abuse, neglect, or exploitation of a vulnerable adult, or who knowingly and willfully prevents another person from doing so, commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline, or in other computer systems, or in the records of any case of abuse, neglect, or exploitation of a vulnerable adult, except as provided in §§ 415.101-415.113, commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(3) A person who has custody of records and documents the confidentiality of which is abrogated under § 415.1045(3) and who refuses to grant access to such records commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(4) If the department or its authorized agent has determined after its investigation that a report is false, the department shall, with the consent of the alleged perpetrator, refer the reports to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in § 415.102. During the pendency of the investigation by the local law enforcement agency, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning the same vulnerable adult in accordance with § 415.104 or § 415.1045. If the law enforcement agency believes that there are indicators of abuse, neglect, or exploitation, it must immediately notify the department, which must assure the safety of the vulnerable adult. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.

(5) A person who knowingly and willfully makes a false report of abuse, neglect, or exploitation of a vulnerable adult, or a person who advises another to make a false report, commits a felony of the third degree, punishable as provided in § 775.082 or § 775.083.

(a) The department shall establish procedures for determining whether a false report of abuse, neglect, or exploitation of a vulnerable adult has been made and for submitting all identifying information relating to such a false report to the local law enforcement agency as provided in this subsection and shall report annually to the Legislature the number of reports referred.

(b) Anyone making a report who is acting in good faith is immune from any liability under this subsection.

CHAPTER 493
PRIVATE INVESTIGATIVE, PRIVATE SECURITY, AND REPOSSESSION SERVICES

493.6120. Violations; penalty.

(1) (a) Except as provided in paragraph (b), a person who engages in any activity for which this chapter requires a license and who does not hold the required license commits:

1. For a first violation, a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

2. For a second or subsequent violation, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, and the department may seek the imposition of a civil penalty not to exceed $10,000.

(b) Paragraph (a) does not apply if the person engages in unlicensed activity within 90 days after the date of the expiration of his or her license.

(2) (a) A person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under this chapter, knowingly and intentionally forces another person to assist the impersonator in an activity within the scope of duty of a professional licensed under this chapter commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) A person who violates paragraph (a) during the course of committing a felony commits a felony of the second degree, pun-

ishable as provided in § 775.082, § 775.083, or § 775.084.

(c) A person who violates paragraph (a) during the course of committing a felony resulting in death or serious bodily injury to another human being commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Except as otherwise provided in this chapter, a person who violates any provision of this chapter except subsection (7) commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(4) A person who is convicted of any violation of this chapter is not eligible for licensure for a period of 5 years.

(5) A person who violates or disregards a cease and desist order issued by the department commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. In addition, the department may seek the imposition of a civil penalty not to exceed $5,000.

(6) A person who was an owner, officer, partner, or manager of a licensed agency or a Class "DS" or "RS" school or training facility at the time of any activity that is the basis for revocation of the agency or branch office license or the school or training facility license and who knew or should have known of the activity shall have his or her personal licenses or approval suspended for 3 years and may not have any financial interest in or be employed in any capacity by a licensed agency or a school or training facility during the period of suspension.

(7) A person may not knowingly possess, issue, cause to be issued, sell, submit, or offer a fraudulent training certificate, proficiency form, or other official document that declares an applicant to have successfully completed any course of training required for licensure under this chapter when that person either knew or reasonably should have known that the certificate, form, or document was fraudulent. A person who violates this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

CHAPTER 499
DRUG, COSMETIC, AND HOUSEHOLD PRODUCTS

499.61. Definitions.

As used in this part:

(1) "Dealer" means any person, firm, corporation, or other entity selling, brokering, or transferring ether to anyone other than a licensed ether manufacturer, distributor, or dealer.

(2) "Department" means the Department of Business and Professional Regulation.

(3) "Distributor" means any person, firm, corporation, or other entity distributing, selling, marketing, transferring, or otherwise supplying ether to retailers, dealers, or any other entity in the primary channel of trade, but does not include retailers.

(4) "Ether" means diethyl ether in any form.

(5) "Manufacturer" means any person, firm, corporation, or other entity preparing, deriving, producing, synthesizing, or otherwise making ether in any form or repacking, relabeling, or manipulating ether.

(6) "Purchaser" means any person, firm, corporation, or other entity who purchases ether in quantities of 2.5 gallons, or equivalent by weight, or more for any purpose whatsoever, but does not include a dealer, distributor, or manufacturer.

499.62. License or permit required of manufacturer, distributor, dealer, or purchaser of ether.

(1) It shall be unlawful for any person to engage in the business of manufacturing, distributing, or dealing in ether in this state, except when done in conformity with the provisions of this part. No person shall be required to obtain more than one license under this part to handle ether, but each person shall pay the highest fee applicable to her or his operation in each location.

(2) Any person who manufactures, distributes, or deals in ether in this state must possess a current valid license issued by the department, except that a manufacturer, distributor, or dealer who also purchases ether in this state shall not be required to obtain an additional permit as a purchaser of ether.

(3) Any person who manufactures, distributes, or deals in ether at or from more than one location must possess a current valid license for each location.

(4) Any person who purchases ether in this state must possess a current valid permit issued by the department, except that no permit shall be required of any person who purchases ether in quantities of less than 2.5 gallons, or equivalent by weight.

(5) Annual fees for licenses and permits shall be specified by rule of the department, but shall not exceed the following amounts:

(a) Manufacturer's license$700

(b) Distributor's license$700

(c) Dealer's license$350

(d) Purchaser's permit$150

(6) Licenses and permits issued by the department shall be valid beginning on October 1 of the year for which they are issued and shall expire on the following September 30.

(7) A licensed or permitted facility shall renew its license or permit prior to its expiration date. If a renewal application and fee are not filed by the expiration date of any year, the permit may be reinstated only upon payment of a delinquent fee of $50, plus the required renewal fee, within 30 days after the date of expiration. If any person who is subject to the requirements of this part fails to comply with the renewal, the department shall have the authority to seize all ether products and dispose of them as of November 1 of the year the license or permit expires. Any funds collected from the disposal shall be placed in the Professional Regulation Trust Fund.

499.64. Issuance of licenses and permits; prohibitions.

(1) Each license and permit issued by the department shall set forth, as a minimum, the full name, date of birth, and physical description of the licensee or permittee and shall have permanently affixed an accurate and current photograph of the licensee or permittee. A license or permit issued to a corporation shall set forth the full name, date of birth, and physical description of the chief executive officer and/or resident agent residing in this state and shall have permanently affixed an accurate and current photograph of the chief executive officer and/or resident agent residing in this state. Each license and permit shall also contain a license or permit number.

(2) The department may, in its discretion, include other data or information in the license or permit when deemed appropriate.

(3) No license or permit shall be issued, renewed, or allowed to remain in effect for any natural person, or for any corporation which has any corporate officer:

(a) Under 18 years of age.

(b) Who has been convicted of a felony under the prescription drug or controlled substance laws of this state or any other state or federal jurisdiction, regardless of whether he or she has been pardoned or had his or her civil rights restored.

(c) Who has been convicted of any felony other than a felony under the prescription drug or controlled substance laws of this state or any other state or federal jurisdiction and has not been pardoned or had his or her civil rights restored.

(d) Who has been adjudicated mentally incompetent and has not had his or her civil rights restored.

(4) It is unlawful for any person to knowingly withhold information or present to the department any false, fictitious, or misrepresented application, identification, document, information, or data intended or likely to deceive the department for the purpose of obtaining a license or permit.

499.65. Possession of ether without license or permit prohibited; confiscation and disposal; exceptions.

(1) It is unlawful for any person to possess 2.5 gallons, or equivalent by weight, or more of ether unless she or he is the holder of a current valid license or permit as provided by this part.

(2) Whenever the department has reason to believe that any person is or has been violating the provisions of this part or any rules adopted pursuant thereto, the department may, without further process of law, confiscate and dispose of the ether in question. The department is authorized to seize and dispose of any abandoned ether.

(3) The department is authorized to enter into contracts with private business entities for the purpose of confiscation and disposal of ether as authorized in subsection (2).

(4) The provisions of subsection (1) shall not apply to:

(a) Any common carrier transporting ether into this state or within the boundaries of this state by air, highway, railroad, or water;

(b) Any contract or private carrier transporting ether on highways into this state or within the boundaries of this state by motor vehicle when such contract or private carrier is engaged in such transport pursuant to certificate or permit, by whatever name, issued to them by any federal or state officer, agency, bureau, commission, or department;

(c) Pharmacists, for use in the usual course of their professional practice or in the performance of their official duties;

(d) Medical practitioners, for use in the usual course of their professional practice or in the performance of their official duties;

(e) Persons who procure ether for disposition by or under the supervision of pharmacists or medical practitioners employed by them or for the purpose of lawful research, teaching, or testing, and not for resale;

(f) Hospitals and other institutions which procure ether for lawful administration by practitioners;

(g) Officers or employees of federal, state, or local governments carrying out their official duties; and

(h) Law enforcement agencies of this state or any of its political subdivisions, and the employees thereof, so long as said agencies and employees are acting within the scope of their respective official capacities and in the performance of their duties.

(5) The department may adopt rules regarding persons engaged in lawful teaching, research, or testing who possess ether and may issue letters of exemption to facilitate the lawful possession of ether under this section.

499.66. Maintenance of records and sales of ether by manufacturers, distributors, and dealers; inspections.

(1) It is unlawful for any manufacturer, distributor, or dealer to sell, distribute, or otherwise transfer ether to any person except a person presenting a current valid license or permit as provided by this part.

(2) Each sale or transfer of ether shall be evidenced by an invoice, receipt, sales ticket, or sales slip which shall bear the name, address, and license or permit number of the manufacturer, distributor, or dealer and the purchaser or transferee, the date of sale or transfer, and the quantity sold or transferred. All original invoices, receipts, sales tickets, and sales slips shall be retained by the manufacturer, distributor, or dealer, and a copy thereof provided to the purchaser or transferee.

(3) Each manufacturer, distributor, and dealer shall keep an accurate and current written account of all inventories, sales, and transfers of ether. Such records shall be maintained by the manufacturer, distributor, or dealer for a period of 5 years.

(4) Records and inventories as required by subsections (2) and (3) shall be made immediately accessible to, and subject to examination and copying by, the department and any law enforcement officer of this state without any requirement of probable cause or search warrant.

(5) It is unlawful for any person to knowingly withhold information or to make any false or fictitious entry or misrepresentation upon any invoice, receipt, sales ticket, or sales slip for the sale, distribution, or transfer of ether or upon any account of inventories of ether.

499.67. Maintenance of records by purchasers; inspections.

(1) It is unlawful for any person to purchase, receive, store, or use ether without maintaining an accurate and current written inventory of all ether purchased, received, stored, and used.

(2) Such records shall include, but not be limited to, invoices, receipts, sales tickets, and sales slips; locations, quantities, and dates of use; the names of any persons using the ether; and the names and license or permit numbers of all persons making such records. Such records shall be maintained by permittees for a period of 5 years.

(3) Such records shall be made accessible to, and subject to examination and copying by, the department and any law enforcement officer of this state without any requirement of probable cause or search warrant.

(4) It is unlawful for any person to knowingly withhold information or make any false or fictitious entry or misrepresentation upon any such records for the purchase, receipt, storage, or use of ether.

(5) It is unlawful for any person to refuse entry or inspection by the department of factories, warehouses, or establishments in which ether is manufactured, processed, repackaged, or held; to refuse entry by the department into any vehicle being used to transport ether; or to refuse the taking of samples by the department.

499.68. Reports of thefts, illegal use, or illegal possession.

(1) Any sheriff, police department, or law enforcement officer of this state shall give immediate notice to the department of any theft, illegal use, or illegal possession of ether involving any person and shall forward a copy of his or her final written report to the department.

(2) Any licensee or permittee who incurs a loss, an unexplained shortage, or a theft of ether, or who has knowledge of a loss, an unexplained shortage, or a theft of ether, shall, within 12 hours after the discovery thereof, report such loss, theft, or unexplained shortage to the county sheriff or police chief of the jurisdiction in which the loss, theft, or unexplained shortage occurred. Such loss, theft, or unexplained shortage must also be reported to the department by the close of the next business day following the discovery thereof.

(3) Any law enforcement agency which investigates the causes and circumstances of any loss, theft, or unexplained shortage of ether shall forward a copy of its final written report to the department. The department

shall retain all such reports in the respective files of the affected licensees and permittees.

499.69. Possession in or near residential housing prohibited; legal entitlement to possession of premises not a defense.

(1) Notwithstanding the possession of a current valid license or permit as provided in this part, it is unlawful for any person to possess 2.5 gallons, or equivalent by weight, or more of ether in, or within 500 feet of, any residential housing structure.

(2) A defendant's legal entitlement to possession of the property where the violation occurred shall not be a defense to a prosecution for a violation of subsection (1).

499.75. Penalties.

(1) Any person who knowingly manufactures, distributes, or deals in ether without possessing a valid current license as required by § 499.62(2) is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) Any person who knowingly purchases 2.5 gallons, or equivalent by weight, or more of ether without possessing a valid current permit as required by § 499.62(4) is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Any person who knowingly withholds information or presents to the department any false, fictitious, or misrepresented application, identification, document, information, statement, or data intended or likely to deceive the department for the purpose of obtaining a license or permit as prohibited by § 499.64(4) is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(4) Any person who knowingly possesses 2.5 gallons, or equivalent by weight, or more of ether and is not the holder of a valid current license or permit as prohibited by § 499.65(1) is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) Any person who knowingly sells or otherwise transfers 2.5 gallons, or equivalent by weight, or more of ether to any person who is not the holder of a valid current license or permit as prohibited by § 499.66(1) is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(6) Any person who knowingly withholds information or makes any false or fictitious entry or misrepresentation upon any invoice, receipt, sales ticket, sales slip, or account of inventories as prohibited by § 499.66(5) is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(7) Any licensee who knowingly fails to maintain written accounts of inventories or records of sales or transfers as required by § 499.66(3) is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(8) Any permittee who knowingly fails to maintain written inventories and records as required by § 499.67 is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(9) Any licensee or permittee who fails to report the loss, unexplained shortage, or theft of ether as required by § 499.68(2) is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(10) Any person who knowingly possesses 2.5 gallons, or equivalent by weight, or more of ether in, or within 500 feet of, any residential housing structure as prohibited by § 499.69(1) is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

499.77. Exceptions.

Nothing contained in this part shall apply to the regular military and naval forces of the United States, or to the duly organized military forces of any state or territory thereof, provided that they are acting within their respective official capacities and in the performance of their duties.

499.78. County and municipal ordinances.

Nothing contained in this part shall affect any existing ordinance, rule, or regulation pertaining to ether in any county or municipality in this state, which ordinance, rule, or regulation is more restrictive than the provisions of this part and the rules adopted pursuant thereto; nor shall the provisions of this part limit the power of any county or municipality to make ordinances, rules, or regulations pertaining to ether which may be more restrictive than the provisions of this part and the rules adopted pursuant thereto.

CHAPTER 506
STAMPED OR MARKED CONTAINERS AND BASKETS

506.502. Definitions.

For the purposes of §§ 506.501-506.519, the term:

(1) "Bakery container" means any permanent type of container which is used by a bakery, distributor, retailer, or food service establishment or the agent of any of them as a means to transport, store, or carry bakery products.

(2) "Dairy case" means a wire or plastic container which holds 16 quarts or more of beverage and is used by a distributor, retailer, or its agent as a means to transport, store, or carry dairy products.

(3) "Department" means the Department of State.

(4) "Egg basket" means any permanent type of container which contains four dozen or more shell eggs and is used by a distributor, retailer, or its agent as a means to transport, store, or carry eggs.

(5) "Laundry cart" means a basket which is mounted on wheels and used in a coin-operated laundry or drycleaning establishment by a customer or an attendant for the purpose of transporting laundry and laundry supplies.

(6) "Name or mark" means any permanently affixed or permanently stamped name or mark which has been registered with the Department of State pursuant to § 506.503 and is used for the purpose of identifying the registered owner of dairy cases, egg baskets, poultry boxes, or bakery containers.

(7) "Parking area" means a lot or other property provided by a retail establishment for the use of customers to park automobiles or other vehicles while doing business in that establishment.

(8) "Poultry box" means any permanent type of container which is used by a processor, distributor, retailer, food service establishment, or its agent as a means to transport, store, or carry poultry.

(9) "Registered owner" means any person, firm, corporation, or association registered with the department as the owner of an identifying name or mark described in subsection (6).

(10) "Shopping cart" means a basket mounted on wheels or a similar device which is generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

506.508. Illegal use of dairy cases, egg baskets, poultry boxes, or bakery containers.

No person, firm, corporation, or association shall use for any purpose any container which is identified with or by any name or mark registered with the department as provided in § 506.503 unless such person is the registered owner of the name or mark. No person, firm, corporation, or association shall deface, obliterate, destroy, cover up, or otherwise remove or conceal any such name or mark without the written consent of the registered owner.

506.509. Possession of shopping carts, laundry carts, dairy cases, egg baskets, poultry boxes, or bakery containers.

Any person who is in possession of any shopping cart, laundry cart, dairy case, egg basket, poultry box, or bakery container with a registered name or mark shall be presumed to be in possession of stolen property and is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082.

506.513. Illegal use of shopping carts and laundry carts.

It is a violation of §§ 506.501-506.519:

(1) To remove any shopping cart or laundry cart from the premises or parking area of a retail establishment with intent to deprive temporarily or permanently the owner of such cart, or the retailer, of possession of the cart.

(2) To remove a shopping cart or laundry cart, without written authorization, from its owner or from the premises or parking area of any retail establishment.

(3) To remove, obliterate, or alter any serial number or sign affixed to a shopping cart or laundry cart.

506.514. Unlawful removal of dairy cases.

It is a violation of §§ 506.501-506.519 for any person not in lawful possession of a dairy case to remove a dairy case from the premises, the parking area, or any other area of any retail establishment, or from any dairy delivery vehicle, if:

(1) The dairy case is marked on at least two sides with a registered name or mark; and

(2) A notice to the public, warning that use by any person other than the registered owner is punishable by law, is visibly displayed on the dairy case.

506.515. Unlawful removal of egg baskets, poultry boxes, or bakery containers.

It is a violation of §§ 506.501-506.519 for any person not in lawful possession of an egg basket, poultry box, or bakery container to remove such egg basket, poultry box, or bakery container from the premises, the parking area, or any other area of any processor, bakery, distributor, retailer, or food service establishment.

506.518. Penalty.

Any person who violates any of the provisions of §§ 506.501-506.519 is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

506.519. Scope of §§ 506.501-506.519.

(1) Sections 506.501-506.519 do not apply to the owner of a shopping cart, laundry cart, dairy case, egg basket, poultry box, or bakery container; to a retailer; to the agents or employees of such owner or retailer; or to a customer who has written consent from the owner of a shopping cart, laundry cart, dairy case, egg basket, poultry box, or bakery container, or from a retailer, to possess such cart, case, basket, box, or container or remove it from the premises or the parking area of the retail establishment.

(2) The provisions of §§ 506.501-506.519 are intended to be supplemental to the other provisions of this chapter and any other provisions of law governing the subject matter of §§ 506.501-506.519.

CHAPTER 509
LODGING AND FOOD SERVICE ESTABLISHMENTS; MEMBERSHIP CAMPGROUNDS

509.092. Public lodging establishments and public food service establishments; rights as private enterprises.

Public lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon race, creed, color, sex, physical disability, or national origin. A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action pursuant to § 760.11.

509.101. Establishment rules; posting of notice; food service inspection report; maintenance of guest register; mobile food dispensing vehicle registry.

(1) Any operator of a public lodging establishment or a public food service establishment may establish reasonable rules and regulations for the management of the establishment and its guests and employees; and each guest or employee staying, sojourning, eating, or employed in the establishment shall conform to and abide by such rules and regulations so long as the guest or employee remains in or at the establishment. Such rules and regulations shall be deemed to be a special contract between the operator and each guest or employee using the services or facilities of the operator. Such rules and regulations shall control the liabilities, responsibilities, and obligations of all parties. Any rules or regulations established pursuant to this section shall be printed in the English language and posted in a prominent place within such public lodging establishment or public food service establishment. In addition, any operator of a public food service establishment shall maintain the latest food service inspection report or a duplicate copy on premises and shall make it available to the public upon request.

(2) It is the duty of each operator of a transient establishment to maintain at all times a register, signed by or for guests who occupy rental units within the establishment, showing the dates upon which the rental units were occupied by such guests and the rates charged for their occupancy. This register shall be maintained in chronological order and available for inspection by the division at any time. Operators need not make available registers which are more than 2 years old.

(3) It is the duty of each operator of a public food service establishment that provides commissary services to maintain a daily registry verifying that each mobile food dispensing vehicle that receives such services is properly licensed by the division. In order that such licensure may be readily verified, each mobile food dispensing vehicle operator shall permanently affix in a prominent place on the side of the vehicle, in figures at least 2 inches high and in contrasting colors from the background, the operator's public food service establishment license number. Prior to providing commissary services, each public food service establishment must verify that the license number displayed on the

vehicle matches the number on the vehicle operator's public food service establishment license.

509.141. Refusal of admission and ejection of undesirable guests; notice; procedure; penalties for refusal to leave.

(1) The operator of any public lodging establishment or public food service establishment may remove or cause to be removed from such establishment, in the manner hereinafter provided, any guest of the establishment who, while on the premises of the establishment, illegally possesses or deals in controlled substances as defined in chapter 893 or is intoxicated, profane, lewd, or brawling; who indulges in any language or conduct which disturbs the peace and comfort of other guests or which injures the reputation, dignity, or standing of the establishment; who, in the case of a public lodging establishment, fails to make payment of rent at the agreed-upon rental rate by the agreed-upon checkout time; who, in the case of a public lodging establishment, fails to check out by the time agreed upon in writing by the guest and public lodging establishment at check-in unless an extension of time is agreed to by the public lodging establishment and guest prior to checkout; who, in the case of a public food service establishment, fails to make payment for food, beverages, or services; or who, in the opinion of the operator, is a person the continued entertainment of whom would be detrimental to such establishment. The admission to, or the removal from, such establishment shall not be based upon race, creed, color, sex, physical disability, or national origin.

(2) The operator of any public lodging establishment or public food service establishment shall notify such guest that the establishment no longer desires to entertain the guest and shall request that such guest immediately depart from the establishment. Such notice may be given orally or in writing. If the notice is in writing, it shall be as follows:

"You are hereby notified that this establishment no longer desires to entertain you as its guest, and you are requested to leave at once. To remain after receipt of this notice is a misdemeanor under the laws of this state."

If such guest has paid in advance, the establishment shall, at the time such notice is given, tender to such guest the unused portion of the advance payment; however, the establishment may withhold payment for each full day that the guest has been entertained at the establishment for any portion of the 24-hour period of such day.

(3) Any guest who remains or attempts to remain in any such establishment after being requested to leave is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(4) If any person is illegally on the premises of any public lodging establishment or public food service establishment, the operator of such establishment may call upon any law enforcement officer of this state for assistance. It is the duty of such law enforcement officer, upon the request of such operator, to place under arrest and take into custody for violation of this section any guest who violates subsection (3) in the presence of the officer. If a warrant has been issued by the proper judicial officer for the arrest of any violator of subsection (3), the officer shall serve the warrant, arrest the person, and take the person into custody. Upon arrest, with or without warrant, the guest will be deemed to have given up any right to occupancy or to have abandoned such right of occupancy of the premises, and the operator of the establishment may then make such premises available to other guests. However, the operator of the establishment shall employ all reasonable and proper means to care for any personal property which may be left on the premises by such guest and shall refund any unused portion of moneys paid by such guest for the occupancy of such premises.

509.142. Conduct on premises; refusal of service.

The operator of a public lodging establishment or public food service establishment may refuse accommodations or service to any person whose conduct on the premises of the establishment displays intoxication, profanity, lewdness, or brawling; who indulges in language or conduct such as to disturb the peace or comfort of other guests; who engages in illegal or disorderly conduct; who illegally possesses or deals in controlled substances as defined in chapter 893; or whose conduct constitutes a nuisance. Such refusal may not be based upon race, creed, color, sex, physical disability, or national origin.

509.143. Disorderly conduct on the premises of an establishment; detention; arrest; immunity from liability.

(1) An operator may take a person into custody and detain that person in a reasonable manner and for a reasonable time if the operator has probable cause to believe that the person was engaging in disorderly con-

duct in violation of § 877.03 on the premises of the licensed establishment and that such conduct was creating a threat to the life or safety of the person or others. The operator shall call a law enforcement officer to the scene immediately after detaining a person under this subsection.

(2) A law enforcement officer may arrest, either on or off the premises of the licensed establishment and without a warrant, any person the officer has probable cause to believe violated § 877.03 on the premises of a licensed establishment and, in the course of such violation, created a threat to the life or safety of the person or others.

(3) An operator or a law enforcement officer who detains a person under subsection (1) or makes an arrest under subsection (2) is not civilly or criminally liable for false arrest, false imprisonment, or unlawful detention on the basis of any action taken in compliance with subsection (1) or subsection (2).

(4) A person who resists the reasonable efforts of an operator or a law enforcement officer to detain or arrest that person in accordance with this section is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, unless the person did not know or did not have reason to know that the person seeking to make such detention or arrest was the operator of the establishment or a law enforcement officer.

509.144. Prohibited handbill distribution in a public lodging establishment; penalties.

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

(a) "Handbill" means a flier, leaflet, pamphlet, or other written material that advertises, promotes, or informs persons about a person, business, company, or food service establishment but does not include employee communications permissible under the National Labor Relations Act, other communications protected by the First Amendment to the United States Constitution, or communications about public health, safety, or welfare distributed by a federal, state, or local governmental entity or a public or private utility.

(b) "Without permission" means without the expressed written permission of the owner, manager, or agent of the owner or manager of the public lodging establishment where a sign is posted prohibiting advertising or solicitation in the manner provided in subsection (5).

(c) "At or in a public lodging establishment" means any property under the sole ownership or control of a public lodging establishment.

(2) Any person, agent, contractor, or volunteer who is acting on behalf of a person, business, company, or food service establishment and who, without permission, delivers, distributes, or places, or attempts to deliver, distribute, or place, a handbill at or in a public lodging establishment commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) Any person who, without permission, directs another person to deliver, distribute, or place, or attempts to deliver, distribute, or place, a handbill at or in a public lodging establishment commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Any person sentenced under this subsection shall be ordered to pay a minimum fine of $500 in addition to any other penalty imposed by the court.

(4) In addition to any penalty imposed by the court, a person who violates subsection (2) or subsection (3):

(a) Shall pay a minimum fine of $2,000 for a second violation.

(b) Shall pay a minimum fine of $3,000 for a third or subsequent violation.

(5) For purposes of this section, a public lodging establishment that intends to prohibit advertising or solicitation, as described in this section, at or in such establishment must comply with the following requirements when posting a sign prohibiting such solicitation or advertising:

(a) There must appear prominently on any sign referred to in this subsection, in letters of not less than 2 inches in height, the terms "no advertising" or "no solicitation" or terms that indicate the same meaning.

(b) The sign must be posted conspicuously.

(c) If the main office of the public lodging establishment is immediately accessible by entering the office through a door from a street, parking lot, grounds, or other area outside such establishment, the sign must be placed on a part of the main office, such as a door or window, and the sign must face the street, parking lot, grounds, or other area outside such establishment.

(d) If the main office of the public lodging establishment is not immediately accessible by entering the office through a door from a street, parking lot, grounds, or other area outside such establishment, the sign must be placed in the immediate vicinity of the main entrance to such establishment, and the sign

must face the street, parking lot, grounds, or other area outside such establishment.

(6) Any personal property, including, but not limited to, any vehicle, item, object, tool, device, weapon, machine, money, security, book, or record, that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person's third or subsequent violation of this section, whether or not comprising an element of the offense, is subject to seizure and forfeiture under the Florida Contraband Forfeiture Act.

509.151. Obtaining food or lodging with intent to defraud; penalty.

(1) Any person who obtains food, lodging, or other accommodations having a value of less than $300 at any public food service establishment, or at any transient establishment, with intent to defraud the operator thereof, is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083; if such food, lodging, or other accommodations have a value of $300 or more, such person is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) This section does not apply where there has been an agreement in writing for delay in payments. This section shall not be used to circumvent the procedural requirements of the Florida Residential Landlord and Tenant Act.

509.161. Rules of evidence in prosecutions.

In prosecutions under § 509.151, proof that lodging, food, or other accommodations were obtained by false pretense; by false or fictitious show of baggage or other property; by absconding without paying or offering to pay for such food, lodging, or accommodations; or by surreptitiously removing or attempting to remove baggage shall constitute prima facie evidence of fraudulent intent. If the operator of the establishment has probable cause to believe, and does believe, that any person has obtained food, lodging, or other accommodations at such establishment with intent to defraud the operator thereof, the failure to make payment upon demand therefor, there being no dispute as to the amount owed, shall constitute prima facie evidence of fraudulent intent in such prosecutions.

509.162. Theft of personal property; detaining and arrest of violator; theft by employee.

(1) Any law enforcement officer or operator of a public lodging establishment or public food service establishment who has probable cause to believe that theft of personal property belonging to such establishment has been committed by a person and that the officer or operator can recover such property or the reasonable value thereof by taking the person into custody may, for the purpose of attempting to effect such recovery or for prosecution, take such person into custody on the premises and detain such person in a reasonable manner and for a reasonable period of time. If the operator takes the person into custody, a law enforcement officer shall be called to the scene immediately. The taking into custody and detention by a law enforcement officer or operator of a public lodging establishment or public food service establishment, if done in compliance with this subsection, does not render such law enforcement officer or operator criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(2) Any law enforcement officer may arrest, either on or off the premises and without warrant, any person if there is probable cause to believe that person has committed theft in a public lodging establishment or in a public food service establishment.

(3) Any person who resists the reasonable effort of a law enforcement officer or operator of a public lodging establishment or public food service establishment to recover property which the law enforcement officer or operator had probable cause to believe had been stolen from the public lodging establishment or public food service establishment, and who is subsequently found to be guilty of theft of the subject property, is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, unless such person did not know, or did not have reason to know, that the person seeking to recover the property was a law enforcement officer or the operator. For purposes of this section, the charge of theft and the charge of resisting apprehension may be tried concurrently.

(4) Theft of any property belonging to a guest of an establishment licensed under this chapter, or of property belonging to such establishment, by an employee of the establishment or by an employee of a person, firm, or entity which has contracted to provide services to the establishment constitutes a

felony of the third degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 538
SECONDHAND DEALERS AND SECONDARY METALS RECYCLERS

538.03. Definitions; applicability.

(1) As used in this part, the term:

(a) "Acquire" means to obtain by purchase, consignment, or trade.

(b) "Appropriate law enforcement official" means the sheriff of the county in which a secondhand dealer is located or, if the secondhand dealer is located within a municipality, both the police chief of the municipality and the sheriff; however, the sheriff or police chief may designate as the appropriate law enforcement official for that county or municipality, as applicable, any law enforcement officer working within that respective county or municipality. This paragraph does not limit the authority or duties of the sheriff.

(c) "Consignment shop" means a shop engaging in the business of accepting for sale, on consignment, secondhand goods which, having once been used or transferred from the manufacturer to the dealer, are then received into the possession of a third party.

(d) "Department" means the Department of Revenue.

(e) "Precious metals" means any item containing any gold, silver, or platinum, or any combination thereof, excluding any chemical or any automotive, photographic, electrical, medical, or dental materials or electronic parts.

(f) "Precious metals dealer" means a secondhand dealer who normally or regularly engages in the business of buying used precious metals for resale. The term does not include those persons involved in the bulk sale of precious metals from one secondhand or precious metals dealer to another.

(g) "Secondhand dealer" means any person, corporation, or other business organization or entity which is not a secondary metals recycler subject to part II and which is engaged in the business of purchasing, consigning, or trading secondhand goods.

(h) "Secondhand goods" means personal property previously owned or used, which is not regulated metals property regulated under part II and which is purchased, consigned, or traded as used property. Such secondhand goods do not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, cardio and strength training or conditioning equipment designed primarily for indoor use, and secondhand sports equipment that is not permanently labeled with a serial number. For purposes of this paragraph, "secondhand sports equipment" does not include golf clubs.

(i) "Secondhand store" means the place or premises at which a secondhand dealer is registered to conduct business as a secondhand dealer or conducts business.

(j) "Transaction" means any purchase, consignment, or trade of secondhand goods by a secondhand dealer.

(2) This chapter does not apply to:

(a) Any secondhand goods transaction involving an organization or entity registered with the state as a nonprofit, religious, or charitable organization or any school-sponsored association or organization other than a secondary metals recycler subject to the provisions of part II.

(b) A law enforcement officer acting in an official capacity.

(c) A trustee in bankruptcy, executor, administrator, or receiver who has presented proof of such status to the secondhand dealer.

(d) Any public official acting under judicial process or authority who has presented proof of such status to the secondhand dealer.

(e) A sale on the execution, or by virtue of any process issued by a court, if proof thereof has been presented to the secondhand dealer.

(f) Any garage sale operator who holds garage sales less than 10 weekends per year.

(g) Any person at antique, coin, or collectible shows or sales.

(h) Any person who sells household personal property as an agent for the property owner or their representative pursuant to a written agreement at that person's residence.

(i) The purchase, consignment, or trade of secondhand goods from one secondhand dealer to another secondhand dealer when the selling secondhand dealer has complied with the requirements of this chapter.

(j) Any person accepting a secondhand good as a trade-in for a similar item of greater value.

(k) Any auction business as defined in § 468.382 operating as an auction business in the buying and selling of estates, business inventory, surplus merchandise, or business liquidations.

(l) Any business that is registered with the Department of Revenue for sales tax purposes as an antique dealer pursuant to chapter 212 and that purchases secondhand

goods from the property owner or her or his representative at the property owner's residence pursuant to a written agreement that states the name, address, and telephone number of the property owner and the type of property purchased.

(m) A business that contracts with other persons or entities to offer its secondhand goods for sale, purchase, consignment, or trade via an Internet website, and that maintains a shop, store, or other business premises for this purpose, if all of the following apply:

1. The secondhand goods must be available on the website for viewing by the public at no charge;

2. The records of the sale, purchase, consignment, or trade must be maintained for at least 2 years;

3. The records of the sale, purchase, consignment, or trade, and the description of the secondhand goods as listed on the website, must contain the serial number of each item, if any;

4. The secondhand goods listed on the website must be searchable based upon the state or zip code;

5. The business must provide the appropriate law enforcement official with the name or names under which it conducts business on the website;

6. The business must allow the appropriate law enforcement official to inspect its business premises at any time during normal business hours;

7. Any payment by the business resulting from such a sale, purchase, consignment, or trade must be made to the person or entity with whom the business contracted to offer the goods and must be made by check or via a money services business licensed under part II of chapter 560; and

8. a. At least 48 hours after the estimated time of contracting to offer the secondhand goods, the business must verify that any item having a serial number is not stolen property by entering the serial number of the item into the Department of Law Enforcement's stolen article database located at the Florida Crime Information Center's public access system website. The business shall record the date and time of such verification on the contract covering the goods. If such verification reveals that an item is stolen property, the business shall immediately remove the item from any website on which it is being offered and notify the appropriate law enforcement official; or

b. The business must provide the appropriate law enforcement official with an electronic copy of the name, address, phone number, driver license number, and issuing state of the person with whom the business contracted to offer the goods, as well as an accurate description of the goods, including make, model, serial number, and any other unique identifying marks, numbers, names, or letters that may be on an item, in a format agreed upon by the business and the appropriate law enforcement official. This information must be provided to the appropriate law enforcement official within 24 hours after entering into the contract unless other arrangements are made between the business and the law enforcement official.

(n) Any person offering his or her own personal property for sale, purchase, consignment, or trade via an Internet website, or a person or entity offering the personal property of others for sale, purchase, consignment, or trade via an Internet website, when that person or entity does not have, and is not required to have, a local occupational or business license for this purpose.

(o) A business whose primary business is the sale, rental, or trade of motion picture videos or video games, if the business:

1. Requires the sellers of secondhand goods to have a current account with the business;

2. Has on file in a readily accessible format the name, current residential address, home and work telephone numbers, government-issued identification number, place of employment, date of birth, gender, and right thumbprint of each seller of secondhand goods;

3. Purchases secondhand goods from the property owner or his or her representative at the place of business pursuant to an agreement in writing and signed by the property owner which describes the property purchased, states the date and time of the purchase, and states that the seller is the lawful owner of the property;

4. Retains such purchase agreements for not less than 1 year; and

5. Pays for the purchased property in the form of a store credit that is issued to the seller and is redeemable solely by the seller or another authorized user of the seller's account with that business.

(p) A motor vehicle dealer as defined in § 320.27.

(3) This part does not apply to secondary metals recyclers regulated under part II, except for § 538.11, which applies to both

secondhand dealers and secondary metals recyclers.

538.04. Recordkeeping requirements; penalties.

(1) A secondhand dealer shall complete a secondhand dealers transaction form at the time of the actual transaction. A secondhand dealer shall maintain a copy of a completed transaction form on the registered premises for at least 1 year after the date of the transaction. However, the secondhand dealer shall maintain a copy of the transaction form for not less than 3 years. Unless other arrangements are agreed upon by the secondhand dealer and the appropriate law enforcement official, the secondhand dealer shall, within 24 hours after acquiring any secondhand goods, deliver to such official a record of the transaction on a form approved by the Department of Law Enforcement. Such record shall contain:

(a) The time, date, and place of the transaction.

(b) A complete and accurate description of the goods acquired, including the following information, if applicable:

1. Brand name.
2. Model number.
3. Manufacturer's serial number.
4. Size.
5. Color, as apparent to the untrained eye.
6. Precious metal type, weight, and content if known.
7. Gemstone description, including the number of stones, if applicable.
8. In the case of firearms, the type of action, caliber or gauge, number of barrels, barrel length, and finish.
9. Any other unique identifying marks, numbers, or letters.

(c) A description of the person from whom the goods were acquired, including:

1. Full name, current residential address, workplace, and home and work phone numbers.
2. Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks.
3. The right thumbprint, free of smudges and smears, of the person from whom the goods were acquired.

(d) Any other information required by the form approved by the Department of Law Enforcement.

(2) The secondhand dealer shall require verification of the identification by the exhibition of a government-issued photographic identification card such as a driver's license or military identification card. The record shall contain the type of identification exhibited, the issuing agency, and the number thereon.

(3) The seller shall sign a statement verifying that the seller is the rightful owner of the goods or is entitled to sell, consign, or trade the goods.

(4) Any person who knowingly gives false verification of ownership or who gives a false or altered identification, and who receives money from a secondhand dealer for goods sold, consigned, or traded commits:

(a) If the value of the money received is less than $300, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) If the value of the money received is $300 or more, a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) Secondhand dealers are exempt from the provisions of this section for all transactions involving secondhand sports equipment except secondhand sports equipment that is permanently labeled with a serial number.

(6) If the appropriate law enforcement official supplies a secondhand dealer with appropriate software and the secondhand dealer has computer capability, the secondhand dealer must electronically transmit secondhand dealer transactions required by this section to such official. If a secondhand dealer does not have computer capability, the appropriate law enforcement official may provide the secondhand dealer with a computer and all equipment necessary to electronically transmit secondhand dealer transactions. The appropriate law enforcement official shall retain ownership of the computer, unless otherwise agreed upon, and the secondhand dealer shall maintain the computer in good working order, except for ordinary wear. A secondhand dealer who transmits secondhand dealer transactions electronically is not required to also deliver the original or paper copies of the secondhand transaction forms to the appropriate law enforcement official. However, such official may, for purposes of a criminal investigation, request the secondhand dealer to deliver the original transaction form that was electronically transmitted. The secondhand dealer shall deliver the form to the appropriate law enforcement official within 24 hours after receipt of the request.

(7) If the original transaction form is lost or destroyed by the appropriate law enforcement official, a copy may be used by the sec-

ondhand dealer as evidence in court. When an electronic image of a customer's identification is accepted for a transaction, the secondhand dealer must maintain the electronic image in order to meet the recordkeeping requirements applicable to the original transaction form. If a criminal investigation occurs, the secondhand dealer shall, upon request, provide a clear and legible copy of the image to the appropriate law enforcement official.

538.05. Inspection of records and premises of secondhand dealers.

(1) The entire registered premises and required records of each secondhand dealer are subject to inspection during regular business hours by any law enforcement officer having jurisdiction.

(2) The inspection authorized by subsection (1) shall consist of an examination on the registered premises of the inventory and required records to determine whether the records and inventory are being maintained on the registered premises as required by § 538.04 and whether the holding period required by § 538.06 is being complied with.

538.06. Holding period.

(1) A secondhand dealer shall not sell, barter, exchange, alter, adulterate, use, or in any way dispose of any secondhand goods within 15 calendar days of the date of acquisition of the goods. Such holding periods are not applicable when the person known by the secondhand dealer to be the person from whom the goods were acquired desires to redeem, repurchase, or recover the goods, provided the dealer can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.

(2) A secondhand dealer must maintain actual physical possession of all secondhand goods throughout a transaction. It is unlawful for a secondhand dealer to accept title or any other form of security in secondhand goods in lieu of actual physical possession. A secondhand dealer who accepts title or any other form of security in secondhand goods in lieu of actual physical possession commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) Upon probable cause that goods held by a secondhand dealer are stolen, a law enforcement officer with jurisdiction may place a 90-day written hold order on the goods. However, the hold may be extended beyond 90 days by a court of competent jurisdiction upon a finding of probable cause that the property is stolen and further holding is necessary for the purposes of trial or to safeguard such property. The dealer shall assume all responsibility, civil or criminal, relative to the property or evidence in question, including responsibility for the actions of any employee with respect thereto.

(4) While a hold order is in effect, the secondhand dealer must, upon request, release the property subject to the hold order to the custody of a law enforcement officer with jurisdiction for use in a criminal investigation. The release of the property to the custody of the law enforcement officer is not considered a waiver or release of the secondhand dealer's rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the secondhand dealer unless the court orders other disposition. When such other disposition is ordered, the court shall additionally order the person from whom the secondhand dealer acquired the property to pay restitution to the secondhand dealer in the amount that the secondhand dealer paid for the property together with reasonable attorney's fees and costs.

(5) All dealers in secondhand property regulated by this chapter shall maintain transaction records for 3 years.

538.07. Penalty for violation of chapter.

(1) Except where otherwise provided herein, a person who knowingly violates any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in § 775.082 and by a fine not to exceed $10,000.

(2) When the lawful owner recovers stolen property from a secondhand dealer and the person who sold or pledged the stolen property to the secondhand dealer is convicted of theft, a violation of this section, or dealing in stolen property, the court shall order the defendant to make restitution to the secondhand dealer or the lawful owner, as applicable, pursuant to § 775.089.

538.08. Stolen goods; petition for return.

(1) If the secondhand dealer contests the identification or ownership of the property, the person alleging ownership of the property may, provided that a timely report of the theft of the goods was made to the proper authorities, bring an action for replevin in the county or circuit court by petition in substantially the following form:

Plaintiff A. B. sues defendant C. D., and alleges:

1. This is an action to recover possession of personal property in _____ County, Florida.

2. The description of the property is: _____ (list property). To the best of plaintiff's knowledge, information, and belief, the value of the property is $ _____.

3. Plaintiff is entitled to the possession of the property under a security agreement dated _____, _____ (year), a copy of which is attached.

4. To plaintiff's best knowledge, information, and belief, the property is located at _____.

5. The property is wrongfully detained by defendant. Defendant came into possession of the property by _____ (describe method of possession). To plaintiff's best knowledge, information, and belief, defendant detains the property because _____ (give reasons).

6. The property has not been taken under an execution or attachment against plaintiff's property.

(2) The filing fees shall be waived by the clerk of the court, and the service fees shall be waived by the sheriff. The court shall award the prevailing party attorney's fees and costs. In addition, when the filing party prevails in the replevin action, the court shall order payment of filing fees to the clerk and service fees to the sheriff.

(3) Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. Upon the receipt of a petition for a writ by a secondhand dealer, the dealer shall hold the property at issue until the court determines the respective interests of the parties.

(4) In addition to the civil petition for return remedy, the state may file a motion as part of a pending criminal case related to the property. The criminal court has jurisdiction to determine ownership, to order return or other disposition of the property, and to order any appropriate restitution to any person. Such order shall be entered upon hearing after proper notice has been given to the secondhand dealer, the victim, and the defendant in the criminal case.

538.09. Registration.

(1) A secondhand dealer shall not engage in the business of purchasing, consigning, or trading secondhand goods from any location without registering with the Department of Revenue. A fee equal to the federal and state costs for processing required fingerprints must be submitted to the department with each application for registration. One application is required for each dealer. If a secondhand dealer is the owner of more than one secondhand store location, the application must list each location, and the department shall issue a duplicate registration for each location. For purposes of subsections (4) and (5) of this section, these duplicate registrations shall be deemed individual registrations. A dealer shall pay a fee of $6 per location at the time of registration and an annual renewal fee of $6 per location on October 1 of each year. All fees collected, less costs of administration, shall be transferred into the Operating Trust Fund. The Department of Revenue shall forward the full set of fingerprints to the Department of Law Enforcement for state and federal processing, provided the federal service is available, to be processed for any criminal justice information as defined in § 943.045. The cost of processing such fingerprints shall be payable to the Department of Law Enforcement by the Department of Revenue. The department may issue a temporary registration to each location pending completion of the background check by state and federal law enforcement agencies, but shall revoke such temporary registration if the completed background check reveals a prohibited criminal background. An applicant for a secondhand dealer registration must be a natural person who has reached the age of 18 years.

(a) If the applicant is a partnership, all the partners must apply.

(b) If the applicant is a joint venture, association, or other noncorporate entity, all members of such joint venture, association, or other noncorporate entity must make application for registration as natural persons.

(c) If the applicant is a corporation, the registration must include the name and address of such corporation's registered agent for service of process in the state and a certified copy of statement from the Secretary of State that the corporation is duly organized in the state or, if the corporation is organized in a state other than Florida, a certified copy of statement from the Secretary of State that the corporation is duly qualified to do business in this state. If the dealer has more than one location, the application must list each location owned by the same legal entity and the department shall issue a duplicate registration for each location.

(2) The secondhand dealer shall furnish with her or his registration a complete set of her or his fingerprints, certified by an authorized law enforcement officer, and a recent fullface photographic identification card of

herself or himself. The Department of Law Enforcement shall report its findings to the Department of Revenue within 30 days after the date the fingerprints are submitted for criminal justice information.

(3) The secondhand dealer's registration shall be conspicuously displayed at her or his registered location. A secondhand dealer must hold secondhand goods at the registered location until 15 days after the secondhand transaction or until any extension of the holding period has expired, whichever is later.

(4) The department may impose a civil fine of up to $10,000 for each violation of this section, which fine shall be transferred into the General Revenue Fund. If the fine is not paid within 60 days, the department may bring a civil action under § 120.69 to recover the fine.

(5) In addition to the fine provided in subsection (4), registration under this section may be denied or any registration granted may be revoked, restricted, or suspended by the department if the department determines that the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made pursuant to this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with any purchase or sale or has been or is engaged in or is about to engage in any practice, purchase, or sale which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in making any purchase or sale;

(e) Is making purchases or sales through any business associate not registered in compliance with the provisions of this chapter;

(f) Has, within the preceding 10-year period for new registrants who apply for registration on or after October 1, 2006, been convicted of, or has entered a plea of guilty or nolo contendere to, or had adjudication withheld for, a crime against the laws of this state or any other state or of the United States which relates to registration as a secondhand dealer or which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, any felony drug offense, any violation of § 812.015, or any fraudulent dealing;

(g) Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit; or

(h) Has failed to pay any sales tax owed to the Department of Revenue.

In the event the department determines to deny an application or revoke a registration, it shall enter a final order with its findings on the register of secondhand dealers and their business associates, if any; and denial, suspension, or revocation of the registration of a secondhand dealer shall also deny, suspend, or revoke the registration of such secondhand dealer's business associates.

(6) Upon the request of a law enforcement official, the Department of Revenue shall release to the official the name and address of any secondhand dealer registered to do business within the official's jurisdiction.

538.15. Certain acts and practices prohibited.

It is unlawful for a secondhand dealer or any employee thereof to do or allow any of the following acts:

(1) Knowingly make a transaction with:

(a) Any person who is under the influence of drugs or alcohol when such condition is visible or apparent;

(b) Any person under the age of 18 years; or

(c) Any person using a name other than her or his own name or the registered name of her or his business.

(2) Have a secondhand store open or engage in or conduct business as a secondhand dealer between the hours of 10 p.m. and 8 a.m. A secondhand dealer shall not conduct any transaction at a drive-through window or similar device.

(3) Fail to pay any sales tax owed to the Department of Revenue or fail to have a sales tax registration number.

538.17. Local regulation of secondhand dealers.

Nothing in this chapter shall preclude political subdivisions of the state and municipalities from enacting laws more restrictive than the provisions of this chapter.

538.18. Definitions.

As used in this part, the term:

(1) "Appropriate law enforcement official" means the sheriff of the county in which a secondary metals recycler is located or, if the secondary metals recycler is located within a municipality, the police chief of the municipality in which the secondary metals recy-

cler is located; however, the sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within that respective county or municipality. This subsection does not limit the authority or duties of the sheriff.

(2) "Department" means the Department of Revenue.

(3) "Ferrous metals" means any metals containing significant quantities of iron or steel.

(4) "Fixed location" means any site occupied by a secondary metals recycler as owner of the site or as lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

(5) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as part of its currency.

(6) "Nonferrous metals" means metals not containing significant quantities of iron or steel, including, without limitation, copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys thereof, excluding precious metals subject to regulation under part I.

(7) "Personal identification card" means a valid Florida driver license, a Florida identification card issued by the Department of Highway Safety and Motor Vehicles, an equivalent form of identification issued by another state, a passport, or an employment authorization issued by the United States Bureau of Citizenship and Immigration Services that contains an individual's photograph and current address.

(8) "Purchase transaction" means a transaction in which a secondary metals recycler gives consideration for regulated metals property.

(9) "Regulated metals property" means any item composed primarily of any nonferrous metals. The term does not include aluminum beverage containers, used beverage containers, or similar beverage containers; however, the term includes stainless steel beer kegs and items made of ferrous metal obtained from any restricted regulated metals property.

(10) "Restricted regulated metals property" means any regulated metals property listed in § 538.26(5)(b) the sale of which is restricted as provided in § 538.26(5)(a).

(11) "Secondary metals recycler" means any person who:

(a) Is engaged, from a fixed location, in the business of purchase transactions or gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

(b) Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.

(12) "Utility" means a public utility or electric utility as defined in § 366.02 or a person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, that is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, or telephone, telegraph, radio, telecommunications, or communications service.

538.19. Records required; limitation of liability.

(1) A secondary metals recycler shall maintain a legible paper record of all purchase transactions to which such secondary metals recycler is a party. A secondary metals recycler shall also maintain a legible electronic record, in the English language, of all such purchase transactions. The appropriate law enforcement official may provide data specifications regarding the electronic record format, but such format must be approved by the Department of Law Enforcement. An electronic record of a purchase transaction shall be electronically transmitted to the appropriate law enforcement official no later than 10 a.m. of the business day following the date of the purchase transaction. The record transmitted to the appropriate law enforcement official must not contain the price paid for the items. A secondary metals recycler who transmits such records electronically is not required to also deliver the original or paper copies of the transaction forms to the appropriate law enforcement official. However, such official may, for purposes of a criminal investigation, request the secondary metals recycler to make available the original transaction form that was electronically transmitted. This original transaction form must include the price paid for the items. The sec-

ondary metals recycler shall make the form available to the appropriate law enforcement official within 24 hours after receipt of the request.

(2) The following information must be maintained on the form approved by the Department of Law Enforcement for each purchase transaction:

(a) The name and address of the secondary metals recycler.

(b) The name, initials, or other identification of the individual entering the information on the ticket.

(c) The date and time of the transaction.

(d) The weight, quantity, or volume, and a description of the type of regulated metals property purchased in a purchase transaction.

(e) The amount of consideration given in a purchase transaction for the regulated metals property.

(f) A signed statement from the person delivering the regulated metals property stating that she or he is the rightful owner of, or is entitled to sell, the regulated metals property being sold. If the purchase involves a stainless steel beer keg, the seller must provide written documentation from the manufacturer that the seller is the owner of the stainless steel beer keg or is an employee or agent of the manufacturer.

(g) The distinctive number from the personal identification card of the person delivering the regulated metals property to the secondary metals recycler.

(h) A description of the person from whom the regulated metals property was acquired, including:

1. Full name, current residential address, workplace, and home and work phone numbers.

2. Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks.

3. The right thumbprint, free of smudges and smears.

4. Vehicle description to include the make, model, and tag number of the vehicle and trailer of the person selling the regulated metals property.

5. Any other information required by the form approved by the Department of Law Enforcement.

(i) A photograph, videotape, or digital image of the regulated metals being sold.

(j) A photograph, videotape, or similar likeness of the person receiving consideration in which such person's facial features are clearly visible.

(3) A secondary metals recycler complies with the requirements of this section if it maintains an electronic database containing the information required by subsection (2) as long as the electronic information required by subsection (2), along with an electronic oath of ownership with an electronic signature of the seller of the secondary metals being purchased by the secondary metals recyclers and an electronic image of the seller's right thumbprint that has no smudges and smears, can be downloaded onto a paper form in the image of the form approved by the Department of Law Enforcement as provided in subsection (2).

(4) A secondary metals recycler shall maintain or cause to be maintained the information required by this section for not less than 3 years from the date of the purchase transaction.

(5) A secondary metals recycler registered with the department that purchases a motor vehicle from a licensed salvage motor vehicle dealer as defined in § 320.27 or another secondary metals recycler registered with the department and uses a mechanical crusher to convert the vehicle to scrap metal must obtain a signed statement from the seller stating that the seller has surrendered the vehicle's certificate of title to the Department of Highway Safety and Motor Vehicles as provided in § 319.30 or otherwise complied with the titling requirements provided by law for conversion of the vehicle to scrap metal. A secondary metals recycler is not liable for the seller's failure to comply with the titling requirements provided by law for conversion of a motor vehicle to scrap metal if the secondary metals recycler obtains and maintains the seller's signed statement.

538.20. Inspection of regulated metals property and records.

During the usual and customary business hours of a secondary metals recycler, a law enforcement officer shall, after properly identifying herself or himself as a law enforcement officer, have the right to inspect:

(1) Any and all purchased regulated metals property in the possession of the secondary metals recycler, and

(2) Any and all records required to be maintained under § 538.19.

538.21. Hold notice.

(1) Whenever a law enforcement officer has reasonable cause to believe that certain items of regulated metals property in the possession of a secondary metals recycler have been stolen, the law enforcement officer

may issue a hold notice to the secondary metals recycler.

(a) The hold notice shall be in writing, shall be delivered to the secondary metals recycler, shall specifically identify those items of regulated metals property that are believed to have been stolen and that are subject to the notice, and shall inform the secondary metals recycler of the information contained in this section.

(b) Upon receipt of the notice issued in accordance with this section, the secondary metals recycler receiving the notice may not process or remove the items of regulated metals property identified in the notice, or any portion thereof, from the place of business of the secondary metals recycler for 15 calendar days after receipt of the notice by the secondary metals recycler, unless sooner released by a law enforcement officer.

(2) No later than the expiration of the foregoing 15-day period, a law enforcement officer may issue a second hold notice to the secondary metals recycler, which shall be an extended hold notice.

(a) The extended hold notice shall be in writing, shall be delivered to the secondary metals recycler, shall specifically identify those items of regulated metals property that are believed to have been stolen and that are subject to the extended hold notice, and shall inform the secondary metals recycler of the information contained in this section.

(b) Upon receipt of the extended hold notice issued in accordance with this section, the secondary metals recycler receiving the extended hold notice may not process or remove the items of regulated metals property identified in the notice, or any portion thereof, from the place of business of the secondary metals recycler for 45 calendar days after receipt of the extended hold notice by the secondary metals recycler, unless sooner released by a law enforcement officer.

(3) At the expiration of the hold period or, if extended in accordance with this section, at the expiration of the extended hold period, the hold is automatically released and the secondary metals recycler may dispose of the regulated metals property unless other disposition has been ordered by a court of competent jurisdiction.

(4) This section provides a uniform statewide process and preempts municipal or county ordinances enacted after December 31, 2008, relating specifically to secondary metals recyclers holding such metals.

538.22. Exemptions.

This part shall not apply to purchases of regulated metals property from:

(1) Organizations, corporations, or associations registered with the state as charitable, philanthropic, religious, fraternal, civic, patriotic, social, or school-sponsored organizations or associations, or from any nonprofit corporation or association;

(2) A law enforcement officer acting in an official capacity;

(3) A trustee in bankruptcy, executor, administrator, or receiver who has presented proof of such status to the secondary metals recycler;

(4) Any public official acting under judicial process or authority who has presented proof of such status to the secondary metals recycler;

(5) A sale on the execution, or by virtue of any process issued by a court, if proof thereof has been presented to the secondary metals recycler; or

(6) A manufacturing, industrial, or other commercial vendor that generates regulated materials in the ordinary course of business.

538.23. Violations and penalties.

(1) (a) Except as provided in paragraph (b), a secondary metals recycler who knowingly and intentionally:

1. Violates § 538.20 or § 538.21;

2. Engages in a pattern of failing to keep records required by § 538.19;

3. Violates § 538.26(2); or

4. Violates § 538.235,

commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) A secondary metals recycler who commits a third or subsequent violation of paragraph (a) commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) A secondary metals recycler is presumed to know upon receipt of stolen regulated metals property in a purchase transaction that the regulated metals property has been stolen from another if the secondary metals recycler knowingly and intentionally fails to maintain the information required in § 538.19 and shall, upon conviction of a violation of § 812.015, be punished as provided in § 812.014(2) or (3).

(3) Any person who knowingly gives false verification of ownership or who gives a false or altered identification and who receives money or other consideration from a secondary metals recycler in return for regulated metals property commits:

(a) A felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the value of the money or other consideration received is less than $300.

(b) A felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the value of the money or other consideration received is $300 or more.

(4) If a lawful owner recovers stolen regulated metals property from a secondary metals recycler who has complied with this part, and the person who sold the regulated metals property to the secondary metals recycler is convicted of theft, a violation of this section, or dealing in stolen property, the court shall order the defendant to make full restitution, including, without limitation, attorneys' fees, court costs, and other expenses to the secondary metals recycler pursuant to § 775.089.

(5) A person acting as a secondary metals recycler who is not registered with the department under § 538.25 commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

538.235. Method of payment.

(1) A secondary metals recycler may not enter into any cash transaction:

(a) In excess of $1,000 for the purchase of regulated metals property; or

(b) In any amount for the purchase of restricted regulated metals property.

(2) Payment in excess of $1,000 for the purchase of regulated metals property shall be made by check issued to the seller of the metal and payable to the seller.

(3) Payment for the purchase of restricted regulated metals property shall be made by check issued to the seller of the metal and payable to the seller or by electronic payment to the seller's bank account or the seller's employer's bank account.

(a) Each check shall be mailed by the secondary metals recycler directly to the street address of the seller that is on file with the secondary metals recycler unless otherwise provided in this part. A check may not be mailed to a post office box. Electronic payments shall be transmitted to an account for which the seller is listed as an account holder or an employee or agent of the seller.

(b) Each check or electronic payment shall be mailed or transmitted by the secondary metals recycler to the seller within 3 days after the purchase transaction unless otherwise provided in this section.

(c) The secondary metals recycler may provide a check at the time of the purchase transaction, rather than mailing the check as required in paragraph (a), if the seller is:

1. An organization, corporation, or association registered with the state as a charitable, philanthropic, religious, fraternal, civic, patriotic, social, or school-sponsored organization or association, or any nonprofit corporation or association;

2. A law enforcement officer acting in an official capacity;

3. A trustee in bankruptcy, executor, administrator, or receiver who has presented proof of such status to the secondary metals recycler;

4. A public official acting under judicial process or authority who has presented proof of such status to the secondary metals recycler;

5. A sheriff acting under the authority of a court's writ of execution, or by virtue of any process issued by a court, if proof thereof has been presented to the secondary metals recycler; or

6. A manufacturing, industrial, or other commercial vendor that generates regulated materials in the ordinary course of business.

538.24. Stolen regulated metals property; petition for return.

(1) If the secondary metals recycler contests the identification or ownership of the regulated metals property, the party other than the secondary metals recycler claiming ownership of any stolen goods in the possession of a secondary metals recycler may, provided that a timely report of the theft of the regulated metals property was made to the proper authorities, bring an action for replevin in the county or circuit court by petition in substantially the following form:

Plaintiff A. B. sues defendant C. D., and alleges:

1. This is an action to recover possession of personal property in _____ County, Florida.

2. The description of the property is: _____ (list property). To the best of plaintiff's knowledge, information, and belief, the value of the property is $ _____.

3. Plaintiff is the lawful owner of the property and can identify the property as belonging to the plaintiff in the following manner: _____ (explain basis of identification).

4. Plaintiff is entitled to the possession of the property under a security agreement dated _____, _____ (year), a copy of which is attached.

5. To the plaintiff's best knowledge, information, and belief, the property is located at _____.

6. The property is wrongfully detained by defendant. Defendant came into possession

of the property by _____ (describe method of possession). To plaintiff's best knowledge, information, and belief, defendant detains the property because _____ (give reasons).

7. The property has not been taken under an execution or attachment against plaintiff's property.

(2) The filing fees shall be waived by the clerk of the court and the service fee shall be waived by the sheriff. The court may award the prevailing party reasonable attorney's fees and costs.

(3) Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. Upon the receipt by a secondary metals recycler of a petition for return, the secondary metals recycler shall hold, and shall not process or otherwise alter, the regulated metals property at issue, or any portion thereof, until the court determines the respective interests of the parties.

538.25. Registration.

(1) A person may not engage in business as a secondary metals recycler at any location without registering with the department. The department shall accept applications only from a fixed business address. The department may not accept an application that provides an address of a hotel room or motel room, a vehicle, or a post office box.

(a) A fee equal to the federal and state costs for processing required fingerprints must be submitted to the department with each application for registration. One application is required for each secondary metals recycler. If a secondary metals recycler is the owner of more than one secondary metals recycling location, the application must list each location, and the department shall issue a duplicate registration for each location. For purposes of subsections (3), (4), and (5), these duplicate registrations shall be deemed individual registrations. A secondary metals recycler shall pay a fee of $6 per location at the time of registration and an annual renewal fee of $6 per location on October 1 of each year. All fees collected, less costs of administration, shall be transferred into the Operating Trust Fund.

(b) The department shall forward the full set of fingerprints to the Department of Law Enforcement for state and federal processing, provided the federal service is available, to be processed for any criminal justice information as defined in § 943.045. The cost of processing such fingerprints shall be payable to the Department of Law Enforcement by the department. The department may issue a temporary registration to each location pending completion of the background check by state and federal law enforcement agencies but shall revoke such temporary registration if the completed background check reveals a prohibited criminal background. The Department of Law Enforcement shall report its findings to the Department of Revenue within 30 days after the date the fingerprints are submitted for criminal justice information.

(c) An applicant for a secondary metals recycler registration must be a natural person who has reached the age of 18 years or a corporation organized or qualified to do business in the state.

1. If the applicant is a natural person, the registration must include a complete set of her or his fingerprints, certified by an authorized law enforcement officer, and a recent fullface photographic identification card of herself or himself.

2. If the applicant is a partnership, all the partners must make application for registration.

3. If the applicant is a corporation, the registration must include the name and address of such corporation's registered agent for service of process in the state and a certified copy of statement from the Secretary of State that the corporation is duly organized in the state or, if the corporation is organized in a state other than Florida, a certified copy of the statement that the corporation is duly qualified to do business in this state.

(2) A secondary metals recycler's registration shall be conspicuously displayed at the place of business set forth on the registration. A secondary metals recycler shall not dispose of property at any location until any holding period has expired.

(3) The Department of Revenue may impose a civil fine of up to $10,000 for each knowing and intentional violation of this section, which fine shall be transferred into the General Revenue Fund. If the fine is not paid within 60 days, the department may bring a civil action under § 120.69 to recover the fine.

(4) In addition to the fine provided in subsection (3), registration under this section may be denied or any registration granted may be revoked, restricted, or suspended by the department if, after October 2, 1989, and within a 24-month period immediately preceding such denial, revocation, restriction, or suspension:

(a) The applicant or registrant has been convicted of knowingly and intentionally:

1. Violating § 538.20 or § 538.21;

2. Engaging in a pattern of failing to keep records as required by § 538.19;

3. Making a material false statement in the application for registration; or

4. Engaging in a fraudulent act in connection with any purchase or sale of regulated metals property;

(b) The applicant or registrant has been convicted of, or entered a plea of guilty or nolo contendere to, a felony committed by the secondary metals recycler against the laws of the state or of the United States involving theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any felony drug offense or of knowingly and intentionally violating the laws of the state relating to registration as a secondary metals recycler; or

(c) The applicant has, after receipt of written notice from the department of failure to pay sales tax, failed or refused to pay, within 30 days after the secondary metals recycler's receipt of such written notice, any sales tax owed to the department.

(5) A denial of an application, or a revocation, restriction, or suspension of a registration, by the department shall be probationary for a period of 12 months in the event that the secondary metals recycler subject to such action has not had any other application for registration denied, or any registration revoked, restricted, or suspended, by the department within the previous 24-month period.

(a) If, during the 12-month probationary period, the department does not again deny an application or revoke, restrict, or suspend the registration of the secondary metals recycler, the action of the department shall be dismissed and the record of the secondary metals recycler cleared thereof.

(b) If, during the 12-month probationary period, the department, for reasons other than those existing prior to the original denial or revocation, restriction, or suspension, again denies an application or revokes, restricts, or suspends the registration of the secondary metals recycler, the probationary nature of such original action shall terminate and both the original action of the department and the action of the department causing the termination of the probationary nature thereof shall immediately be reinstated against the secondary metals recycler.

(6) Upon the request of a law enforcement official, the Department of Revenue shall release to the official the name and address of any secondary metals recycler registered to do business within the official's jurisdiction.

538.26. Certain acts and practices prohibited.

It is unlawful for a secondary metals recycler to do or allow any of the following acts:

(1) Purchase regulated metals property, restricted regulated metals property, or ferrous metals before 7 a.m. or after 7 p.m.

(2) Purchase regulated metals property, restricted regulated metals property, or ferrous metals from any seller who presents such property for sale at the registered location of the secondary metals recycler when such property was not transported in a motor vehicle.

(3) Purchase regulated metals property, restricted regulated metals property, or ferrous metals from any location other than a fixed location.

(4) Purchase regulated metals property from a seller who:

(a) Uses a name other than his or her own name or the registered name of the seller's business;

(b) Is younger than 18 years of age; or

(c) Is visibly or apparently under the influence of drugs or alcohol.

(5) (a) Purchase any restricted regulated metals property listed in paragraph (b) unless the secondary metals recycler obtains reasonable proof that the seller:

1. Owns such property. Reasonable proof of ownership may include, but is not limited to, a receipt or bill of sale; or

2. Is an employee, agent, or contractor of the property's owner who is authorized to sell the property on behalf of the owner. Reasonable proof of authorization to sell the property includes, but is not limited to, a signed letter on the owner's letterhead, dated no later than 90 days before the sale, authorizing the seller to sell the property.

(b) The purchase of any of the following regulated metals property is subject to the restrictions provided in paragraph (a):

1. A manhole cover.

2. An electric light pole or other utility structure and its fixtures, wires, and hardware that are readily identifiable as connected to the utility structure.

3. A guard rail.

4. A street sign, traffic sign, or traffic signal and its fixtures and hardware.

5. Communication, transmission, distribution, and service wire from a utility, including copper or aluminum bus bars, connectors, grounding plates, or grounding wire.

6. A funeral marker or funeral vase.

7. A historical marker.

8. Railroad equipment, including, but not limited to, a tie plate, signal house, control box, switch plate, E clip, or rail tie junction.

9. Any metal item that is observably marked upon reasonable inspection with any form of the name, initials, or logo of a governmental entity, utility company, cemetery, or railroad.

10. A copper, aluminum, or aluminum-copper condensing or evaporator coil, including its tubing or rods, from an air-conditioning or heating unit, excluding coils from window air-conditioning or heating units and motor vehicle air-conditioning or heating units.

11. An aluminum or stainless steel container or bottle designed to hold propane for fueling forklifts.

12. A stainless steel beer keg.

13. A catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a motor vehicle.

14. Metallic wire that has been burned in whole or in part to remove insulation.

15. A brass or bronze commercial valve or fitting, referred to as a "fire department connection and control valve" or an "FDC valve," that is commonly used on structures for access to water for the purpose of extinguishing fires.

16. A brass or bronze commercial potable water backflow preventer valve that is commonly used to prevent backflow of potable water from commercial structures into municipal domestic water service systems.

17. A shopping cart.

18. A brass water meter.

19. A storm grate.

20. A brass sprinkler head used in commercial agriculture.

21. More than two lead-acid batteries, or any part or component thereof, in a single purchase or from the same individual in a single day.

CHAPTER 539
PAWNBROKING

539.001. The Florida Pawnbroking Act.

(1) SHORT TITLE.—This section may be cited as the "Florida Pawnbroking Act."

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

(a) "Agency" means the Department of Agriculture and Consumer Services.

(b) "Appropriate law enforcement official" means the sheriff of the county in which a pawnshop is located or, in case of a pawnshop located within a municipality, the police chief of the municipality in which the pawnshop is located; however, any sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within the county or municipality headed by that sheriff or police chief. Nothing in this subsection limits the power and responsibilities of the sheriff.

(c) "Claimant" means a person who claims that his or her property was misappropriated.

(d) "Conveying customer" means a person who delivers property into the custody of a pawnbroker, either by pawn, sale, consignment, or trade.

(e) "Identification" means a government-issued photographic identification or an electronic image taken from a government-issued photographic identification.

(f) "Misappropriated" means stolen, embezzled, converted, or otherwise wrongfully appropriated against the will of the rightful owner.

(g) "Net worth" means total assets less total liabilities.

(h) "Pawn" means any advancement of funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor on the terms and conditions contained in this section.

(i) "Pawnbroker" means any person who is engaged in the business of making pawns; who makes a public display containing the term "pawn," "pawnbroker," or "pawnshop" or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.

(j) "Pawnbroker transaction form" means the instrument on which a pawnbroker records pawns and purchases as provided in subsection (8).

(k) "Pawn service charge" means a charge for investigating the title, storage, and insuring of the security; closing the transaction; making daily reports to appropriate law enforcement officials; expenses and losses; and all other services.

(l) "Pawnshop" means the location at which a pawnbroker conducts business.

(m) "Permitted vendor" means a vendor who furnishes a pawnbroker with an invoice specifying the vendor's name and address,

the date of the sale, a description of the items sold, and the sales price, and who has an established place of business, or, in the case of a secondhand dealer as defined in § 538.03, has represented in writing that such dealer has complied with all applicable recordkeeping, reporting, and retention requirements pertaining to goods sold or otherwise delivered to a pawnbroker.

(n) "Person" means an individual, partnership, corporation, joint venture, trust, association, or other legal entity.

(o) "Pledged goods" means tangible personal property that is deposited with, or otherwise delivered into the possession of a pawnbroker in connection with a pawn. "Pledged goods" does not include titles or any other form of written security in tangible property in lieu of actual physical possession, including, but not limited to, choses in action, securities, printed evidence of indebtedness, or certificates of title and other instruments evidencing title to separate items of property, including motor vehicles. For purposes of federal and state bankruptcy laws, a pledgor's interest in his or her pledged goods during the pendency of a pawn is a right of redemption only.

(p) "Pledgor" means an individual who delivers pledged goods into the possession of a pawnbroker in connection with a pawn.

(q) "Purchase" means the transfer and delivery of goods, by a person other than a permitted vendor, to a pawnbroker by acquisition for value, consignment, or trade for other goods.

(r) "Amount financed" is used interchangeably to mean the same as "amount of money advanced" or "principal amount".

(s) "Default date" means that date upon which the pledgor's right of redemption expires and absolute right, title, and interest in and to the pledged goods shall vest in and shall be deemed conveyed to the pawnbroker by operation of law.

(t) "Beneficial owner" means a person who does not have title to property but has rights in the property which are the normal incident of owning the property.

(u) "Operator" means a person who has charge of a corporation or company and has control of its business, or of its branch establishments, divisions, or departments, and who is vested with a certain amount of discretion and independent judgment.

(3) LICENSE REQUIRED.—

(a) A person may not engage in business as a pawnbroker unless the person has a valid license issued by the agency. A separate license is required for each pawnshop. The agency must issue more than one license to a person if that person complies with the requirements for each license.

(b) A licensee who seeks to move a pawnshop to another location must give written notice to the agency at least 30 days before the move, and the agency must amend the license to indicate the new location. The licensee must also give such written notice to the appropriate law enforcement official.

(c) Each license is valid for a period of 1 year unless it is earlier relinquished, suspended, or revoked. Each license shall be renewed annually, and each licensee shall, initially and annually thereafter, pay to the agency a license fee of $300 for each license held.

(d) The agency may issue a temporary pawnbroker's license for the operation of a pawnshop either upon receipt of an application to transfer an existing license from one person to another or upon receipt of an application for a license involving principals and owners that are substantially identical to those of the existing licensee. The temporary license is effective until the permanent license is issued or denied by the agency.

(e) A person must apply to the agency for a new license or for a temporary license upon any change, directly or beneficially, in the ownership of any pawnshop. An application for a license or an application to transfer an existing license is not required upon any change, directly or beneficially, in the ownership of a pawnshop if one or more holders of at least 90 percent of the outstanding equity interest of the pawnshop before the change in ownership continue to hold at least 90 percent of the outstanding equity interest after the change in ownership.

(f) Any person applying for or renewing a local occupational license to engage in business as a pawnbroker must exhibit a current license from the agency before the local business tax receipt may be issued or reissued.

(4) ELIGIBILITY FOR LICENSE.—

(a) To be eligible for a pawnbroker's license, an applicant must:

1. Be of good moral character;

2. Have a net worth of at least $50,000 or file with the agency a bond issued by a surety company qualified to do business in this state in the amount of $10,000 for each license. In lieu of the bond required in this section, the applicant may establish a certificate of deposit or an irrevocable letter of credit in a Florida banking institution in the amount of the bond. The original bond, cer-

tificate of deposit, or letter of credit shall be filed with the agency, and the agency shall be the beneficiary to said document. The bond, certificate of deposit, or letter of credit shall be in favor of the agency for the use and benefit of any consumer who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of this section by the pawnbroker. Such liability may be enforced either by proceeding in an administrative action or by filing a judicial suit at law in a court of competent jurisdiction. However, in such court suit, the bond, certificate of deposit, or letter of credit posted with the agency shall not be amenable or subject to any judgment or other legal process issuing out of or from such court in connection with such lawsuit, but such bond, certificate of deposit, or letter of credit shall be amenable to and enforceable only by and through administrative proceedings before the agency. It is the intent of the Legislature that such bond, certificate of deposit, or letter of credit shall be applicable and liable only for the payment of claims duly adjudicated by order of the agency. The bond, certificate of deposit, or letter of credit shall be payable on a pro rata basis as determined by the agency, but the aggregate amount may not exceed the amount of the bond, certificate of deposit, or letter of credit;

3. Not have been convicted of, or found guilty of, or pled guilty or nolo contendere to, or not have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a felony within the last 10 years and not be acting as a beneficial owner for someone who has been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a felony within the last 10 years; and

4. Not have been convicted of, or found guilty of, or pled guilty or nolo contendere to, or not have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime that involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest dealing within the last 10 years, and not be acting as a beneficial owner for someone who has been convicted, of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime that involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest dealing within the last 10 years.

(b) Any applicant claiming to have a net worth of $50,000 or more shall file with the agency, at the time of applying for a license, the following documentation:

1. A current financial statement prepared by a Florida certified public accountant; or

2. An affidavit stating the applicant's net worth is at least $50,000, accompanied by supporting documentation; or

3. If the applicant is a corporation, a copy of the applicant's most recently filed federal tax return.

If the agency cannot verify that the applicant meets the net worth requirement for a license, the agency may require a finding, including the presentation of a current balance sheet, by an accounting firm or individual holding a permit to practice public accounting in this state, that the accountant has reviewed the books and records of the applicant and that the applicant meets the net worth requirement.

(c) If an applicant for a pawnbroker's license is not an individual, the eligibility requirements of this subsection, other than the requirements of subparagraph (a)2., apply to each operator of the pawnshop and to each direct or beneficial owner of at least 10 percent of the outstanding equity interest of the pawnshop and, if the applicant is a corporation, to each officer and director of the corporation.

(5) APPLICATION FOR LICENSE.—

(a) An application for a pawnbroker's license, for the transfer of an existing pawnbroker's license, or for the approval of a change in the ownership of a licensee's pawnshop must be under oath and must state the full name and place of residence of the applicant, the place where the business is to be conducted, and other relevant information required by the agency.

(b) 1. If the applicant is not an individual, the applicant must state the full name and address of each direct or beneficial owner of at least a 10-percent equity interest in such person. If the applicant is a corporation, the application must also state the full name and address of each officer and director.

2. Notwithstanding the provisions of subparagraph 1., the application need not state the full name and address of each officer, director, and shareholder if the applicant is owned directly or beneficially by a person that as an issuer has a class of securities registered under § 12 of the Securities Exchange Act of 1934, or under § 15(d) thereof, and is an issuer of registered securities required to file reports with the Securities and Exchange Commission and if the person files with the agency the information, documents, and reports required to be filed with the Securities and Exchange Commission.

(c) Each initial application for a license must be accompanied by a complete set of fingerprints taken by an authorized law enforcement officer or a fingerprinting service provider approved by the Department of Law Enforcement, $300 for the first year's license fee, and the actual cost to the agency for fingerprint analysis for each person subject to the eligibility requirements. The agency shall submit the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check. These fees and costs are not refundable.

(d) When the application and the required fees are received, the agency shall investigate the facts, approve the application, and issue a license to the applicant if the agency finds that the eligibility requirements for the license are satisfied. The license must be prominently displayed at the front desk or counter at each pawnshop.

(e) Fees and fines collected under this section by the agency shall be deposited into the General Inspection Trust Fund.

(6) SUSPENSION, REVOCATION, AND SURRENDER OF LICENSE; NET WORTH REQUIREMENT.—

(a) The agency may, after notice and a hearing, suspend or revoke any license upon a finding that:

1. The licensee, either knowingly or without the exercise of due care, has violated this section or has aided or conspired with another person to violate this section;

2. A condition exists that, had it existed when the license was issued, would have justified the agency's refusal to issue a license;

3. The licensee or its applicable agents or employees who are subject to the eligibility requirements no longer meet the eligibility requirements to hold a pawnbroker's license; or

4. The licensee has through gross negligence or willful noncompliance failed to comply with a written hold order.

(b) The agency may conditionally license or place on probation a person whose license has been suspended or may reprimand a licensee for a violation of this section.

(c) The manner of giving notice and conducting a hearing, as required by paragraph (a), must conform to chapter 120.

(d) Any licensee may surrender a license by delivering it, by certified or registered mail, return receipt requested, to the agency with written notice of its surrender. The surrender of a license does not affect the civil or criminal liability of the licensee for acts committed before the surrender of the license.

(e) The revocation, suspension, or surrender of a license does not impair or affect the obligation of any preexisting lawful contract between the licensee and any pledgor. Any pawn transaction made by a person without benefit of a license is voidable, in which case the person forfeits the right to collect any moneys, including principal and any charges, from the pledgor in connection with such transaction and is obligated to return to the pledgor the pledged goods in connection with such transaction.

(f) The agency may reinstate a suspended license or issue a new license to a person whose license has been revoked, if after a hearing it determines that no fact or condition then exists that would have justified the agency in originally refusing to issue a license.

(g) Each licensee must maintain a net worth of $50,000 or the bond specified in subsection (4).

(7) ORDERS IMPOSING PENALTIES.—

(a) The agency may enter an order imposing one or more of the penalties set forth in paragraph (b) if the agency finds that a pawnbroker:

1. Violated or is operating in violation of any of the provisions of this section or of the rules adopted or orders issued thereunder;

2. Made a material false statement in any application, document, or record required to be submitted or retained under this section;

3. Refused or failed, or any of its principal officers has refused or failed, after notice, to produce any document or records or disclose any information required to be produced or disclosed under this section or the rules of the agency;

4. Made a material false statement in response to any request or investigation by the

agency, the Department of Legal Affairs, or the state attorney; or

5. Has intentionally defrauded the public through dishonest or deceptive means.

(b) Upon a finding as set forth in paragraph (a), the agency may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to § 120.695.

2. Imposing an administrative fine not to exceed $5,000 for each act which constitutes a violation of this section or a rule or an order.

3. Directing that the pawnbroker cease and desist specified activities.

4. Refusing to license or revoking or suspending a license.

5. Placing the licensee on probation for a period of time, subject to such conditions as the agency may specify.

(c) The administrative proceedings which could result in the entry of an order imposing any of the penalties specified in paragraph (b) are governed by chapter 120.

(d) 1. When the agency, if a violation of this section occurs, has reasonable cause to believe that a person is operating in violation of this section, the agency may bring a civil action in the appropriate court for temporary or permanent injunctive relief and may seek other appropriate civil relief, including a civil penalty not to exceed $5,000 for each violation, restitution and damages for injured customers, court costs, and reasonable attorney's fees.

2. The agency may terminate any investigation or action upon agreement by the offender to pay a stipulated civil penalty, to make restitution or pay damages to customers, or to satisfy any other relief authorized herein and requested by the agency.

(e) The remedies provided for in this subsection shall be in addition to any other remedy provided by law.

(8) PAWNBROKER TRANSACTION FORM.—

(a) At the time the pawnbroker enters into any pawn or purchase transaction, the pawnbroker shall complete a pawnbroker transaction form for such transaction, including an indication of whether the transaction is a pawn or a purchase, and the pledgor or seller shall sign such completed form. The agency must approve the design and format of the pawnbroker transaction form, which must be 81/2 inches x 11 inches in size and elicit the information required under this section. In completing the pawnbroker transaction form, the pawnbroker shall record the following information, which must be typed or written indelibly and legibly in English.

(b) The front of the pawnbroker transaction form must include:

1. The name and address of the pawnshop.

2. A complete and accurate description of the pledged goods or purchased goods, including the following information, if applicable:

a. Brand name.

b. Model number.

c. Manufacturer's serial number.

d. Size.

e. Color, as apparent to the untrained eye.

f. Precious metal type, weight, and content, if known.

g. Gemstone description, including the number of stones.

h. In the case of firearms, the type of action, caliber or gauge, number of barrels, barrel length, and finish.

i. Any other unique identifying marks, numbers, names, or letters.

Notwithstanding sub-subparagraphs a.-i., in the case of multiple items of a similar nature delivered together in one transaction which do not bear serial or model numbers and which do not include precious metal or gemstones, such as musical or video recordings, books, and hand tools, the description of the items is adequate if it contains the quantity of items and a description of the type of items delivered.

3. The name, address, home telephone number, place of employment, date of birth, physical description, and right thumbprint of the pledgor or seller.

4. The date and time of the transaction.

5. The type of identification accepted from the pledgor or seller, including the issuing agency and the identification number.

6. In the case of a pawn:

a. The amount of money advanced, which must be designated as the amount financed;

b. The maturity date of the pawn, which must be 30 days after the date of the pawn;

c. The default date of the pawn and the amount due on the default date;

d. The total pawn service charge payable on the maturity date, which must be designated as the finance charge;

e. The amount financed plus the finance charge that must be paid to redeem the pledged goods on the maturity date, which must be designated as the total of payments;

f. The annual percentage rate, computed according to the regulations adopted by the

Federal Reserve Board under the federal Truth in Lending Act; and

g. The front or back of the pawnbroker transaction form must include a statement that:

I. Any personal property pledged to a pawnbroker within this state which is not redeemed within 30 days following the maturity date of the pawn, if the 30th day is not a business day, then the following business day, is automatically forfeited to the pawnbroker, and absolute right, title, and interest in and to the property vests in and is deemed conveyed to the pawnbroker by operation of law, and no further notice is necessary;

II. The pledgor is not obligated to redeem the pledged goods; and

III. If the pawnbroker transaction form is lost, destroyed, or stolen, the pledgor must immediately advise the issuing pawnbroker in writing by certified or registered mail, return receipt requested, or in person evidenced by a signed receipt.

IV. A pawn may be extended upon mutual agreement of the parties.

7. In the case of a purchase, the amount of money paid for the goods or the monetary value assigned to the goods in connection with the transaction.

8. A statement that the pledgor or seller of the item represents and warrants that it is not stolen, that it has no liens or encumbrances against it, and that the pledgor or seller is the rightful owner of the goods and has the right to enter into the transaction.

Any person who knowingly gives false verification of ownership or gives a false or altered identification and who receives money from a pawnbroker for goods sold or pledged commits:

a. If the value of the money received is less than $300, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

b. If the value of the money received is $300 or more, a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) A pawnbroker transaction form must provide a space for the imprint of the right thumbprint of the pledgor or seller and a blank line for the signature of the pledgor or seller.

(d) At the time of the pawn or purchase transaction, the pawnbroker shall deliver to the pledgor or seller an exact copy of the completed pawnbroker transaction form.

(9) RECORDKEEPING; REPORTING; HOLD PERIOD.—

(a) A pawnbroker must maintain a copy of each completed pawnbroker transaction form on the pawnshop premises for at least 1 year after the date of the transaction. On or before the end of each business day, the pawnbroker must deliver to the appropriate law enforcement official the original pawnbroker transaction forms for each of the transactions occurring during the previous business day, unless other arrangements have been agreed upon between the pawnbroker and the appropriate law enforcement official. If the original transaction form is lost or destroyed by the appropriate law enforcement official, a copy may be used by the pawnbroker as evidence in court. When an electronic image of a pledgor or seller identification is accepted for a transaction, the pawnbroker must maintain the electronic image in order to meet the same recordkeeping requirements as for the original transaction form. If a criminal investigation occurs, the pawnbroker shall, upon request, provide a clear and legible copy of the image to the appropriate law enforcement official.

(b) If the appropriate law enforcement agency supplies the appropriate software and the pawnbroker presently has the computer ability, pawn transactions shall be electronically transferred. If a pawnbroker does not presently have the computer ability, the appropriate law enforcement agency may provide the pawnbroker with a computer and all necessary equipment for the purpose of electronically transferring pawn transactions. The appropriate law enforcement agency shall retain ownership of the computer, unless otherwise agreed upon. The pawnbroker shall maintain the computer in good working order, ordinary wear and tear excepted. In the event the pawnbroker transfers pawn transactions electronically, the pawnbroker is not required to also deliver to the appropriate law enforcement official the original or copies of the pawnbroker transaction forms. The appropriate law enforcement official may, for the purposes of a criminal investigation, request that the pawnbroker produce an original of a transaction form that has been electronically transferred. The pawnbroker shall deliver this form to the appropriate law enforcement official within 24 hours of the request.

(c) All goods delivered to a pawnbroker in a pawn or purchase transaction must be securely stored and maintained in an unaltered condition within the jurisdiction of the appropriate law enforcement official for a period of 30 calendar days after the transac-

tion. Those goods delivered to a pawnbroker in a purchase transaction may not be sold or otherwise disposed of before the expiration of such period. The pawnbroker shall make all pledged and purchased goods and all records relating to such goods available for inspection by the appropriate law enforcement official during normal business hours throughout such period. The pawnbroker must store and maintain pledged goods for the period prescribed in subsection (10) unless the pledged goods are redeemed earlier; provided, however, that within the first 30 days after the original pawn, the pledged goods may be redeemed only by the pledgor or the pledgor's attorney in fact.

(10) PLEDGED GOODS NOT REDEEMED.—Pledged goods not redeemed by the pledgor on or before the maturity date of a pawn must be held by the pawnbroker for at least 30 days following such date or until the next business day, if the 30th day is not a business day. Pledged goods not redeemed within the 30-day period following the maturity date of a pawn are automatically forfeited to the pawnbroker; absolute right, title, and interest in and to the goods shall vest in and shall be deemed conveyed to the pawnbroker by operation of law; and no further notice is necessary. A pledgor has no obligation to redeem pledged goods or make any payment on a pawn.

(11) PAWN SERVICE CHARGES.—

(a) In a pawn transaction, a pawnbroker may contract for and receive a pawn service charge. The interest component of the pawn service charge shall be deemed to be 2 percent of the amount financed for each 30-day period in a pawn transaction. The pawnbroker may charge any amount of pawn service charge, so long as the total amount, inclusive of the interest component, does not exceed 25 percent of the amount financed for each 30-day period in a pawn transaction, except that the pawnbroker is entitled to receive a minimum pawn service charge of $5 for each such 30-day period.

(b) The default date of any pawn may be extended to a subsequent date by mutual agreement, between the pledgor and the pawnbroker except the pawnbroker may not impose a minimum duration of more than 30 days, evidenced by a written memorandum, a copy of which must be supplied to the pledgor, which must clearly specify the new default date, and the pawn service charges owed on the new default date. In this event, the daily pawn service charge for the extension shall be equal to the pawn service charge for the original 30-day period divided by 30 days (i.e., one-thirtieth of the original total pawn service charge). There is no limit on the number of extensions that the parties may agree to.

(c) The total amount of pawn service charges that a pawnbroker may collect in the case of pledged goods redeemed at any time within 30 days after the date of the pawn is the amount provided in paragraph (a). The total amount of pawn service charges that a pawnbroker may collect in the case of redemptions occurring at any time more than 30 days after the date of the pawn is twice the amount provided in paragraph (a), except that, for redemptions occurring more than 60 days after the date of the pawn, pawn service charges continue to accrue from and after the 60th day at the daily rate determined as provided in paragraph (b). Any unused pawn service charge paid in advance by the pledgor shall be refunded by the pawnbroker.

(d) Pledged goods may be redeemed by mail by agreement between the pledgor and the pawnbroker. The pledgor must pay in advance all moneys due and a reasonable charge assessed by the pawnbroker to recover its cost and expenses involved in the packaging, insuring, and shipping of the pledged goods. The pawnbroker shall insure the pledged goods in an amount acceptable to the pledgor. The pawnbroker's liability for loss or damage in connection with the shipment of such pledged goods is limited to the amount of the insurance coverage obtained.

(e) Any interest, charge, or fees contracted for or received, directly or indirectly, in excess of the amounts authorized under this section are prohibited, may not be collected, and render the pawn transaction voidable, in which case the pawnbroker shall forfeit the right to collect twice the amount of the pawn service charge contracted for in the pawn and, upon the pledgor's written request received by the pawnbroker within 30 days after the maturity date, shall be obligated to return to the pledgor the pledged goods delivered to the pawnbroker in connection with the pawn upon payment of the balance remaining due, provided that there shall be no penalty for a violation resulting from an accidental and bona fide error that is corrected upon discovery. Any action to circumvent the limitation on pawn service charges collectible under this section is voidable. In the event a pledgor makes a partial payment on a pawn that reduces the amount financed, any additional pawn service charges shall be

calculated on the remaining balance of the original amount financed.

(12) PROHIBITED ACTS.—A pawnbroker, or an employee or agent of a pawnbroker, may not:

(a) Falsify or intentionally fail to make an entry of any material matter in a pawnbroker transaction form.

(b) Refuse to allow the agency, the appropriate law enforcement official, or the state attorney, or any of their designated representatives having jurisdiction, to inspect completed pawnbroker transaction forms or pledged or purchased goods during the ordinary hours of the pawnbroker's business or other time acceptable to both parties. The appropriate law enforcement official shall disclose to a claimant the name and address of the pawnbroker, the name and address of the conveying customer, and a description of pawned, purchased, or consigned goods that the claimant claims to be misappropriated.

(c) Obliterate, discard, or destroy a completed pawnbroker transaction form sooner than 3 years after the date of the transaction.

(d) Accept a pledge or purchase property from a person under the age of 18 years.

(e) Make any agreement requiring or allowing the personal liability of a pledgor or the waiver of any of the provisions of this section.

(f) Knowingly enter into a pawn or purchase transaction with any person who is under the influence of alcohol or controlled substances when such condition is apparent, or with any person using the name of another or the registered name of another's business.

(g) Conduct any pawn or purchase transaction at a drive-through window or similar device in which the customer remains in a vehicle while conducting the transaction.

(h) Fail to return or replace pledged goods to a pledgor upon payment of the full amount due the pawnbroker, unless the pledged goods have been placed under a hold order under subsection (16), or taken into custody by a court or otherwise disposed of by court order.

(i) Sell or otherwise charge for insurance in connection with a pawn transaction, except in connection with the shipment of pledged goods redeemed by mail as provided in subsection (11).

(j) Engage in title loan transactions at, within, or adjoining a licensed pawnshop location.

(k) Lease pledged goods to the pledgor or any other party.

(l) Operate a pawnshop between the hours of 10 p.m. and 7 a.m.

(m) Knowingly hire anyone to work in a pawnshop who has been convicted of, or entered a plea of guilty or nolo contendere to, or had adjudication withheld for a felony within the last 5 years, or been convicted of, or entered a plea of guilty or nolo contendere to, or had adjudication withheld for a crime within the last 5 years which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any fraudulent, or dishonest dealing.

(n) Knowingly accept or receive misappropriated property from a conveying customer in a pawn or purchase transaction.

(13) RIGHT TO REDEEM; LOST PAWNBROKER TRANSACTION FORM.—

(a) Only a pledgor or a pledgor's authorized representative is entitled to redeem the pledged goods described in the pawnbroker transaction form; however, if the pawnbroker determines that the person is not the original pledgor, or the pledgor's authorized representative, the pawnbroker is not required to allow the redemption of the pledged goods by such person. The person redeeming the pledged goods must sign the pledgor's copy of the pawnbroker transaction form, which the pawnbroker may retain as evidence of the person's receipt of the pledged goods. If the person redeeming the pledged goods is the pledgor's authorized representative, that person must present notarized authorization from the original pledgor and show identification to the pawnbroker and the pawnbroker shall record that person's name and address on the pawnbroker transaction form retained by the pawnshop. It is the pawnbroker's responsibility to verify that the person redeeming the pledged goods is either the pledgor or the pledgor's authorized representative.

(b) If a pledgor's copy of the pawnbroker transaction form is lost, destroyed, or stolen, the pledgor must notify the pawnbroker in writing by certified or registered mail, return receipt requested, or in person evidenced by a signed receipt, and receipt of this notice invalidates the pawnbroker transaction form if the pledged goods have not previously been redeemed. Before delivering the pledged goods or issuing a new pawnbroker transaction form, the pawnbroker must require the pledgor to make a written statement of the loss, destruction, or theft of the pledgor's copy of the pawnbroker transaction form. The pawnbroker must record on the writ-

ten statement the type of identification and the identification number accepted from the pledgor, the date the statement is given, and the number of the pawnbroker transaction form that was lost, destroyed, or stolen. The statement must be signed by the pawnbroker or the pawnshop employee who accepts the statement from the pledgor. A pawnbroker is entitled to a fee not to exceed $2 in connection with each lost, destroyed, or stolen pawnbroker transaction form and the taking of a properly prepared written statement.

(c) Sales tax is not due or collectible in connection with the redemption of pledged goods.

(d) If pledged goods are lost or damaged while in the possession of the pawnbroker, the pawnbroker may satisfy the pledgor's claim by replacing the lost or damaged goods with like kinds of merchandise of equal value, with which the pledgor can reasonably replace the goods. Such replacement is a defense to any civil action based upon the loss or damage of the goods.

(14) PAWNBROKER'S LIEN.—A pawnbroker has a possessory lien on the pledged goods pawned as security for the funds advanced, the pawn service charge owed, and the other charges authorized under this section, but not for other debts due to the pawnbroker. A pawnbroker has no recourse against a pledgor for payment on a pawn transaction except for the pledged goods themselves. Except as otherwise provided in this section, the pawnbroker must retain possession of the pledged goods until the lien is satisfied or until the default date. The pawnbroker may be compelled to relinquish possession of the pledged goods only after receipt of the applicable funds advanced plus the accrued service charge and other authorized charges, upon court order, or as otherwise provided by law.

(15) CLAIMS AGAINST PURCHASED GOODS OR PLEDGED GOODS HELD BY PAWNBROKERS.—

(a) To obtain possession of purchased or pledged goods held by a pawnbroker which a claimant claims to be misappropriated, the claimant must notify the pawnbroker by certified mail, return receipt requested, or in person evidenced by signed receipt, of the claimant's claim to the purchased or pledged goods. The notice must contain a complete and accurate description of the purchased or pledged goods and must be accompanied by a legible copy of the applicable law enforcement agency's report on the misappropriation of such property. If the claimant and the pawnbroker do not resolve the matter within 10 days after the pawnbroker's receipt of the notice, the claimant may petition the court to order the return of the property, naming the pawnbroker as a defendant, and must serve the pawnbroker with a copy of the petition. The pawnbroker shall hold the property described in the petition until the right to possession is resolved by the parties or by a court of competent jurisdiction. The court shall waive any filing fee for the petition to recover the property, and the sheriff shall waive the service fees.

(b) If, after notice and a hearing, the court finds that the property was misappropriated and orders the return of the property to the claimant:

1. The claimant may recover from the pawnbroker the cost of the action, including the claimant's reasonable attorney's fees; and

2. If the conveying customer is convicted of theft, a violation of this section, or dealing in stolen property, the court shall order the conveying customer to repay the pawnbroker the full amount the conveying customer received from the pawnbroker for the property, plus all applicable pawn service charges. As used in this paragraph, the term "convicted of" includes a plea of nolo contendere to the charges or any agreement in which adjudication is withheld; and

3. The conveying customer shall be responsible to pay all attorney's fees and taxable costs incurred by the pawnbroker in defending a replevin action or any other civil matter wherein it is found that the conveying customer was in violation of this paragraph.

(c) If the court finds that the claimant failed to comply with the requirements in paragraph (a) or otherwise finds against the claimant, the claimant is liable for the defendants' costs, including reasonable attorney's fees.

(d) The sale, pledge, or delivery of tangible personal property to a pawnbroker by any person in this state is considered to be:

1. An agreement by the person who sells, pledges, or delivers the tangible personal property that the person is subject to the jurisdiction of the court in all civil actions and proceedings arising out of the pledge or sale transaction filed by either a resident or nonresident plaintiff;

2. An appointment of the Secretary of State by any nonresident of this state as that person's lawful attorney and agent upon whom may be served all process in suits per-

taining to the actions and proceedings arising out of the sale, pledge, or delivery; and

3. An agreement by any nonresident that any process in any suit so served has the same legal force and validity as if personally served in this state.

(16) HOLD ORDERS; ISSUANCE; REQUIRED INFORMATION; PROCEDURES.—

(a) When an appropriate law enforcement official has probable cause to believe that property in the possession of a pawnbroker is misappropriated, the official may place a written hold order on the property. The written hold order shall impose a holding period not to exceed 90 days unless extended by court order. The appropriate law enforcement official may rescind, in writing, any hold order. An appropriate law enforcement official may place only one hold order on property.

(b) Upon the expiration of the holding period, the pawnbroker shall notify, in writing, the appropriate law enforcement official by certified mail, return receipt requested, that the holding period has expired. If, on the 10th day after the written notice has been received by the appropriate law enforcement official, the pawnbroker has not received from a court an extension of the hold order on the property and the property is not the subject of a proceeding under subsection (15), title to the property shall vest in and be deemed conveyed by operation of law to the pawnbroker, free of any liability for claims but subject to any restrictions contained in the pawn transaction contract and subject to the provisions of this section.

(c) A hold order must specify:

1. The name and address of the pawnbroker.

2. The name, title, and identification number of the representative of the appropriate law enforcement official or the court placing the hold order.

3. If applicable, the name and address of the appropriate law enforcement official or court to which such representative is attached and the number, if any, assigned to the claim regarding the property.

4. A complete description of the property to be held, including model number and serial number if applicable.

5. The name of the person reporting the property to be misappropriated unless otherwise prohibited by law.

6. The mailing address of the pawnbroker where the property is held.

7. The expiration date of the holding period.

(d) The pawnbroker or the pawnbroker's representative must sign and date a copy of the hold order as evidence of receipt of the hold order and the beginning of the 90-day holding period.

(e) 1. Except as provided in subparagraph 2., a pawnbroker may not release or dispose of property subject to a hold order except pursuant to a court order, a written release from the appropriate law enforcement official, or the expiration of the holding period of the hold order.

2. While a hold order is in effect, the pawnbroker must upon request release the property subject to the hold order to the custody of the appropriate law enforcement official for use in a criminal investigation. The release of the property to the custody of the appropriate law enforcement official is not considered a waiver or release of the pawnbroker's property rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the pawnbroker unless the court orders other disposition. When such other disposition is ordered, the court shall additionally order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property together with reasonable attorney's fees and costs.

(17) CRIMINAL PENALTIES.—

(a) Any person who engages in business as a pawnbroker without first securing a license commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) In addition to any other penalty, any person, who willfully violates this section or who willfully makes a false entry in any record specifically required by this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Clerical or recordkeeping errors, such as typographical errors or scrivener's errors, regarding any document or record required by this section do not constitute a willful violation of this section, and are not subject to criminal penalties. Clerical or recordkeeping errors are subject to the administrative remedies, as provided in this act.

(18) INJUNCTIONS.—When the agency has reasonable cause to believe that a person is violating this section, the agency may enter an order requiring the person to stop the violation. The agency may petition the court to enjoin the person from engaging in the

violation, continuing the violation, or doing any act in furtherance of the violation. The court may order a preliminary or permanent injunction.

(19) RECORDS OF THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT.—The Department of Law Enforcement, on request, must supply to the agency any arrest and conviction records in its possession of an individual applying for or holding a license under this section.

(20) CONFLICTING ORDINANCES.—Any county or municipality may enact ordinances that are in compliance with, but not more restrictive than this section, except that local ordinances shall not require the payment of any fee or tax related to a pawn transaction or purchase unless authorized under this chapter or restrict hours of operations other than between midnight and 6 a.m. Any ordinance that conflicts with this subsection is void. This section does not affect the authority of a county or municipality to establish land use controls or require a pawnbroker to obtain a local occupational license.

(21) RULEMAKING AUTHORITY.—The agency has authority to adopt rules pursuant to chapter 120 to implement the provisions of this section.

539.002. Applicability.

Chapter 538 does not apply to pawnbrokers licensed under the Florida Pawnbroking Act. This act does not abrogate any provision of chapters 671-680.

539.003. Confidentiality.

All records relating to pawnbroker transactions delivered to appropriate law enforcement officials pursuant to § 539.001 are confidential and exempt from the provisions of § 119.07(1) and § 24(a), Art. I of the State Constitution and may be used only for official law enforcement purposes. This section does not prohibit the disclosure by the appropriate law enforcement officials of the name and address of the pawnbroker, the name and address of the conveying customer, or a description of pawned property to the alleged owner of pawned property.

CHAPTER 540
COMMERCIAL DISCRIMINATION

540.11. Unauthorized copying of phonograph records, disk, wire, tape, film, or other article on which sounds are recorded.

(1) As used in this section, unless the context otherwise requires:

(a) "Owner" means the person who owns the original sounds embodied in the master phonograph record, master disk, master tape, master film, or other device used for reproducing sounds on phonograph records, disks, tapes, films, or other articles upon which sound is recorded, and from which the transferred recorded sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance.

(b) "Performer" means the person or persons appearing in the performance.

(c) "Master recording" means the original fixation of sounds upon an article from which copies can be made.

(d) "Person" means any individual, partnership, corporation, association, or other legal entity.

(e) "Article" means the tangible medium upon which sounds or images are recorded or any original phonograph record, disk, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

(2) (a) It is unlawful:

1. Knowingly and willfully and without the consent of the owner, to transfer or cause to be transferred, directly or indirectly, any sounds recorded on a phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, with the intent to sell, or cause to be sold, or use or cause to be used for profit through public performance, such article on which sounds are so transferred without consent of the owner.

2. Knowingly to manufacture, distribute, wholesale or transport within the state or cause to be transported within the state for commercial advantage or private financial gain any article on which sounds are recorded with knowledge that the sounds thereon are transferred without consent of the owner.

3. Knowingly and willfully and without the consent of the performer, to transfer to or cause to be transferred to any phonograph record, disk, wire, tape, film, or other article

any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell, or cause to be sold, or to use or cause to be used for profit through public performance or to be used to promote the sale of any product or such article onto which such performance is so transferred.

4. Knowingly to manufacture, distribute, wholesale or transport within this state or cause to be transported within this state for commercial advantage or private financial gain any article embodying a performance, whether live before an audience or transmitted by wire or through the air by radio or television, recorded with the knowledge that the performance is so transferred without consent of the owner.

Subparagraphs 1. and 2. apply only to sound recordings fixed prior to February 15, 1972.

(b) 1. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in § 775.082, by a fine of up to $250,000, or both if the offense involves at least 1,000 unauthorized articles embodying sound or at least 65 unauthorized audiovisual articles during any 180-day period or is a second or subsequent conviction under either this subparagraph or subparagraph 2.

2. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in § 775.082, by a fine of up to $150,000, or both if the offense involves more than 100 but less than 1,000 unauthorized articles embodying sound or more than 7 but less than 65 unauthorized audiovisual articles during any 180-day period.

3. A person who otherwise violates paragraph (a) commits a misdemeanor of the first degree, punishable as provided in § 775.082, by a fine of up to $25,000, or both.

(c) For purposes of this subsection, a person who is authorized to maintain custody and control over business records which reflect whether or not the owner of the live performance consented to having the live performance recorded or fixed shall be a proper witness in any proceeding regarding the issue of consent.

(3) (a) It is unlawful:

1. To sell or offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for any of these purposes any article with the knowledge, or with reasonable grounds to know, that the sounds thereon have been transferred without the consent of the owner.

2. To sell or offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for any of these purposes any article embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, recorded without the consent of the performer.

3. Knowingly, for commercial advantage or private financial gain to sell or resell, offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for such purposes, any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, unless the outside cover, box, or jacket clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

(b) 1. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in § 775.082, by a fine of up to $250,000, or both if the offense involves at least 1,000 unauthorized articles embodying sound or at least 65 unauthorized audiovisual articles during any 180-day period or is a second or subsequent conviction under either this subparagraph or subparagraph 2. of this subsection.

2. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in § 775.082, by a fine of up to $150,000, or both if the offense involves more than 100 but less than 1,000 unauthorized articles embodying sound or more than 7 but less than 65 unauthorized audiovisual articles during any 180-day period.

3. A person who otherwise violates this subsection commits a misdemeanor of the first degree, punishable as provided in § 775.082, by a fine of up to $25,000, or both.

(4) Any recorded article produced in violation of subsections (2) and (3), or any equipment or components used in the production thereof, shall be subject to seizure and forfeiture and destruction by the seizing law enforcement agency.

(5) This section shall neither enlarge nor diminish the right of parties in private litigation.

(6) This section does not apply:

(a) To any broadcaster who, in connection with, or as part of, a radio, television, or cable broadcast transmission, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording.

(b) To any person who transfers such sounds in the home for personal use and without compensation for such transfer.

(c) To any not-for-profit educational institution or any federal or state governmental entity, if all the following conditions exist:

1. The primary purpose of the institution or entity is the advancement of the public's knowledge and the dissemination of information.

2. Such purpose is clearly set forth in the institution's or entity's charter, bylaws, certificate of incorporation, or similar document.

3. Prior to the transfer of the sounds, the institution or entity has made a good faith effort to identify and locate the owner or owners of the articles to be transferred.

4. Despite good faith efforts, the owner or owners have not been located.

CHAPTER 550
PARI-MUTUEL WAGERING

550.3615. Bookmaking on the grounds of a permitholder; penalties; reinstatement; duties of track employees; penalty; exceptions.

(1) Any person who engages in bookmaking, as defined in § 849.25, on the grounds or property of a permitholder of a horse or dog track or jai alai fronton is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Notwithstanding the provisions of § 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(2) Any person who, having been convicted of violating subsection (1), thereafter commits the same crime is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Notwithstanding the provisions of § 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(3) Any person who has been convicted of bookmaking in this state or any other state of the United States or any foreign country shall be denied admittance to and shall not attend any racetrack or fronton in this state during its racing seasons or operating dates, including any practice or preparational days, for a period of 2 years after the date of conviction or the date of final appeal. Following the conclusion of the period of ineligibility, the director of the division may authorize the reinstatement of an individual following a hearing on readmittance. Any such person who knowingly violates this subsection is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(4) If the activities of a person show that this law is being violated, and such activities are either witnessed or are common knowledge by any track or fronton employee, it is the duty of that employee to bring the matter to the immediate attention of the permitholder, manager, or her or his designee, who shall notify a law enforcement agency having jurisdiction. Willful failure on the part of any track or fronton employee to comply with the provisions of this subsection is a ground for the division to suspend or revoke that employee's license for track or fronton employment.

(5) Each permittee shall display, in conspicuous places at a track or fronton and in all race and jai alai daily programs, a warning to all patrons concerning the prohibition and penalties of bookmaking contained in this section and § 849.25. The division shall adopt rules concerning the uniform size of all warnings and the number of placements throughout a track or fronton. Failure on the part of the permittee to display such warnings may result in the imposition of a $500 fine by the division for each offense.

(6) This section does not apply to any person attending a track or fronton or employed by a track or fronton who places a bet through the legalized pari-mutuel pool for another person, provided such service is rendered gratuitously and without fee or other reward.

(7) This section does not apply to any prosecutions filed and pending at the time of passage hereof, but all such cases shall be disposed of under existing law at the time of institution of such prosecutions.

CHAPTER 552
MANUFACTURE, DISTRIBUTION, AND USE OF EXPLOSIVES

552.081. Definitions.

As used in this chapter:

(1) "Explosive materials" means explosives, blasting agents, or detonators.

(2) "Explosives" means any chemical compound, mixture, or device, the primary purpose of which is to function by explosion. The term "explosives" includes, but is not limited to, dynamite, nitroglycerin, trinitrotoluene, other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter

cord, and igniters. "Explosives" does not include cartridges for firearms and does not include fireworks as defined in chapter 791.

(3) "Blasting agent" means any material or mixture, consisting of fuel and oxidizer, intended for blasting and not otherwise defined as an explosive, provided the finished product, ready for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined.

(4) "Detonator" means any device containing a detonating charge that is used for initiating detonation of an explosive and includes, but is not limited to, blasting caps and electric blasting caps of instantaneous and delay types.

(5) "Person" means any natural person, partnership, association, or corporation.

(6) "Manufacturer-distributor" means a person engaged in the manufacture, compounding, combining, production, or distribution of explosives.

(7) "Dealer" means a person engaged in the wholesale or retail business of buying and selling explosives.

(8) "User" means a dealer or manufacturer-distributor who uses an explosive as an ultimate consumer or a person who, as an ultimate consumer of an explosive, purchases such explosive from a dealer or manufacturer-distributor.

(9) "Blaster" means a person employed by a user who detonates or otherwise effects the explosion of an explosive.

(10) "Sale" and its various forms includes delivery of an explosive with or without consideration.

(11) "Highway" means any public highway in this state, including public streets, alleys, and other thoroughfares, by whatever name, in any municipality.

(12) "Manufacturer's mark" means the mark placed on each carton of and each individual piece of explosive by the manufacturer to identify the manufacturer and the location, date, and shift of manufacture.

(13) "Two-component explosives" means any two inert components which, when mixed, become capable of detonation by a No. 6 blasting cap, and shall be classified as a Class "A" explosive when so mixed.

(14) "Division" means the Division of State Fire Marshal of the Department of Financial Services.

(15) "Purchase" and its various forms means acquisition of any explosive by a person with or without consideration.

552.091. License or permit required of manufacturer-distributor, dealer, user, or blaster of explosives.

(1) It shall be unlawful for any person to engage in the business of a manufacturer-distributor or to acquire, sell, possess, store, or engage in the use of explosives in this state, except in conformity with the provisions of this chapter.

(2) Each manufacturer-distributor, dealer, user, or blaster must be possessed of a valid and subsisting license or permit issued by the division, except that if a manufacturer-distributor makes sales to users, such manufacturer shall not be required to obtain an additional license as a dealer.

(3) In the case of multiple locations for storage of explosives, each manufacturer-distributor, dealer, or user maintaining more than one permanent storage magazine location shall possess an additional license, as herein set forth, for each such location.

(4) The manufacturer-distributor of two-component explosives is required to purchase a manufacturer-distributor explosive license. Dealers of two-component explosives are required to purchase a dealer's explosive license. A user's explosive license is required of any person to purchase, mix, or use two-component explosives from a dealer or manufacturer-distributor. A blaster's explosive permit is required of any person employed by a user to mix, detonate, or otherwise effect the explosion of two-component explosives, provided that a user who is a natural person is not required to obtain a blaster's permit in addition to the user's license in order to mix, detonate, or otherwise effect the explosion of any explosive.

(5) (a) Licenses, permits, and fees therefor are required for each license year for the following:

1. Manufacturer-distributor license .. $650
2. Dealer license 450
3. User license..... 125
4. Blaster permit..... 50
5. Duplicate licenses or permits or address changes 5

(b) However, no fee shall be required for a dealer license if the only explosive sold by the dealer is black powder for recreational use.

(6) Said licenses and permits shall be issued by the division for each license year beginning October 1 and expiring the following September 30.

552.101. Possession without license prohibited; exceptions.

It is unlawful for any person to possess an explosive unless he or she is the holder of

a current, valid license or permit, as above provided, and possesses such explosive for the purpose covered by the license or permit held. However, there is excepted from this provision common, contract, and private carriers, as described in § 552.12, possessed of an explosive in connection with transportation of the same in the ordinary course of their business.

552.111. Maintenance of records and sales of explosives by manufacturer-distributors and dealers; inspections.

(1) It is unlawful for any licensed manufacturer-distributor to sell or distribute explosives to any person except a person presenting a current, valid dealer's explosive license or user's explosive license.

(2) It is unlawful for any licensed dealer to sell or distribute explosives to any person except a person presenting a current, valid user of explosives license or dealer's explosive license.

(3) Each sale shall be evidenced by an invoice or sales ticket, which shall bear the name, address, and explosives license number of the purchaser, the date of sale, quantity sold, type of explosive sold, manufacturer's mark, and use for which the explosive is purchased. All original invoices or sales tickets shall be retained by the manufacturer-distributor or dealer and a copy thereof provided to the purchaser.

(4) Each manufacturer-distributor and each dealer shall keep an accurate and current written account of all inventories and sales of explosives. Such records shall be maintained by the manufacturer-distributor or dealer for a period of 5 years.

(5) Such records and inventories shall be made accessible to, and subject to examination by, the division and any peace officer of this state.

(6) It is unlawful for any person knowingly to withhold information or to make any false or fictitious entry or misrepresentation upon any sales invoice, sales ticket, or account of inventories.

552.112. Maintenance of records by users; inspection.

(1) It is unlawful for any user of explosives to purchase, store, or use explosives without maintaining an accurate and current written inventory of all explosives purchased, possessed, stored, or used.

(2) Such records shall include, but not be limited to, invoices or sales tickets from purchases, location of blasting sites, dates and times of firing, the amount of explosives used for each blast or delay series, the name of the person in charge of loading and firing, and the license or permit number and name of the person making such entry into the records. Such records shall be maintained by users for a period of 5 years.

(3) Such records shall be made accessible to, and subject to examination by, the division and any peace officer of this state.

(4) It is unlawful for any person knowingly to withhold information or make any false or fictitious entry or misrepresentation upon any such records.

552.113. Reports of thefts, illegal use, or illegal possession.

(1) Any sheriff, police department, or peace officer of this state shall give immediate notice to the division of any theft, illegal use, or illegal possession of explosives within the purview of this chapter, coming to his or her attention, and shall forward a copy of his or her final written report to the division.

(2) It is unlawful for any holder of an explosives license or permit who incurs a loss, unexplained shortage, or theft of explosives, or who has knowledge of a theft or loss of explosives, to fail to report such loss or unexplained shortage or theft, within 12 hours after discovery thereof, to the nearest county sheriff or police chief and the division. Such report shall include the amount and type of explosives missing, the manufacturer's mark, if available, the approximate time of occurrence, if known, and any other information such licensee or permittee may possess. Any other person who has knowledge or information concerning a theft shall immediately inform the nearest county sheriff or police chief of such occurrence.

(3) The division shall investigate, or be certain that a qualified law enforcement agency investigates, the cause and circumstances of each theft, illegal use, or illegal possession of explosives which occurs within the state. A report of each such investigation shall be made and maintained by the division.

552.114. Sale, labeling, and disposition of explosives; unlawful possession.

No person shall sell, accept, or deliver any explosives unless each carton and each individual piece of such explosive is plainly labeled, stamped, or marked with the manufacturer's mark. It shall only be necessary for such identification marks to be on the containers used for packaging such explosives for explosive materials of such small size as not to be suitable for marking on the individual item. It is unlawful for any person to

use or possess any explosives not marked as required in this section. All unmarked explosives found in the possession of any person shall be confiscated and disposed of in accordance with the provisions of this chapter.

552.12. Transportation of explosives without license prohibited; exceptions.

No person shall transport any explosive into this state or within the boundaries of this state over the highways, on navigable waters or by air, unless such person is possessed of a license or permit; provided, there is excepted from the effects of this sentence common, contract and private carriers, as mentioned in the next succeeding sentence. Common carriers by air, highway, railroad, or water transporting explosives into this state, or within the boundaries of this state (including ocean-plying vessels loading or unloading explosives in Florida ports), and contract or private carriers by motor vehicle transporting explosives on highways into this state, or within the boundaries of this state, and which contract or private carriers are engaged in such business pursuant to certificate or permit by whatever name issued to them by any federal or state officer, agency, bureau, commission or department, shall be fully subject to the provisions of this chapter; provided, that in any instance where the Federal Government, acting through the [1]Interstate Commerce Commission or other federal officer, agency, bureau, commission or department, by virtue of federal laws or rules or regulations promulgated pursuant thereto, has preempted the field of regulation in relation to any activity of any such common, contract or private carrier sought to be regulated by this chapter, such activity of such a carrier is excepted from the provisions of this chapter.

552.22. Penalties.

(1) Any person who manufactures, purchases, transports, keeps, stores, possesses, distributes, sells, or uses any explosive with the intent to harm life, limb, or property is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Manufacturing, purchasing, possessing, distributing, or selling an explosive under circumstances contrary to the provisions of this chapter or such regulations as are adopted pursuant thereto shall be prima facie evidence of an intent to use the explosive for destruction of life, limb, or property.

(2) Any person who possesses any explosive material, knowing or having reasonable cause to believe that such explosive material was stolen, is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Any person who knowingly withholds information or presents to the division any false, fictitious, or misrepresented application, identification, document, information, statement, or data, intended or likely to deceive, for the purpose of obtaining an explosives license or permit is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(4) Any person who knowingly withholds information or makes any false or fictitious entry or misrepresentation upon any records required by § 552.111 or § 552.112 is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(5) Any person who is the holder of an explosives license or permit and who fails to report the loss, theft, or unexplained shortage of any explosive material as required by § 552.113 is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(6) Any person who violates any order, rule, or regulation of the division, an order to cease and desist, or an order to correct conditions issued pursuant to this chapter is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(7) Any person who is the holder of an explosives license or permit and who abandons any explosive material is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(8) The license or permit of any person convicted of violating subsection (1) or subsection (2) is automatically and permanently revoked upon such conviction.

(9) The license or permit of any person convicted of violating subsection (3), subsection (4), subsection (5), subsection (6), or subsection (7) is automatically revoked upon such conviction, and the division shall not issue a license or permit to such person for 2 years from the date of such conviction.

(10) Any person who knowingly possesses an explosive in violation of the provisions of § 552.101 is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

552.24. Exceptions.

Nothing contained in this chapter shall apply to the regular military or naval forces of the United States; or to the duly organized military force of any state or territory thereof; or to police or fire departments in this state, provided they are acting within their

respective official capacities and in the performance of their duties.

552.241. Limited exemptions.

The licensing, permitting, and storage requirements of this chapter shall not apply to:

(1) Dealers who purchase, sell, possess, or transport:

(a) Smokeless propellant or commercially manufactured sporting grades of black powder in quantities not exceeding 150 pounds, provided such dealer holds a valid federal firearms dealer's license.

(b) Small arms ammunition primers, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches and friction primers intended to be used solely for sporting, recreational, and cultural purposes, provided such dealer holds a valid federal firearms dealer's license.

(2) Users who are natural persons and who purchase, possess, or transport:

(a) Smokeless propellant powder in quantities not to exceed 150 pounds, or commercially manufactured sporting grades of black powder not to exceed 25 pounds, provided such powder is for the sole purpose of handloading cartridges for use in pistols or sporting rifles, or handloading shells for use in shotguns, or for a combination of these or other purposes strictly confined to handloading or muzzle-loading firearms for sporting, recreational, or cultural use.

(b) Small arms ammunition primers, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches and friction primers, provided such small arms ammunition primers are for the sole purpose of handloading cartridges for use in pistols or sporting rifles, or handloading shells for use in shotguns, or for a combination of these or other purposes strictly confined to handloading or muzzle-loading firearms for sporting, recreational, or cultural use.

CHAPTER 560
MONEY SERVICES BUSINESSES

560.103. Definitions.

As used in this chapter, the term:

(1) "Affiliated party" means a director, officer, responsible person, employee, or foreign affiliate of a money services business, or a person who has a controlling interest in a money services business as provided in § 560.127.

(2) "Appropriate regulator" means a state, federal, or foreign agency that has been granted authority to enforce state, federal, or foreign laws related to a money services business or deferred presentment provider.

(3) "Authorized vendor" means a person designated by a money services business licensed under part II of this chapter to act on behalf of the licensee at locations in this state pursuant to a written contract with the licensee.

(4) "Branch office" means the physical location, other than the principal place of business, of a money services business operated by a licensee under this chapter.

(5) "Cashing" means providing currency for payment instruments except for travelers checks.

(6) "Check casher" means a person who sells currency in exchange for payment instruments received, except travelers checks.

(7) "Commission" means the Financial Services Commission.

(8) "Compliance officer" means the individual in charge of overseeing, managing, and ensuring that a money services business is in compliance with all state and federal laws and rules relating to money services businesses, as applicable, including all money laundering laws and rules.

(9) "Conductor" means a natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument.

(10) "Corporate payment instrument" means a payment instrument on which the payee named on the instrument's face is other than a natural person.

(11) "Currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(12) "Deferred presentment provider" means a person who is licensed under part II or part III of this chapter and has filed a declaration of intent with the office to engage in deferred presentment transactions as provided under part IV of this chapter.

(13) "Department" means the Department of Financial Services.

(14) "Electronic instrument" means a card, tangible object, or other form of electronic payment for the transmission or payment of money or the exchange of monetary value, including a stored value card or device

that contains a microprocessor chip, magnetic stripe, or other means for storing information; that is prefunded; and for which the value is decremented upon each use.

(15) "Financial audit report" means a report prepared in connection with a financial audit that is conducted in accordance with generally accepted auditing standards prescribed by the American Institute of Certified Public Accountants by a certified public accountant licensed to do business in the United States, and which must include:

(a) Financial statements, including notes related to the financial statements and required supplementary information, prepared in conformity with accounting principles generally accepted in the United States. The notes must, at a minimum, include detailed disclosures regarding receivables that are greater than 90 days, if the total amount of such receivables represents more than 2 percent of the licensee's total assets.

(b) An expression of opinion regarding whether the financial statements are presented in conformity with accounting principles generally accepted in the United States, or an assertion to the effect that such an opinion cannot be expressed and the reasons.

(16) "Foreign affiliate" means a person located outside this state who has been designated by a licensee to make payments on behalf of the licensee to persons who reside outside this state. The term also includes a person located outside of this state for whom the licensee has been designated to make payments in this state.

(17) "Foreign currency exchanger" means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government.

(18) "Fraudulent identification paraphernalia" means all equipment, products, or materials of any kind that are used, intended for use, or designed for use in the misrepresentation of a customer's identity. The term includes, but is not limited to:

(a) A signature stamp, thumbprint stamp, or other tool or device used to forge a customer's personal identification information.

(b) An original of any type of personal identification listed in § 560.310(2)(b) which is blank, stolen, or unlawfully issued.

(c) A blank, forged, fictitious, or counterfeit instrument in the similitude of any type of personal identification listed in § 560.310(2)(b) which would in context lead a reasonably prudent person to believe that such instrument is an authentic original of such personal identification.

(d) Counterfeit, fictitious, or fabricated information in the similitude of a customer's personal identification information that, although not authentic, would in context lead a reasonably prudent person to credit its authenticity.

(19) "Licensee" means a person licensed under this chapter.

(20) "Location" means a branch office, mobile location, or location of an authorized vendor whose business activity is regulated under this chapter.

(21) "Monetary value" means a medium of exchange, whether or not redeemable in currency.

(22) "Money services business" means any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter.

(23) "Money transmitter" means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.

(24) "Net worth" means assets minus liabilities, determined in accordance with United States generally accepted accounting principles.

(25) "Office" means the Office of Financial Regulation of the commission.

(26) "Officer" means an individual, other than a director, who participates in, or has authority to participate in, the major policymaking functions of a money services business, regardless of whether the individual has an official title or receives a salary or other compensation.

(27) "Outstanding money transmission" means a money transmission to a designated recipient or a refund to a sender that has not been completed.

(28) "Outstanding payment instrument" means an unpaid payment instrument whose sale has been reported to a licensee.

(29) "Payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instru-

ment, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

(30) "Payment instrument seller" means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which sells a payment instrument.

(31) "Person" means an individual, partnership, association, trust, corporation, limited liability company, or other group, however organized, but does not include a public agency or instrumentality thereof.

(32) "Personal identification information" means a customer's name that, alone or together with any of the following information, may be used to identify that specific customer:

(a) Customer's signature.

(b) Photograph, digital image, or other likeness of the customer.

(c) Unique biometric data, such as the customer's thumbprint or fingerprint, voice print, retina or iris image, or other unique physical representation of the customer.

(33) "Responsible person" means an individual who is employed by or affiliated with a money services business and who has principal active management authority over the business decisions, actions, and activities of the money services business in this state.

(34) "Sells" means to sell, issue, provide, or deliver.

(35) "Stored value" means funds or monetary value represented in digital electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically.

560.125. Unlicensed activity; penalties.

(1) A person may not engage in the business of a money services business or deferred presentment provider in this state unless the person is licensed or exempted from licensure under this chapter.

(2) Only a money services business licensed under part II of this chapter may appoint an authorized vendor. Any person acting as a vendor for an unlicensed money transmitter or payment instrument issuer becomes the principal thereof, and no longer merely acts as a vendor, and is liable to the holder or remitter as a principal money transmitter or payment instrument seller.

(3) Any person whose substantial interests are affected by a proceeding brought by the office pursuant to this chapter may, pursuant to § 560.113, petition any court of competent jurisdiction to enjoin the person or activity that is the subject of the proceeding from violating any of the provisions of this section. For the purpose of this subsection, any money services business licensed under this chapter, any person residing in this state, and any person whose principal place of business is in this state are presumed to be substantially affected. In addition, the interests of a trade organization or association are deemed substantially affected if the interests of any of its members are affected.

(4) The office may issue and serve upon any person who violates any of the provisions of this section a complaint seeking a cease and desist order or impose an administrative fine as provided in § 560.114.

(5) A person who violates this section, if the violation involves:

(a) Currency or payment instruments exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Currency or payment instruments totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) Currency or payment instruments totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(6) In addition to the penalties authorized by § 775.082, § 775.083, or § 775.084, a person who has been convicted of, or entered a plea of guilty or nolo contendere to, having violated this section may be sentenced to pay a fine of up to $250,000 or twice the value of the currency or payment instruments, whichever is greater, except that on a second or subsequent violation of this section, the fine may be up to $500,000 or quintuple the value of the currency or payment instruments, whichever is greater.

(7) A person who violates this section is also liable for a civil penalty of not more than the value of the currency or payment instruments involved or $25,000, whichever is greater.

(8) In any prosecution brought pursuant to this section, the common law corpus delicti rule does not apply. The defendant's confession or admission is admissible during trial without the state having to prove the corpus

delicti if the court finds in a hearing conducted outside the presence of the jury that the defendant's confession or admission is trustworthy. Before the court admits the defendant's confession or admission, the state must prove by a preponderance of the evidence that there is sufficient corroborating evidence that tends to establish the trustworthiness of the statement by the defendant. Hearsay evidence is admissible during the presentation of evidence at the hearing. In making its determination, the court may consider all relevant corroborating evidence, including the defendant's statements.

CHAPTER 562
BEVERAGE LAW: ENFORCEMENT

562.01. Possession of untaxed beverages.

It is unlawful for any person to own, possess, purchase, sell, serve, distribute, or store any alcoholic beverages unless said person has fully complied with the pertinent provisions of the beverage law relating to the payment of excise taxes.

562.02. Possession of beverage not permitted to be sold under license.

It is unlawful for a licensee under the Beverage Law or his or her agent to have in his or her possession, or permit anyone else to have in his or her possession, at or in the place of business of such licensee, alcoholic beverages not authorized by law to be sold by such licensee.

562.03. Storage on licensed premises.

It is unlawful for any vendor to store or keep any alcoholic beverages except for the personal consumption of the vendor, the vendor's family and guest in any building or room other than the building or room shown in the diagram accompanying his or her license application or in another building or room approved by the division.

562.06. Sale only on licensed premises.

Each license application shall describe the location of the place of business where such beverage may be sold. It is unlawful to sell, or permit the sale of such beverage except on the premises covered by the license as described in the application therefor.

562.061. Misrepresentation of beverages sold on licensed premises.

It is unlawful for any licensee, his or her agent or employee knowingly to sell or serve any beverage represented or purporting to be an alcoholic beverage which in fact is not such beverage. It is further unlawful for any licensee knowingly to keep or store on the licensed premises any bottles which are filled or contain liquid other than that stated on the label of such bottle.

562.07. Illegal transportation of beverages.

It is unlawful for alcoholic beverages to be transported in quantities of more than 12 bottles except as follows:

(1) By common carriers;

(2) In the owned or leased vehicles of licensed vendors or any persons authorized in § 561.57(3) transporting alcoholic beverage purchases from the distributor's place of business to the vendor's licensed place of business or off-premises storage and to which said vehicles are carrying a permit and invoices or sales tickets for alcoholic beverages purchased and transported as provided for in the alcoholic beverage law;

(3) By individuals who possess such beverages not for resale within the state;

(4) By licensed manufacturers, distributors, or vendors delivering alcoholic beverages away from their place of business in vehicles which are owned or leased by such licensees; and

(5) By a vendor, distributor, pool buying agent, or salesperson of wine and spirits as outlined in § 561.57(5).

562.11. Selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties.

(1) (a) 1. It is unlawful for any person to sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume such beverages on the licensed premises. A person who violates this subparagraph commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. A person who violates this subparagraph a second or subsequent time within 1 year after a prior conviction commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

2. In addition to any other penalty imposed for a violation of subparagraph 1., the court may order the Department of Highway Safety and Motor Vehicles to withhold the is-

suance of, or suspend or revoke, the driver's license or driving privilege, as provided in § 322.057, of any person who violates subparagraph 1. This subparagraph does not apply to a licensee, as defined in § 561.01, who violates subparagraph 1. while acting within the scope of his or her license or an employee or agent of a licensee, as defined in § 561.01, who violates subparagraph 1. while engaged within the scope of his or her employment or agency.

(b) A licensee, or his or her or its agents, officers, servants, or employees, may not provide alcoholic beverages to a person younger than 21 years of age who is employed by the licensee except as authorized pursuant to § 562.111 or § 562.13, and may not permit a person younger than 21 years of age who is employed by the licensee to consume alcoholic beverages on the licensed premises or elsewhere while in the scope of employment. A licensee, or his or her or its agents, officers, servants, or employees, who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. This paragraph may be cited as "the Christopher Fugate Act."

(c) A licensee who violates paragraph (a) shall have a complete defense to any civil action therefor, except for any administrative action by the division under the Beverage Law, if, at the time the alcoholic beverage was sold, given, served, or permitted to be served, the person falsely evidenced that he or she was of legal age to purchase or consume the alcoholic beverage and the appearance of the person was such that an ordinarily prudent person would believe him or her to be of legal age to purchase or consume the alcoholic beverage and if the licensee carefully checked one of the following forms of identification with respect to the person: a driver's license, an identification card issued under the provisions of § 322.051 or, if the person is physically handicapped as defined in § 553.45(1), a comparable identification card issued by another state which indicates the person's age, a passport, or a United States Uniformed Services identification card, and acted in good faith and in reliance upon the representation and appearance of the person in the belief that he or she was of legal age to purchase or consume the alcoholic beverage. Nothing herein shall negate any cause of action which arose prior to June 2, 1978.

(d) Any person charged with a violation of paragraph (a) has a complete defense if, at the time the alcoholic beverage was sold, given, served, or permitted to be served:

1. The buyer or recipient falsely evidenced that he or she was 21 years of age or older;

2. The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 years of age or older; and

3. Such person carefully checked a driver's license or an identification card issued by this state or another state of the United States, a passport, or a United States Uniformed Services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

(2) It is unlawful for any person to misrepresent or misstate his or her age or the age of any other person for the purpose of inducing any licensee or his or her agents or employees to sell, give, serve, or deliver any alcoholic beverages to a person under 21 years of age, or for any person under 21 years of age to purchase or attempt to purchase alcoholic beverages.

(a) Anyone convicted of violating the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(b) Any person under the age of 17 years who violates such provisions shall be within the jurisdiction of the judge of the circuit court and shall be dealt with as a juvenile delinquent according to law.

(c) In addition to any other penalty imposed for a violation of this subsection, if a person uses a driver's license or identification card issued by the Department of Highway Safety and Motor Vehicles in violation of this subsection, the court:

1. May order the person to participate in public service or a community work project for a period not to exceed 40 hours; and

2. Shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend or revoke, the person's driver's license or driving privilege, as provided in § 322.056.

(3) Any person under the age of 21 years testifying in any criminal prosecution or in any hearing before the division involving the violation by any other person of the provisions of this section may, at the discretion of the prosecuting officer, be given full and complete immunity from prosecution for any violation of law revealed in such testimony that may be or may tend to be self-incriminating, and any such person under 21 years of age so testifying, whether under subpoena or oth-

erwise, shall be compelled to give any such testimony in such prosecution or hearing for which immunity from prosecution therefor is given.

(4) This section does not apply to a person who gives, serves, or permits to be served an alcoholic beverage to a student who is at least 18 years of age, if the alcoholic beverage is delivered as part of the student's required curriculum at a postsecondary educational institution that is institutionally accredited by an agency recognized by the United States Department of Education and is licensed or exempt from licensure pursuant to the provisions of chapter 1005 or that is a public postsecondary education institution; if the student is enrolled in the college and is required to taste alcoholic beverages that are provided only for instructional purposes during classes conducted under the supervision of authorized instructional personnel pursuant to such a curriculum; if the alcoholic beverages are never offered for consumption or imbibed by such a student and at all times remain in the possession and control of such instructional personnel, who must be 21 years of age or older; and if each participating student executes a waiver and consent in favor of the state and indemnifies the state and holds it harmless.

562.111. Possession of alcoholic beverages by persons under age 21 prohibited.

(1) It is unlawful for any person under the age of 21 years, except a person employed under the provisions of § 562.13 acting in the scope of her or his employment, to have in her or his possession alcoholic beverages, except that nothing contained in this subsection shall preclude the employment of any person 18 years of age or older in the sale, preparation, or service of alcoholic beverages in licensed premises in any establishment licensed by the Division of Alcoholic Beverages and Tobacco or the Division of Hotels and Restaurants. Notwithstanding the provisions of § 562.45, any person under the age of 21 who is convicted of a violation of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083; however, any person under the age of 21 who has been convicted of a violation of this subsection and who is thereafter convicted of a further violation of this subsection is, upon conviction of the further offense, guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) The prohibition in this section against the possession of alcoholic beverages does not apply to the tasting of alcoholic beverages by a student who is at least 18 years of age, who is tasting the alcoholic beverages as part of the student's required curriculum at a postsecondary educational institution that is institutionally accredited by an agency recognized by the United States Department of Education and that is licensed or exempt from licensure pursuant to the provisions of chapter 1005 or is a public postsecondary education institution; if the student is enrolled in the college and is tasting the alcoholic beverages only for instructional purposes during classes that are part of such a curriculum; if the student is allowed only to taste, but not consume or imbibe, the alcoholic beverages; and if the alcoholic beverages at all times remain in the possession and control of authorized instructional personnel of the college who are 21 years of age or older.

(3) In addition to any other penalty imposed for a violation of subsection (1), the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend or revoke, the violator's driver's license or driving privilege, as provided in § 322.056.

562.12. Beverages sold with improper license, or without license or registration, or held with intent to sell prohibited.

(1) It is unlawful for any person to sell alcoholic beverages without a license, and it is unlawful for any licensee to sell alcoholic beverages except as permitted by her or his license, or to sell such beverages in any manner except that permitted by her or his license; and any licensee or other person who keeps or possesses alcoholic beverages not permitted to be sold by her or his license, or not permitted to be sold without a license, with intent to sell or dispose of same unlawfully, or who keeps and maintains a place where alcoholic beverages are sold unlawfully, is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) It is unlawful for any person to operate as an exporter of alcoholic beverages within the state without registering as an exporter pursuant to § 561.17. Any person who violates this subsection is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(3) Upon the arrest of any licensee or other person charged with a violation of this section, the arresting officer shall take into her

or his custody all alcoholic beverages found in the possession, custody, or control of the person arrested or, in the case of a licensee, all alcoholic beverages not within the purview of her or his license, and safely keep and preserve the same and have it forthcoming at any investigation, prosecution, or other proceeding for the violation of this section and for the destruction of the same as provided herein. Upon the conviction of the person arrested for a violation of this section, the judge of the court trying the case, after notice to the person convicted and any other person whom the judge may be of the opinion is entitled to notice, as the judge may deem reasonable, shall issue to the sheriff of the county, the division, or the authorized municipality a written order adjudging and declaring the alcoholic beverages forfeited and directing the sheriff, the division, or the authorized municipality to dispose of the alcoholic beverages as provided in § 562.44 or § 568.10.

562.121. Operating bottle club without license prohibited.

It is unlawful for any person to operate a bottle club without the license required by § 561.14(6). Any person convicted of a violation of this section is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

562.13. Employment of minors or certain other persons by certain vendors prohibited; exceptions.

(1) Unless otherwise provided in this section, it is unlawful for any vendor licensed under the Beverage Law to employ any person under 18 years of age.

(2) This section shall not apply to:

(a) Professional entertainers 17 years of age who are not in school.

(b) Minors employed in the entertainment industry, as defined by § 450.012(5), who have either been granted a waiver under § 450.095 or employed under the terms of § 450.132 or under rules adopted pursuant to either of these sections.

(c) Persons under the age of 18 years who are employed in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations which have obtained licenses to sell beer or beer and wine, when such sales are made for consumption off the premises.

(d) Persons 17 years of age or over or any person furnishing evidence that he or she is a senior high school student with written permission of the principal of said senior high school or that he or she is a senior high school graduate, or any high school graduate, employed by a bona fide food service establishment where alcoholic beverages are sold, provided such persons do not participate in the sale, preparation, or service of the beverages and that their duties are of such nature as to provide them with training and knowledge as might lead to further advancement in food service establishments.

(e) Persons under the age of 18 years employed as bellhops, elevator operators, and others in hotels when such employees are engaged in work apart from the portion of the hotel property where alcoholic beverages are offered for sale for consumption on the premises.

(f) Persons under the age of 18 years employed in bowling alleys in which alcoholic beverages are sold or consumed, so long as such minors do not participate in the sale, preparation, or service of such beverages.

(g) Persons under the age of 18 years employed by a bona fide dinner theater as defined in this paragraph, as long as their employment is limited to the services of an actor, actress, or musician. For the purposes of this paragraph, a dinner theater means a theater presenting consecutive productions playing no less than 3 weeks each in conjunction with dinner service on a regular basis. In addition, both events must occur in the same room, and the only advertised price of admission must include both the cost of the meal and the attendance at the performance.

(h) Persons under the age of 18 years who are employed in places of business licensed under § 565.02(6), provided such persons do not participate in the sale, preparation, or service of alcoholic beverages.

However, a minor to whom this subsection otherwise applies may not be employed if the employment, whether as a professional entertainer or otherwise, involves nudity, as defined in § 847.001, on the part of the minor and such nudity is intended as a form of adult entertainment.

(3) (a) It is unlawful for any vendor licensed under the beverage law to employ as a manager or person in charge or as a bartender any person:

1. Who has been convicted within the last past 5 years of any offense against the beverage laws of this state, the United States, or any other state.

2. Who has been convicted within the last past 5 years in this state or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or any felony

violation of chapter 893 or the controlled substances act of any other state or the Federal Government.

3. Who has, in the last past 5 years, been convicted of any felony in this state, any other state, or the United States.

The term "conviction" shall include an adjudication of guilt on a plea of guilty or nolo contendere or forfeiture of a bond when such person is charged with a crime.

(b) This subsection shall not apply to any vendor licensed under the provisions of § 563.02(1)(a) or § 564.02(1)(a).

562.131. Solicitation for sale of alcoholic beverage prohibited; penalty.

(1) It is unlawful for any licensee, his or her employee, agent, servant, or any entertainer employed at the licensed premises or employed on a contractual basis to entertain, perform or work upon the licensed premises to beg or solicit any patron or customer thereof or visitor in any licensed premises to purchase any beverage, alcoholic or otherwise, for such licensee's employee, agent, servant, or entertainer.

(2) It is unlawful for any licensee, his or her employee, agent, or servant to knowingly permit any person to loiter in or about the licensed premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any beverage, alcoholic or otherwise.

(3) Any violation of this section is a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

562.14. Regulating the time for sale of alcoholic and intoxicating beverages; prohibiting use of licensed premises.

(1) Except as otherwise provided by county or municipal ordinance, no alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed in any place holding a license under the division between the hours of midnight and 7 a.m. of the following day. This section shall not apply to railroads selling only to passengers for consumption on railroad cars.

(2) Except as otherwise provided by county or municipal ordinance, no vendor issued an alcoholic beverage license to sell alcoholic beverages for consumption on the vendor's licensed premises and whose principal business is the sale of alcoholic beverages, shall allow the licensed premises, as defined in § 561.01(11), to be rented, leased, or otherwise used during the hours in which the sale of alcoholic beverages is prohibited. However, this prohibition shall not apply to the rental, lease, or other use of the licensed premises on Sundays after 8 a.m. Further, neither this subsection, nor any local ordinance adopted pursuant to this subsection, shall be construed to apply to a theme park complex as defined in § 565.02(6) or an entertainment/resort complex as defined in § 561.01(18).

(3) The division shall not be responsible for the enforcement of the hours of sale established by county or municipal ordinance.

(4) Any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

562.15. Unlawful possession; unpaid taxes.

It is unlawful for any person to own or possess within this state any alcoholic beverage, unless full compliance has been had with the pertinent provisions of the Beverage Law as to payment of excise taxes on beverages of like alcohol content. However, this section shall not apply:

(1) To manufacturers or distributors licensed under the Beverage Law, to state bonded warehouses, or to common carriers; or

(2) To persons possessing not in excess of 1 gallon of such beverages if the beverage shall have been purchased by said possessor outside of the state in accordance with the laws of the place where purchased and shall have been brought into this state by said possessor. The burden of proof that such beverages were purchased outside the state and in accordance with the laws of the place where purchased shall in all cases be upon the possessor of such beverages.

562.16. Possession of beverages upon which tax is unpaid.

Any person or corporation who shall own or have in her or his or its possession any beverage upon which a tax is imposed by the Beverage Law, or which would be imposed if such beverage were manufactured in or brought into this state in accordance with the regulatory provisions of the Beverage Law, and upon which such tax has not been paid shall, in addition to the fines and penalties otherwise provided in the Beverage Law, be personally liable for the amount of the tax imposed on such beverage, and the division may collect such tax from such person by suit or otherwise; provided, that this section shall not apply to manufacturers or distributors licensed under the Beverage Law, to state bonded warehouses or to common carriers; provided, further, this section shall not apply

to persons possessing not in excess of 1 gallon of such beverages; provided, the beverage shall have been purchased by said possessor outside of the state in accordance with the laws of the place where purchased and shall have been brought into this state by said possessor. The burden of proof that such beverages were purchased outside the state and in accordance with the laws of the place where purchased in all cases shall be upon the possessor of such beverages.

562.18. Possession of beverage upon which federal tax unpaid.

It is unlawful for any person to have in her or his possession within this state any alcoholic beverage on which a federal excise tax is required to be paid, unless such federal excise tax has been paid as to such beverage.

562.23. Conspiracy to violate Beverage Law; penalty.

If two or more persons shall conspire to do any act which is in violation of any of the provisions of the Beverage Law, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy, if the act so conspired to be done would be a misdemeanor under the provisions of the Beverage Law, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, or, if the act so conspired to be done would be a felony under the provisions of the Beverage Law, shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

562.27. Seizure and forfeiture.

(1) It is unlawful for any person to have in her or his possession, custody, or control, or to own, make, construct, or repair, any still, still piping, still apparatus, or still worm, or any piece or part thereof, designed or adapted for the manufacture of an alcoholic beverage, or to have in her or his possession, custody or control any receptacle or container containing any mash, wort, or wash, or other fermented liquids whatever capable of being distilled or manufactured into an alcoholic beverage, unless such possession, custody, control, ownership, manufacture, construction, or repairing be by or for a person authorized by law to manufacture such alcoholic beverage.

(2) It is unlawful for any person to have in her or his possession, custody, or control any raw materials or substance intended to be used in the distillation or manufacturing of an alcoholic beverage unless the person holds a license from the state authorizing the manufacture of the alcoholic beverage.

(3) The terms "raw material" or "substance" for the purpose of this chapter shall mean and include, but not be limited to, any of the following: Any grade or type of sugar, syrup, or molasses derived from sugarcane, sugar beets, corn, sorghum, or any other source; starch; potatoes; grain or cornmeal, corn chops, cracked corn, rye chops, middlings, shorts, bran, or any other grain derivative; malt; malt sugar or malt syrup; oak chips, charred or not charred; yeast; cider; honey; fruit; grapes; berries; fruit, grape or berry juices or concentrates; wine; caramel; burnt sugar; gin flavor; Chinese bean cake or Chinese wine cake; urea; ammonium phosphate, ammonium carbonate, ammonium sulphate, or any other yeast food; ethyl acetate or any other ethyl ester; any other material of the character used in the manufacture of distilled spirits or any chemical or other material suitable for promoting or accelerating fermentation; any chemical or material of the character used in the production of distilled spirits by chemical reaction; or any combination of such materials or chemicals.

(4) Any such raw materials, substance, or any still, still piping, still apparatus, or still worm, or any piece or part thereof, or any mash, wort, or wash, or other fermented liquid and the receptacle or container thereof, and any alcoholic beverage, together with all personal property used to facilitate the manufacture or production of the alcoholic beverage or to facilitate the violation of the alcoholic beverage control laws of this state or the United States, may be seized by the division or by any sheriff or deputy sheriff and shall be forfeited to the state.

(5) It shall be unlawful for any person to sell or otherwise dispose of raw materials or other substances knowing same are to be used in the distillation or manufacture of an alcoholic beverage unless such person receiving same, by purchase or otherwise, holds a license from the state authorizing the manufacture of such alcoholic beverage.

(6) Any vehicle, vessel, or aircraft used in the transportation or removal of or for the deposit or concealment of any illicit liquor still or stilling apparatus; any mash, wort, wash, or other fermented liquids capable of being distilled or manufactured into an alcoholic beverage; or any alcoholic beverage commonly known and referred to as "moonshine whiskey" shall be seized and may be forfeited as provided by the Florida Contraband Forfeiture Act. Any sheriff, deputy sheriff, em-

ployee of the division, or police officer may seize any of the vehicles, vessels, or conveyances, and the same may be forfeited as provided by law.

(7) The finding of any still, still piping, still apparatus, or still worm, or any piece or part thereof, or any mash, wort, or wash or other fermented liquids in the dwelling house or place of business, or so near thereto as to lead to the reasonable belief that they are within the possession, custody, or control of the occupants of the dwelling house or place of business, shall be prima facie evidence of a violation of this section by the occupants of the dwelling house or place of business.

(8) Any person violating any provisions of this section of the law shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

562.28. Possession of beverages in fraud of Beverage Law.

All beverages on which taxes are imposed by the Beverage Law or would be imposed if such beverages were manufactured in or brought into this state in accordance with the regulatory provisions of such law, which shall be found in the possession, or custody, or within the control of any person, for the purpose of being sold or removed by her or him in fraud of the Beverage Law, or with design to evade payment of said taxes, may be seized by the division or any sheriff or deputy sheriff and shall be forfeited to the state.

562.29. Raw materials and personal property; seizure and forfeiture.

All raw materials found in the possession of any person intending to manufacture the same into a beverage subject to tax under the Beverage Law, or into a beverage which would be subject to tax under such law if manufactured in accordance with the regulatory provisions thereof, for the purpose of fraudulently selling such manufactured beverage, or with the design to evade the payment of said tax; and all tools, implements, instruments, and personal property whatsoever, in the place or building or within any yard or enclosure or in the vicinity where such beverage or raw materials are found, may also be seized by the division or any sheriff or deputy sheriff, and shall be forfeited as aforesaid.

562.30. Possession of beverage prima facie evidence; exception.

The possession by any person, except a licensed manufacturer or distributor, a state bonded warehouse, or a common carrier, of any beverage which is taxable under the Beverage Law, or which would be taxable thereunder if such beverage were manufactured in or brought into the state in accordance with the regulatory provisions thereof, and upon which the tax has not been paid, shall be prima facie evidence that such beverage has been manufactured, or is being sold, removed, or concealed with design to evade payment of such tax.

562.32. Moving or concealing beverage with intent to defraud state of tax; penalty.

Every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing any beverage for or in respect whereof any tax is imposed by the Beverage Law or would be imposed if such beverage were manufactured in or brought into this state in accordance with the regulatory provisions thereof, with intent to defraud the state of such tax or any part thereof, shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

562.33. Beverage and personal property; seizure and forfeiture.

Whenever any beverage on which any tax is imposed by the Beverage Law or would be imposed if such beverage were manufactured in or brought into this state in accordance with the regulatory provisions thereof, or any materials, utensils, or vessels proper, or other personal property whatsoever, intended to be made use of for or in the manufacture of such beverage are removed, or are deposited or concealed in any place, with intent to defraud the state of such tax, or any part thereof, all such beverages and all such materials, utensils, vessels, or other personal property whatsoever, may be seized by the division or any sheriff or deputy sheriff and shall be forfeited to the state.

562.34. Containers; seizure and forfeiture.

(1) It shall be unlawful for any person to have in her or his possession, custody, or control any cans, jugs, jars, bottles, vessels, or any other type of containers which are being used, are intended to be used, or are known by the possessor to have been used to bottle or package alcoholic beverages; however, this provision shall not apply to any person properly licensed to bottle or package such alcoholic beverages or to any person intending to dispose of such containers to a person, firm, or corporation properly licensed to bottle or package such alcoholic beverages.

(2) It shall be unlawful for any person to sell or otherwise dispose of any cans, jugs, jars, bottles, vessels, or any other type of containers, knowing that such are to be used in the bottling or packaging of alcoholic beverages, unless the person receiving same, by purchase or otherwise, shall hold a license to manufacture or distribute such alcoholic beverages.

(3) It shall be unlawful for any person to transport any cans, jugs, jars, bottles, vessels, or any other type of containers intended to be used to bottle or package alcoholic beverages; however, this section shall not apply to any firm or corporation holding a license to manufacture or distribute such alcoholic beverages and shall not apply to any person transporting such containers to any person, firm, or corporation holding a license to manufacture or distribute such alcoholic beverages.

(4) Any person violating any provision of this section of the law shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) Any such cans, jugs, jars, bottles, vessels, or any other type of container found in the possession, custody, or control of any person which are being used or are intended to be used or to be disposed of in violation of this section shall be seized by the division, sheriffs, or deputy sheriffs and shall be forfeited to the state.

562.35. Conveyance; seizure and forfeiture.

Every vehicle, vessel, or aircraft used in the transportation or removal of, or for the deposit or concealment of, any mash, wort, or wash or other fermented liquids, any moonshine whiskey, or any raw materials used to manufacture illicit liquors, utensils, or stills and stilling apparatus shall be seized and may be forfeited as provided by the Florida Contraband Forfeiture Act.

562.36. Beverage on conveyance prima facie evidence; proviso.

The presence, in any conveyance or place, of any beverage upon which a tax is imposed by the Beverage Law or would be imposed if such beverage were manufactured in or brought into this state in accordance with the regulatory provisions thereof, and upon which the tax has not been paid, shall be prima facie evidence that such beverage is being removed, deposited, or concealed with intent to defraud the state of such tax; provided, that the provisions of this section shall not apply to any conveyance or any place owned by, or in the possession, custody, or control of a licensed manufacturer or distributor, a state bonded warehouse, or a common carrier.

562.38. Report of seizures.

Any sheriff, deputy sheriff, or police officer, upon the seizure of any property under this act, shall promptly report such seizure to the division or its representative, together with a description of all such property seized so that the state may be kept informed as to the size and magnitude of the illicit liquor business.

562.41. Searches; penalty.

(1) Any authorized employee of the division, any sheriff, any deputy sheriff, or any police officer may make searches of persons, places, and conveyances of any kind whatsoever in accordance with the laws of this state for the purpose of determining whether or not the provisions of the Beverage Law are being violated.

(2) Any authorized employee of the division, any sheriff, any deputy sheriff, or any police officer may enter in the daytime any building or place where any beverages subject to tax under the Beverage Law or which would be subject to tax thereunder if such beverages were manufactured in or brought into this state in accordance with the regulatory provisions thereof, or any alcoholic beverages, are manufactured, produced, or kept, so far as may be necessary, for the purpose of examining said beverages. When such premises are open at night, such officers may enter them while so open, in the performance of their official duties.

(3) Any owner of such premises or person having the agency, superintendency, or possession of same, who refuses to admit such officer or to suffer her or him to examine such beverages, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(4) Any person who shall forcibly obstruct or hinder the director, any division employee, any sheriff, any deputy sheriff, or any police officer in the execution of any power or authority vested in her or him by law, or who shall forcibly rescue or cause to be rescued any property if the same shall have been seized by such officer, or shall attempt or endeavor to do so, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(5) Licensees, by the acceptance of their license, agree that their places of business shall always be subject to be inspected and

searched without search warrants by the authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or at any other time such premises are occupied by the licensee or other persons.

562.45. Penalties for violating Beverage Law; local ordinances; prohibiting regulation of certain activities or business transactions; requiring nondiscriminatory treatment; providing exceptions.

(1) Any person willfully and knowingly making any false entries in any records required under the Beverage Law or willfully violating any of the provisions of the Beverage Law, concerning the excise tax herein provided for shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. It is unlawful for any person to violate any provision of the Beverage Law, and any provision of the Beverage Law for which no penalty has been provided shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083; provided, that any person who shall have been convicted of a violation of any provision of the Beverage Law and shall thereafter be convicted of a further violation of the Beverage Law, shall, upon conviction of said further offense, be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) (a) Nothing contained in the Beverage Law shall be construed to affect or impair the power or right of any county or incorporated municipality of the state to enact ordinances regulating the hours of business and location of place of business, and prescribing sanitary regulations therefor, of any licensee under the Beverage Law within the county or corporate limits of such municipality. However, except for premises licensed on or before July 1, 1999, and except for locations that are licensed as restaurants, which derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages, pursuant to chapter 509, a location for on-premises consumption of alcoholic beverages may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipality approves the location as promoting the public health, safety, and general welfare of the community under proceedings as provided in § 125.66(4), for counties, and § 166.041(3)(c), for municipalities. This restriction shall not, however, be construed to prohibit the issuance of temporary permits to certain nonprofit organizations as provided for in § 561.422. The division may not issue a change in the series of a license or approve a change of a licensee's location unless the licensee provides documentation of proper zoning from the appropriate county or municipal zoning authorities.

(b) Nothing in the Beverage Law shall be construed to affect or impair the power or right of any county or incorporated municipality of the state to enact ordinances regulating the type of entertainment and conduct permitted in any establishment licensed under the Beverage Law to sell alcoholic beverages for consumption on the premises, or any bottle club licensed under § 561.14, which is located within such county or municipality.

(c) A county or municipality may not enact any ordinance that regulates or prohibits those activities or business transactions of a licensee regulated by the Division of Alcoholic Beverages and Tobacco under the Beverage Law. Except as otherwise provided in the Beverage Law, a local government, when enacting ordinances designed to promote and protect the general health, safety, and welfare of the public, shall treat a licensee in a nondiscriminatory manner and in a manner that is consistent with the manner of treatment of any other lawful business transacted in this state. Nothing in this section shall be construed to affect or impair the enactment or enforcement by a county or municipality of any zoning, land development or comprehensive plan regulation or other ordinance authorized under §§ 1, 2, and 5, Art. VIII of the State Constitution.

562.451. Moonshine whiskey; ownership, possession, or control prohibited; penalties; rule of evidence.

(1) Any person who owns or has in her or his possession or under her or his control less than 1 gallon of liquor, as defined in the Beverage Law, which was not made or manufactured in accordance with the laws in effect at the time when and place where the same was made or manufactured shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) Any person who owns or has in her or his possession or under her or his control 1 gallon or more of liquor, as defined in the Beverage Law, which was not made or manufactured in accordance with the laws in effect at the time when and place where the same was made or manufactured shall be guilty of a felony of the third degree, punish-

able as provided in § 775.082, § 775.083, or § 775.084.

(3) In any prosecution under this section, proof that the liquor involved is what is commonly known as moonshine whiskey shall be prima facie evidence that the same was not made or manufactured in accordance with the laws in effect at the time when and place where the same was made or manufactured.

562.452. Curb service of intoxicating liquor prohibited.

It is unlawful for any person to sell or serve, by the drink, any intoxicating liquor, other than malt beverages of legal alcoholic content, except within the building and licensed premises as provided in §§ 562.06 and 565.02(1)(g) which is the address of the person holding a license for the sale of such intoxicating liquor. However, nothing in this section shall be construed to permit the practice of curb or drive-in service in connection with such intoxicating liquors when sold by the drink or the sale of intoxicating liquors in parking lots; provided, however, that nothing in this section contained shall be construed to prevent the regular delivery by licensed dealers of sealed containers containing such intoxicating liquors.

562.453. Curb drinking of intoxicating liquor prohibited.

It is unlawful for any person to consume any intoxicating liquor, except malt beverages of legal alcoholic content, at curb or drive-in stands, except within the building which is the address of the person holding a license for the sale of such intoxicating liquors.

562.454. Vendors to be closed in time of riot.

(1) Whenever any riot or gathering of a mob occurs in any area of this state, all persons in the area who sell alcoholic beverages shall, upon being so ordered by proclamation as provided herein, immediately stop the sale of alcoholic beverages and immediately close all barrooms, saloons, shops, or other places where any other alcoholic beverages are sold and keep them closed and refrain from selling, bartering, lending, or giving away any alcoholic beverages until such time as public notice shall be given by the sheriff of the county or the mayor of any city, town, or village where any riot or mob action may have occurred that such places may be opened and the sale of alcoholic beverages resumed.

(2) Whenever any riot has occurred or mob has gathered, or there is a reasonable cause to apprehend the occurrence of such events in any area of the state, the mayor or county commission shall immediately issue a proclamation ordering the suspension of sale of alcoholic beverages and the closing of the places described in subsection (1) until such time as the public peace and safety no longer requires such restrictions.

(3) None of the provisions of this section shall require the closing of any store, shop, restaurant, gasoline service station, or other place or establishment in which alcoholic beverages are sold by the drink for consumption on the premises or as items in a stock of varied merchandise for sale to the general public, but all sales of such alcoholic beverages shall be suspended, and all bars, cocktail lounges, and other areas maintained for the sale or service of such beverages in such stores, shops, restaurants, gasoline service stations, and other such places or establishments shall be closed during any riot, gathering of a mob, or other occurrence contemplated in subsections (1) and (2).

(4) Any person who knowingly violates any of the provisions of this section or the proclamation or permits any person in his or her employ to do so or connives with any other person to evade the terms of such proclamation shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

562.455. Adulterating liquor; penalty.

Whoever adulterates, for the purpose of sale, any liquor, used or intended for drink, with cocculus indicus, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any liquor so adulterated, shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

562.48. Minors patronizing, visiting, or loitering in a dance hall.

Any person operating any dance hall in connection with the operation of any place of business where any alcoholic beverage is sold who shall knowingly permit or allow any person under the age of 18 years to patronize, visit, or loiter in any such dance hall or place of business, unless such minor is attended by one or both of his or her parents or by his or her natural guardian, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

562.50. Habitual drunkards; furnishing intoxicants to, after notice.

Any person who shall sell, give away, dispose of, exchange, or barter any alcoholic beverage, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever under any name, label, or brand, which produces intoxication, to any person habitually addicted to the use of any or all such intoxicating liquors, after having been given written notice by wife, husband, father, mother, sister, brother, child, or nearest relative that said person so addicted is an habitual drunkard and that the use of intoxicating drink or drinks is working an injury to the person using said liquors, or to the person giving said written notice, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 588
LEGAL FENCES AND LIVESTOCK AT LARGE

588.24. Penalty.

Any owner of livestock who unlawfully, intentionally, knowingly or negligently permits the same to run at large or stray upon the public roads of this state or any person who shall release livestock, after being impounded, without authority of the impounder, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 603
FRUITS AND VEGETABLES

603.161. Sales certificates, work orders to accompany certain fruit.

(1) This section applies to tropical or subtropical fruit. "Tropical or subtropical fruit" means avocados, bananas, calamondins, carambolas, guavas, kumquats, limes, longans, loquats, lychees, mameys, mangoes, papayas, passion fruit, sapodillas, and fruit that must be grown in tropical or semitropical regions, except citrus fruit as defined in § 601.03.

(2) Every purchaser of more than one bushel or crate of tropical or semitropical fruit at the point of growth shall obtain a sales certificate from the grower who shall prepare and furnish such certificates. The sales certificate shall accompany the fruit from the point of growth to the final processor or wholesaler who will offer for retail sale and such processor or wholesaler shall keep the sales certificate for inspection upon request by a peace officer for 1 year from date of purchase.

(3) The sales certificate shall indicate the name, address and telephone number of the grower from whom the fruit was purchased; the species, variety and amount purchased; and for the purchaser and each subsequent purchaser, her or his name, address and telephone number, date of purchase and driver's license number; if the fruit is transported by other than the owner, the name of the transporting company and the make, type and license number of the vehicle transporting the fruit. The grower shall keep a copy of the sales certificate for 1 year from date of the purchase. The Commissioner of Agriculture, according to requirements of this section, shall prescribe the form of sales certificates.

(4) All firms or individuals transporting fruit for handlers, packinghouses or processors shall obtain a work order from the dispatcher of the named organizations which must remain in the possession of the driver to the point of pickup and thereafter with the fruit until delivered. The form of the work order shall be prescribed by the Commissioner of Agriculture and shall indicate the name of firm or individual transporting fruit, date, grove destination, time for pickup, truck number, number of crates, variety of fruit, name of packinghouse or other place where fruit is to be delivered, driver's name, driver's license number and the name of the truck dispatcher.

(5) Violation of the provisions of this section shall constitute a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 713
LIENS, GENERALLY

713.68. Liens for hotels, apartment houses, roominghouses, boardinghouses, etc.

In favor of any person conducting or operating any hotel, apartment house, roominghouse, boardinghouse or tenement house where rooms or apartments are let for hire or rental on a transient basis. Such lien shall exist on all the property including trunks, baggage, jewelry and wearing apparel, guns and sporting goods, furniture and furnishings and other personal property of any person which property is brought into or placed in any room or apartment of any hotel, apartment house, lodginghouse, roominghouse, boardinghouse or tenement house when such person shall occupy, on a transient basis,

such room or apartment as tenant, lessee, boarder, roomer or guest for the privilege of which occupancy money or anything of value is to be paid to the person conducting or operating such hotel, apartment house, roominghouse, lodginghouse, boardinghouse or tenement house. Such lien shall continue and be in full force and effect for the amount payable for such occupancy until the same shall have been fully paid and discharged.

713.69. Unlawful to remove property upon which lien has accrued.

It is unlawful for any person to remove any property upon which a lien has accrued under the provisions of § 713.68 from any hotel, apartment house, roominghouse, lodginghouse, boardinghouse or tenement house without first making full payment to the person operating or conducting the same of all sums due and payable for such occupancy or without first having the written consent of such person so conducting or operating such place to so remove such property. Any person violating the provisions of this section shall, if the property removed in violation hereof be of the value of $50 or less, be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083; and if the property so removed should be of greater value than $50 then such person shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

CHAPTER 741
MARRIAGE; DOMESTIC VIOLENCE

741.28. Domestic violence; definitions.

As used in §§ 741.28-741.31:

(1) "Department" means the Florida Department of Law Enforcement.

(2) "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

(3) "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

(4) "Law enforcement officer" means any person who is elected, appointed, or employed by any municipality or the state or any political subdivision thereof who meets the minimum qualifications established in § 943.13 and is certified as a law enforcement officer under § 943.1395.

741.283. Minimum term of imprisonment for domestic violence.

If a person is adjudicated guilty of a crime of domestic violence, as defined in § 741.28, and the person has intentionally caused bodily harm to another person, the court shall order the person to serve a minimum of 5 days in the county jail as part of the sentence imposed, unless the court sentences the person to a nonsuspended period of incarceration in a state correctional facility. This section does not preclude the court from sentencing the person to probation, community control, or an additional period of incarceration.

741.29. Domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting.

(1) Any law enforcement officer who investigates an alleged incident of domestic violence shall assist the victim to obtain medical treatment if such is required as a result of the alleged incident to which the officer responds. Any law enforcement officer who investigates an alleged incident of domestic violence shall advise the victim of such violence that there is a domestic violence center from which the victim may receive services. The law enforcement officer shall give the victim immediate notice of the legal rights and remedies available on a standard form developed and distributed by the department. As necessary, the department shall revise the Legal Rights and Remedies Notice to Victims to include a general summary of § 741.30 using simple English as well as Spanish, and shall distribute the notice as a model form to be used by all law enforcement agencies throughout the state. The notice shall include:

(a) The resource listing, including telephone number, for the area domestic violence center designated by the Department of Children and Family Services; and

(b) A copy of the following statement: "IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you may ask the state attorney to file a criminal complaint. You also have the

right to go to court and file a petition requesting an injunction for protection from domestic violence which may include, but need not be limited to, provisions which restrain the abuser from further acts of abuse; direct the abuser to leave your household; prevent the abuser from entering your residence, school, business, or place of employment; award you custody of your minor child or children; and direct the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so."

(2) When a law enforcement officer investigates an allegation that an incident of domestic violence has occurred, the officer shall handle the incident pursuant to the arrest policy provided in § 901.15(7), and as developed in accordance with subsections (3), (4), and (5). Whether or not an arrest is made, the officer shall make a written police report that is complete and clearly indicates the alleged offense was an incident of domestic violence. Such report shall be given to the officer's supervisor and filed with the law enforcement agency in a manner that will permit data on domestic violence cases to be compiled. Such report must include:

(a) A description of physical injuries observed, if any.

(b) If a law enforcement officer decides not to make an arrest or decides to arrest two or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting two or more parties.

(c) A statement which indicates that a copy of the legal rights and remedies notice was given to the victim.

Whenever possible, the law enforcement officer shall obtain a written statement from the victim and witnesses concerning the alleged domestic violence. The officer shall submit the report to the supervisor or other person to whom the employer's rules or policies require reports of similar allegations of criminal activity to be made. The law enforcement agency shall, without charge, send a copy of the initial police report, as well as any subsequent, supplemental, or related report, which excludes victim/witness statements or other materials that are part of an active criminal investigation and are exempt from disclosure under chapter 119, to the nearest locally certified domestic violence center within 24 hours after the agency's receipt of the report. The report furnished to the domestic violence center must include a narrative description of the domestic violence incident.

(3) Whenever a law enforcement officer determines upon probable cause that an act of domestic violence has been committed within the jurisdiction the officer may arrest the person or persons suspected of its commission and charge such person or persons with the appropriate crime. The decision to arrest and charge shall not require consent of the victim or consideration of the relationship of the parties.

(4) (a) When complaints are received from two or more parties, the officers shall evaluate each complaint separately to determine whether there is probable cause for arrest.

(b) If a law enforcement officer has probable cause to believe that two or more persons have committed a misdemeanor or felony, or if two or more persons make complaints to the officer, the officer shall try to determine who was the primary aggressor. Arrest is the preferred response only with respect to the primary aggressor and not the preferred response with respect to a person who acts in a reasonable manner to protect or defend oneself or another family or household member from domestic violence.

(5) No law enforcement officer shall be held liable, in any civil action, for an arrest based on probable cause, enforcement in good faith of a court order, or service of process in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.

(6) A person who willfully violates a condition of pretrial release provided in § 903.047, when the original arrest was for an act of domestic violence as defined in § 741.28, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, and shall be held in custody until his or her first appearance.

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

(1) There is created a cause of action for an injunction for protection against domestic violence.

(a) Any person described in paragraph (e), who is either the victim of domestic violence as defined in § 741.28 or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence, has standing in the circuit court to file a sworn petition for an injunction for protection against domestic violence.

(b) This cause of action for an injunction may be sought whether or not any other cause of action is currently pending between the parties. However, the pendency of any such cause of action shall be alleged in the petition.

(c) In the event a subsequent cause of action is filed under chapter 61, any orders entered therein shall take precedence over any inconsistent provisions of an injunction issued under this section which addresses matters governed by chapter 61.

(d) A person's right to petition for an injunction shall not be affected by such person having left a residence or household to avoid domestic violence.

(e) This cause of action for an injunction may be sought by family or household members. No person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such person is not a spouse.

(f) This cause of action for an injunction shall not require that either party be represented by an attorney.

(g) Any person, including an officer of the court, who offers evidence or recommendations relating to the cause of action must either present the evidence or recommendations in writing to the court with copies to each party and their attorney, or must present the evidence under oath at a hearing at which all parties are present.

(h) Nothing in this section shall affect the title to any real estate.

(i) The court is prohibited from issuing mutual orders of protection. This does not preclude the court from issuing separate injunctions for protection against domestic violence where each party has complied with the provisions of this section. Compliance with the provisions of this section cannot be waived.

(j) Notwithstanding any provision of chapter 47, a petition for an injunction for protection against domestic violence may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the domestic violence occurred. There is no minimum requirement of residency to petition for an injunction for protection.

(2) (a) Notwithstanding any other provision of law, the assessment of a filing fee for a petition for protection against domestic violence is prohibited effective October 1, 2002. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for reimbursement for petitions for protection against domestic violence issued by the court, at the rate of $40 per petition. The request for reimbursement shall be submitted in the form and manner prescribed by the Office of the State Courts Administrator. From this reimbursement, the clerk shall pay any law enforcement agency serving the injunction the fee requested by the law enforcement agency; however, this fee shall not exceed $20.

(b) No bond shall be required by the court for the entry of an injunction.

(c) 1. The clerk of the court shall assist petitioners in seeking both injunctions for protection against domestic violence and enforcement for a violation thereof as specified in this section.

2. All clerks' offices shall provide simplified petition forms for the injunction, any modifications, and the enforcement thereof, including instructions for completion.

3. The clerk of the court shall advise petitioners of the opportunity to apply for a certificate of indigence in lieu of prepayment for the cost of the filing fee, as provided in paragraph (a).

4. The clerk of the court shall ensure the petitioner's privacy to the extent practical while completing the forms for injunctions for protection against domestic violence.

5. The clerk of the court shall provide petitioners with a minimum of two certified copies of the order of injunction, one of which is serviceable and will inform the petitioner of the process for service and enforcement.

6. Clerks of court and appropriate staff in each county shall receive training in the effective assistance of petitioners as provided or approved by the Florida Association of Court Clerks.

7. The clerk of the court in each county shall make available informational brochures on domestic violence when such brochures are provided by local certified domestic violence centers.

8. The clerk of the court in each county shall distribute a statewide uniform informational brochure to petitioners at the time of filing for an injunction for protection against domestic or repeat violence when such brochures become available. The brochure must include information about the effect of giving the court false information about domestic violence.

(3) (a) The sworn petition shall allege the existence of such domestic violence and shall

include the specific facts and circumstances upon the basis of which relief is sought.

(b) The sworn petition shall be in substantially the following form:

PETITION FOR INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE

Before me, the undersigned authority, personally appeared Petitioner _____ (Name), who has been sworn and says that the following statements are true:

(a) Petitioner resides at: _____ (address)

(Petitioner may furnish address to the court in a separate confidential filing if, for safety reasons, the petitioner requires the location of the current residence to be confidential.)

(b) Respondent resides at: _____ (last known address)

(c) Respondent's last known place of employment: _____ (name of business and address)

(d) Physical description of respondent:

Race_____

Sex_____

Date of birth _____

Height_____

Weight_____

Eye color_____

Hair color_____

Distinguishing marks or scars_____

(e) Aliases of respondent: _____

(f) Respondent is the spouse or former spouse of the petitioner or is any other person related by blood or marriage to the petitioner or is any other person who is or was residing within a single dwelling unit with the petitioner, as if a family, or is a person with whom the petitioner has a child in common, regardless of whether the petitioner and respondent are or were married or residing together, as if a family.

(g) The following describes any other cause of action currently pending between the petitioner and respondent: _____

The petitioner should also describe any previous or pending attempts by the petitioner to obtain an injunction for protection against domestic violence in this or any other circuit, and the results of that attempt _____

Case numbers should be included if available.

(h) Petitioner is either a victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence because respondent has (mark all sections that apply and describe in the spaces below the incidents of violence or threats of violence, specifying when and where they occurred, including, but not limited to, locations such as a home, school, place of employment, or visitation exchange):

___ committed or threatened to commit domestic violence defined in § 741.28, Florida Statutes, as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another. With the exception of persons who are parents of a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

___ previously threatened, harassed, stalked, or physically abused the petitioner.

___ attempted to harm the petitioner or family members or individuals closely associated with the petitioner.

___ threatened to conceal, kidnap, or harm the petitioner's child or children.

___ intentionally injured or killed a family pet.

___ used, or has threatened to use, against the petitioner any weapons such as guns or knives.

___ physically restrained the petitioner from leaving the home or calling law enforcement.

___ a criminal history involving violence or the threat of violence (if known).

___ another order of protection issued against him or her previously or from another jurisdiction (if known).

___ destroyed personal property, including, but not limited to, telephones or other communication equipment, clothing, or other items belonging to the petitioner.

___ engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.

(i) Petitioner alleges the following additional specific facts: (mark appropriate sections)

___ A minor child or minor children reside with the petitioner whose names and ages are as follows: _____

___ Petitioner needs the exclusive use and possession of the dwelling that the parties share.

___ Petitioner is unable to obtain safe alternative housing because: _____

___ Petitioner genuinely fears that respondent imminently will abuse, remove, or hide the minor child or children from petitioner because: _____

(j) Petitioner genuinely fears imminent domestic violence by respondent.

(k) Petitioner seeks an injunction: (mark appropriate section or sections)

___ Immediately restraining the respondent from committing any acts of domestic violence.

___ Restraining the respondent from committing any acts of domestic violence.

___ Awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.

___ Providing a temporary parenting plan, including a temporary time-sharing schedule, with regard to the minor child or children of the parties which might involve prohibiting or limiting time-sharing or requiring that it be supervised by a third party.

___ Establishing temporary support for the minor child or children or the petitioner.

___ Directing the respondent to participate in a batterers' intervention program or other treatment pursuant to § 39.901, Florida Statutes.

___ Providing any terms the court deems necessary for the protection of a victim of domestic violence, or any minor children of the victim, including any injunctions or directives to law enforcement agencies.

(c) Every petition for an injunction against domestic violence shall contain, directly above the signature line, a statement in all capital letters and bold type not smaller than the surrounding text, as follows:

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION 837.02, FLORIDA STATUTES.

_____ (initials)

(d) If the sworn petition seeks to determine a parenting plan and time-sharing schedule with regard to the minor child or children of the parties, the sworn petition shall be accompanied by or shall incorporate the allegations required by § 61.522 of the Uniform Child Custody Jurisdiction and Enforcement Act.

(4) Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. The respondent shall be personally served with a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, prior to the hearing.

(5) (a) If it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte, pending a full hearing, and may grant such relief as the court deems proper, including an injunction:

1. Restraining the respondent from committing any acts of domestic violence.

2. Awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.

3. On the same basis as provided in § 61.13, providing the petitioner a temporary parenting plan, including a time-sharing schedule, which may award the petitioner up to 100 percent of the time-sharing. The temporary parenting plan remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the minor child.

(b) In a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, no evidence other than verified pleadings or affidavits shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. When the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. Nothing herein affects a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

(c) Any such ex parte temporary injunction shall be effective for a fixed period not to exceed 15 days. A full hearing, as provided by this section, shall be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance of the hearing before or during a hearing for good cause shown by any party, which shall include a continuance to obtain service of process. Any injunction shall be

extended if necessary to remain in full force and effect during any period of continuance.

(6) (a) Upon notice and hearing, when it appears to the court that the petitioner is either the victim of domestic violence as defined by § 741.28 or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, the court may grant such relief as the court deems proper, including an injunction:

1. Restraining the respondent from committing any acts of domestic violence.

2. Awarding to the petitioner the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.

3. On the same basis as provided in chapter 61, providing the petitioner with 100 percent of the time-sharing in a temporary parenting plan that remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the minor child.

4. On the same basis as provided in chapter 61, establishing temporary support for a minor child or children or the petitioner. An order of temporary support remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting child support.

5. Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent. When the court orders the respondent to participate in a batterers' intervention program, the court, or any entity designated by the court, must provide the respondent with a list of batterers' intervention programs from which the respondent must choose a program in which to participate.

6. Referring a petitioner to a certified domestic violence center. The court must provide the petitioner with a list of certified domestic violence centers in the circuit which the petitioner may contact.

7. Ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies, as provided in this section.

(b) In determining whether a petitioner has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, the court shall consider and evaluate all relevant factors alleged in the petition, including, but not limited to:

1. The history between the petitioner and the respondent, including threats, harassment, stalking, and physical abuse.

2. Whether the respondent has attempted to harm the petitioner or family members or individuals closely associated with the petitioner.

3. Whether the respondent has threatened to conceal, kidnap, or harm the petitioner's child or children.

4. Whether the respondent has intentionally injured or killed a family pet.

5. Whether the respondent has used, or has threatened to use, against the petitioner any weapons such as guns or knives.

6. Whether the respondent has physically restrained the petitioner from leaving the home or calling law enforcement.

7. Whether the respondent has a criminal history involving violence or the threat of violence.

8. The existence of a verifiable order of protection issued previously or from another jurisdiction.

9. Whether the respondent has destroyed personal property, including, but not limited to, telephones or other communications equipment, clothing, or other items belonging to the petitioner.

10. Whether the respondent engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence.

In making its determination under this paragraph, the court is not limited to those factors enumerated in subparagraphs 1.-10.

(c) The terms of an injunction restraining the respondent under subparagraph (a)1. or ordering other relief for the protection of the victim under subparagraph (a)7. shall remain in effect until modified or dissolved. Either party may move at any time to modify or dissolve the injunction. No specific allegations are required. Such relief may be granted in addition to other civil or criminal remedies.

(d) A temporary or final judgment on injunction for protection against domestic violence entered pursuant to this section shall, on its face, indicate that:

1. The injunction is valid and enforceable in all counties of the State of Florida.

2. Law enforcement officers may use their arrest powers pursuant to § 901.15(6) to enforce the terms of the injunction.

3. The court had jurisdiction over the parties and matter under the laws of Florida and that reasonable notice and opportunity to be heard was given to the person against whom the order is sought sufficient to protect that person's right to due process.

4. The date respondent was served with the temporary or final order, if obtainable.

(e) An injunction for protection against domestic violence entered pursuant to this section, on its face, may order that the respondent attend a batterers' intervention program as a condition of the injunction. Unless the court makes written factual findings in its judgment or order which are based on substantial evidence, stating why batterers' intervention programs would be inappropriate, the court shall order the respondent to attend a batterers' intervention program if:

1. It finds that the respondent willfully violated the ex parte injunction;

2. The respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence; or

3. The respondent, in this state or any other state, has had at any time a prior injunction for protection entered against the respondent after a hearing with notice.

(f) The fact that a separate order of protection is granted to each opposing party shall not be legally sufficient to deny any remedy to either party or to prove that the parties are equally at fault or equally endangered.

(g) A final judgment on injunction for protection against domestic violence entered pursuant to this section must, on its face, indicate that it is a violation of § 790.233, and a first degree misdemeanor, for the respondent to have in his or her care, custody, possession, or control any firearm or ammunition.

(h) All proceedings under this subsection shall be recorded. Recording may be by electronic means as provided by the Rules of Judicial Administration.

(7) The court shall allow an advocate from a state attorney's office, an advocate from a law enforcement agency, or an advocate from a certified domestic violence center who is registered under § 39.905 to be present with the petitioner or respondent during any court proceedings or hearings related to the injunction for protection, provided the petitioner or respondent has made such a request and the advocate is able to be present.

(8) (a) 1. The clerk of the court shall furnish a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. When requested by the sheriff, the clerk of the court may transmit a facsimile copy of an injunction that has been certified by the clerk of the court, and this facsimile copy may be served in the same manner as a certified copy. Upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may transmit a facsimile copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court shall be responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other provision of law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section shall use service and verification procedures consistent with those of the sheriff.

2. When an injunction is issued, if the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in the execution or service of the injunction. A law enforcement officer shall accept a copy of an injunction for protection against domestic violence, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

3. All orders issued, changed, continued, extended, or vacated subsequent to the original service of documents enumerated under subparagraph 1., shall be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. In the event a party fails or refuses to acknowl-

edge the receipt of a certified copy of an order, the clerk shall note on the original order that service was effected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

If the respondent has been served previously with the temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b) There shall be created a Domestic and Repeat Violence Injunction Statewide Verification System within the Department of Law Enforcement. The department shall establish, implement, and maintain a statewide communication system capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions and repeat violence injunctions issued by the courts throughout the state. Such information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes.

(c) 1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5. a. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence and other court actions related to the injunction for protection. The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against domestic violence was served. When a petitioner makes a request for notification, the clerk must apprise the petitioner of her or his right to request in writing that the information specified in sub-subparagraph b. be held exempt from public records requirements for 5 years. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

b. Upon implementation of the automated process, information held by clerks and law enforcement agencies in conjunction with the automated process developed under sub-subparagraph a. which reveals the home or employment telephone number, cellular telephone number, home or employment address, electronic mail address, or other electronic means of identification of a petitioner requesting notification of service of an injunction for protection against domestic violence and other court actions related to the injunction for protection is exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution, upon written request by the petitioner. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this sub-subparagraph. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with § 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

6. Within 24 hours after an injunction for protection against domestic violence is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

(9) (a) The court may enforce a violation of an injunction for protection against domestic violence through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a criminal violation under § 741.31. The court may enforce the respondent's compliance with the injunction through any appropriate civil and criminal remedies, including, but not limited to, a monetary assessment or a fine. The clerk of the court shall collect and receive such assessments or fines. On a monthly basis, the clerk shall transfer the moneys collected pursuant to this paragraph to the State Treasury for deposit in the Domestic Violence Trust Fund established in § 741.01.

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

(10) The petitioner or the respondent may move the court to modify or dissolve an injunction at any time.

741.31. Violation of an injunction for protection against domestic violence.

(1) In the event of a violation of the injunction for protection against domestic violence when there has not been an arrest, the petitioner may contact the clerk of the circuit court of the county in which the violation is alleged to have occurred. The clerk shall either assist the petitioner in the preparation of an affidavit in support of the violation or direct the petitioner to the office operated by the court within the circuit that has been designated by the chief judge of that circuit as the central intake point for injunction violations and where the petitioner can receive assistance in the preparation of the affidavit in support of the violation.

(2) The affidavit shall be immediately forwarded by the office assisting the petitioner to the state attorney of that circuit and to such court or judge as the chief judge of that circuit determines to be the recipient of affidavits of violation. If the affidavit alleges a crime has been committed, the office assisting the petitioner shall also forward a copy of the petitioner's affidavit to the appropriate law enforcement agency for investigation. No later than 20 days after receiving the initial report, the local law enforcement agency shall complete their investigation and forward the report to the state attorney. The policy adopted by the state attorney in each circuit under § 741.2901(2), shall include a policy regarding intake of alleged violations of injunctions for protection against domestic violence under this section. The intake shall be supervised by a prosecutor who, pursuant to § 741.2901(1), has been designated and assigned to handle domestic violence cases. The state attorney shall determine within 30 working days whether its office will proceed to file criminal charges, or prepare a motion for an order to show cause as to why the respondent should not be held in criminal contempt, or prepare both as alternative findings, or file notice that the case remains under investigation or is pending subject to some other action.

(3) If the court has knowledge, based on its familiarity with the case, that the petitioner, the children of the petitioner, or another person is in immediate danger if the court fails to act prior to the decision of the state attorney to prosecute, it should immediately issue an order of appointment of the state attorney to file a motion for an order to show cause as to why the respondent should not be held in contempt. If the court does not issue an order of appointment of the state attorney, it shall immediately notify the state attorney that the court is proceeding to enforce the violation through criminal contempt.

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

1. Refusing to vacate the dwelling that the parties share;

2. Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;

3. Committing an act of domestic violence against the petitioner;

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

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

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

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

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

commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

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

2. It is the intent of the Legislature that the disabilities regarding possession of firearms and ammunition are consistent with federal law. Accordingly, this paragraph shall not apply to a state or local officer as defined in § 943.10(14), holding an active certification, who receives or possesses a firearm or ammunition for use in performing official duties on behalf of the officer's employing agency, unless otherwise prohibited by the employing agency.

(5) Whether or not there is a criminal prosecution under subsection (4), the court shall order the respondent to attend a batterers' intervention program if it finds a willful violation of a domestic violence injunction, unless the court makes written factual findings in its judgment or order which are based on substantial evidence, stating why a batterers' intervention program would be inappropriate.

(6) Any person who suffers an injury and/or loss as a result of a violation of an injunction for protection against domestic violence may be awarded economic damages for that injury and/or loss by the court issuing the injunction. Damages includes costs and attorneys' fees for enforcement of the injunction.

741.315. Recognition of foreign protection orders.

(1) As used in this section, the term "court of a foreign state" means a court of competent jurisdiction of a state of the United States, other than Florida; the District of Columbia; an Indian tribe; or a commonwealth, territory, or possession of the United States.

(2) Pursuant to 18 U.S.C. § 2265, an injunction for protection against domestic violence issued by a court of a foreign state must be accorded full faith and credit by the courts of this state and enforced by a law enforcement agency as if it were the order of a Florida court issued under § 741.30, § 741.31, § 784.046, § 784.047, § 784.0485, or § 784.0487, and provided that the court had jurisdiction over the parties and the matter and that reasonable notice and opportunity to be heard was given to the person against whom the order is sought sufficient to protect that person's right to due process. Ex parte foreign injunctions for protection are not eligible for enforcement under this section unless notice and opportunity to be heard have been provided within the time required by the foreign state or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(3) Notwithstanding § 55.505 or any other provision to the contrary, neither residence in this state nor registration of foreign injunctions for protection shall be required for enforcement of this order by this state and failure to register the foreign order shall not be an impediment to its enforcement. The following registration procedure shall be available to protected persons who hold orders from a court of a foreign state.

(a) A protected person shall present a certified copy of a foreign order of protection to any sheriff in this state and request that the same be registered in the injunction registry. However, nothing in this section shall operate to preclude the enforcement of any order of protection determined by the law enforcement officer to be valid even if the protected person does not have a certified copy of the foreign protection order. It is not necessary that the protected person register the foreign order in the protected person's county of residence. Venue is proper throughout the state. The protected person must swear by affidavit, that to the best of the protected person's knowledge and belief, the attached certified copy of the foreign order, docket number , issued in the state of on is currently in effect as written and has not been superseded by any other order and that the respondent has been given a copy of it.

(b) The sheriff shall examine the certified copy of the foreign order and register the order in the injunction registry, noting that it is a foreign order of protection. If not apparent from the face of the certified copy of the foreign order, the sheriff shall use best

efforts to ascertain whether the order was served on the respondent. The Florida Department of Law Enforcement shall develop a special notation for foreign orders of protection. The sheriff shall assign a case number and give the protected person a receipt showing registration of the foreign order in this state. There shall be no fee for registration of a foreign order.

(c) The foreign order may also be registered by local law enforcement agencies upon receipt of the foreign order and any accompanying affidavits in the same manner described in paragraphs (a) and (b).

(4) (a) Law enforcement officers shall enforce foreign orders of protection as if they were entered by a court of this state. Upon presentation of a foreign protection order by a protected person, a law enforcement officer shall assist in enforcement of all of its terms, pursuant to federal law, except matters related to child custody, visitation, and support. As to those provisions only, enforcement may be obtained upon domestication of the foreign order pursuant to §§ 55.501-55.509 unless the foreign order is a "pickup order" or "order of bodily attachment" requiring the immediate return of a child.

(b) Before enforcing a foreign protection order, a law enforcement officer should confirm the identity of the parties present and review the order to determine that, on its face, it has not expired. Presentation of a certified or true copy of the protection order shall not be required as a condition of enforcement, provided that a conflicting certified copy is not presented by the respondent or the individual against whom enforcement is sought.

(c) A law enforcement officer shall use reasonable efforts to verify service of process.

(d) Service may be verified as follows:

1. By petitioner: Petitioner may state under oath that to the best of petitioner's knowledge, respondent was served with the order of protection because petitioner was present at time of service; respondent told petitioner he or she was served; another named person told petitioner respondent was served; or respondent told petitioner he or she knows of the content of the order and date of the return hearing.

2. By respondent: Respondent states under oath that he or she was or was not served with the order.

(e) Enforcement and arrest for violation of a foreign protection order shall be consistent with the enforcement of orders issued in this state.

(f) A law enforcement officer acting in good faith under this section and the officer's employing agency shall be immune from all liability, civil or criminal, that might otherwise be incurred or imposed by reason of the officer's or agency's actions in carrying out the provisions of this section.

(g) Law enforcement shall not require petitioner to sign a registration affidavit as a condition of enforcement.

(h) A foreign order of protection shall remain in effect until the date of expiration on its face; or, if there is no expiration date on its face, a foreign order of protection shall remain in effect until expiration. If the order of protection states on its face that it is a permanent order, then there is no date of expiration.

(5) Any person who acts under this section and intentionally provides a law enforcement officer with a copy of an order of protection known by that person to be false or invalid, or who denies having been served with an order of protection when that person has been served with such order, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(6) In the event 18 U.S.C. § 2265 is held to be unconstitutional, this section shall be null and void.

CHAPTER 775
DEFINITIONS; GENERAL PENALTIES; REGISTRATION OF CRIMINALS

775.012. General purposes.

The general purposes of the provisions of the code are:

(1) To proscribe conduct that improperly causes or threatens substantial harm to individual or public interest.

(2) To give fair warning to the people of the state in understandable language of the nature of the conduct proscribed and of the sentences authorized upon conviction.

(3) To define clearly the material elements constituting an offense and the accompanying state of mind or criminal intent required for that offense.

(4) To differentiate on reasonable grounds between serious and minor offenses and to establish appropriate disposition for each.

(5) To safeguard conduct that is without fault or legitimate state interest from being condemned as criminal.

(6) To ensure the public safety by deterring the commission of offenses and provid-

ing for the opportunity for rehabilitation of those convicted and for their confinement when required in the interests of public protection.

775.021. Rules of construction.

(1) The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.

(2) The provisions of this chapter are applicable to offenses defined by other statutes, unless the code otherwise provides.

(3) This section does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

(4) (a) Whoever, in the course of one criminal transaction or episode, commits an act or acts which constitute one or more separate criminal offenses, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense; and the sentencing judge may order the sentences to be served concurrently or consecutively. For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial.

(b) The intent of the Legislature is to convict and sentence for each criminal offense committed in the course of one criminal episode or transaction and not to allow the principle of lenity as set forth in subsection (1) to determine legislative intent. Exceptions to this rule of construction are:

1. Offenses which require identical elements of proof.

2. Offenses which are degrees of the same offense as provided by statute.

3. Offenses which are lesser offenses the statutory elements of which are subsumed by the greater offense.

775.08. Classes and definitions of offenses.

When used in the laws of this state:

(1) The term "felony" shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary. "State penitentiary" shall include state correctional facilities. A person shall be imprisoned in the state penitentiary for each sentence which, except an extended term, exceeds 1 year.

(2) The term "misdemeanor" shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by a term of imprisonment in a county correctional facility, except an extended term, not in excess of 1 year. The term "misdemeanor" shall not mean a conviction for any noncriminal traffic violation of any provision of chapter 316 or any municipal or county ordinance.

(3) The term "noncriminal violation" shall mean any offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by no other penalty than a fine, forfeiture, or other civil penalty. A noncriminal violation does not constitute a crime, and conviction for a noncriminal violation shall not give rise to any legal disability based on a criminal offense. The term "noncriminal violation" shall not mean any conviction for any violation of any municipal or county ordinance. Nothing contained in this code shall repeal or change the penalty for a violation of any municipal or county ordinance.

(4) The term "crime" shall mean a felony or misdemeanor.

775.081. Classifications of felonies and misdemeanors.

(1) Felonies are classified, for the purpose of sentence and for any other purpose specifically provided by statute, into the following categories:

(a) Capital felony;

(b) Life felony;

(c) Felony of the first degree;

(d) Felony of the second degree; and

(e) Felony of the third degree.

A capital felony and a life felony must be so designated by statute. Other felonies are of the particular degree designated by statute. Any crime declared by statute to be a felony without specification of degree is of the third degree, except that this provision shall not affect felonies punishable by life imprisonment for the first offense.

(2) Misdemeanors are classified, for the purpose of sentence and for any other purpose specifically provided by statute, into the following categories:

(a) Misdemeanor of the first degree; and

(b) Misdemeanor of the second degree.

A misdemeanor is of the particular degree designated by statute. Any crime declared by statute to be a misdemeanor without specification of degree is of the second degree.

(3) This section is supplemental to, and is not to be construed to alter, the law of this state establishing and governing criminal of-

fenses that are divided into degrees by virtue of distinctive elements comprising such offenses, regardless of whether such law is established by constitutional provision, statute, court rule, or court decision.

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

(1) A person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in § 921.141 results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(2) In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment as provided in subsection (1). No sentence of death shall be reduced as a result of a determination that a method of execution is held to be unconstitutional under the State Constitution or the Constitution of the United States.

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a) 1. For a life felony committed prior to October 1, 1983, by a term of imprisonment for life or for a term of years not less than 30.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

4. a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of § 800.04(5)(b), by:

I. A term of imprisonment for life; or

II. A split sentence that is a term of not less than 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in § 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of § 800.04(5)(b), by a term of imprisonment for life.

(b) For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

(c) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.

(d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

(a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year;

(b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

(5) Any person who has been convicted of a noncriminal violation may not be sentenced to a term of imprisonment nor to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in chapter 316 or by ordinance of any city or county.

(6) Nothing in this section shall be construed to alter the operation of any statute of this state authorizing a trial court, in its discretion, to impose a sentence of imprisonment for an indeterminate period within minimum and maximum limits as provided by law, except as provided in subsection (1).

(7) This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

(8) (a) The sentencing guidelines that were effective October 1, 1983, and any revisions thereto, apply to all felonies, except capital felonies, committed on or after October 1, 1983, and before January 1, 1994, and to all felonies, except capital felonies and life felonies, committed before October 1, 1983, when the defendant affirmatively selects to be sentenced pursuant to such provisions.

(b) The 1994 sentencing guidelines, that were effective January 1, 1994, and any revisions thereto, apply to all felonies, except capital felonies, committed on or after January 1, 1994, and before October 1, 1995.

(c) The 1995 sentencing guidelines that were effective October 1, 1995, and any re-

visions thereto, apply to all felonies, except capital felonies, committed on or after October 1, 1995, and before October 1, 1998.

(d) The Criminal Punishment Code applies to all felonies, except capital felonies, committed on or after October 1, 1998. Any revision to the Criminal Punishment Code applies to sentencing for all felonies, except capital felonies, committed on or after the effective date of the revision.

(e) Felonies, except capital felonies, with continuing dates of enterprise shall be sentenced under the sentencing guidelines or the Criminal Punishment Code in effect on the beginning date of the criminal activity.

(9) (a) 1. "Prison releasee reoffender" means any defendant who commits, or attempts to commit:

a. Treason;

b. Murder;

c. Manslaughter;

d. Sexual battery;

e. Carjacking;

f. Home-invasion robbery;

g. Robbery;

h. Arson;

i. Kidnapping;

j. Aggravated assault with a deadly weapon;

k. Aggravated battery;

l. Aggravated stalking;

m. Aircraft piracy;

n. Unlawful throwing, placing, or discharging of a destructive device or bomb;

o. Any felony that involves the use or threat of physical force or violence against an individual;

p. Armed burglary;

q. Burglary of a dwelling or burglary of an occupied structure; or

r. Any felony violation of § 790.07, § 800.04, § 827.03, § 827.071, or § 847.0135(5);

within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor or within 3 years after being released from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

2. "Prison releasee reoffender" also means any defendant who commits or attempts to commit any offense listed in subsubparagraphs (a)1.a.-r. while the defendant was serving a prison sentence or on escape status from a state correctional facility operated by the Department of Corrections or a private vendor or while the defendant was on escape status from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

3. If the state attorney determines that a defendant is a prison releasee reoffender as defined in subparagraph 1., the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:

a. For a felony punishable by life, by a term of imprisonment for life;

b. For a felony of the first degree, by a term of imprisonment of 30 years;

c. For a felony of the second degree, by a term of imprisonment of 15 years; and

d. For a felony of the third degree, by a term of imprisonment of 5 years.

(b) A person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence.

(c) Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to § 775.084 or any other provision of law.

(d) 1. It is the intent of the Legislature that offenders previously released from prison who meet the criteria in paragraph (a) be punished to the fullest extent of the law and as provided in this subsection, unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection.

2. For every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place

such explanation in the case file maintained by the state attorney.

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

(11) The purpose of this section is to provide uniform punishment for those crimes made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

775.0823. Violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.

The Legislature does hereby provide for an increase and certainty of penalty for any person convicted of a violent offense against any law enforcement or correctional officer, as defined in § 943.10(1), (2), (3), (6), (7), (8), or (9); against any state attorney elected pursuant to § 27.01 or assistant state attorney appointed under § 27.181; or against any justice or judge of a court described in Art. V of the State Constitution, which offense arises out of or in the scope of the officer's duty as a law enforcement or correctional officer, the state attorney's or assistant state attorney's duty as a prosecutor or investigator, or the justice's or judge's duty as a judicial officer, as follows:

(1) For murder in the first degree as described in § 782.04(1), if the death sentence is not imposed, a sentence of imprisonment for life without eligibility for release.

(2) For attempted murder in the first degree as described in § 782.04(1), a sentence pursuant to § 775.082, § 775.083, or § 775.084.

(3) For attempted felony murder as described in § 782.051, a sentence pursuant to § 775.082, § 775.083, or § 775.084.

(4) For murder in the second degree as described in § 782.04(2) and (3), a sentence pursuant to § 775.082, § 775.083, or § 775.084.

(5) For attempted murder in the second degree as described in § 782.04(2) and (3), a sentence pursuant to § 775.082, § 775.083, or § 775.084.

(6) For murder in the third degree as described in § 782.04(4), a sentence pursuant to § 775.082, § 775.083, or § 775.084.

(7) For attempted murder in the third degree as described in § 782.04(4), a sentence pursuant to § 775.082, § 775.083, or § 775.084.

(8) For manslaughter as described in § 782.07 during the commission of a crime, a sentence pursuant to § 775.082, § 775.083, or § 775.084.

(9) For kidnapping as described in § 787.01, a sentence pursuant to § 775.082, § 775.083, or § 775.084.

(10) For aggravated battery as described in § 784.045, a sentence pursuant to § 775.082, § 775.083, or § 775.084.

(11) For aggravated assault as described in § 784.021, a sentence pursuant to § 775.082, § 775.083, or § 775.084.

Notwithstanding the provisions of § 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld.

775.083. Fines.

(1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in § 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in § 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:

(a) $15,000, when the conviction is of a life felony.

(b) $10,000, when the conviction is of a felony of the first or second degree.

(c) $5,000, when the conviction is of a felony of the third degree.

(d) $1,000, when the conviction is of a misdemeanor of the first degree.

(e) $500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.

(f) Any higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim.

(g) Any higher amount specifically authorized by statute.

Fines imposed in this subsection shall be deposited by the clerk of the court in the fine and forfeiture fund established pursuant to

§ 142.01, except that the clerk shall remit fines imposed when adjudication is withheld to the Department of Revenue for deposit in the General Revenue Fund. If a defendant is unable to pay a fine, the court may defer payment of the fine to a date certain. As used in this subsection, the term "convicted" or "conviction" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(2) In addition to the fines set forth in subsection (1), court costs shall be assessed and collected in each instance a defendant pleads nolo contendere to, or is convicted of, or adjudicated delinquent for, a felony, a misdemeanor, or a criminal traffic offense under state law, or a violation of any municipal or county ordinance if the violation constitutes a misdemeanor under state law. The court costs imposed by this section shall be $50 for a felony and $20 for any other offense and shall be deposited by the clerk of the court into an appropriate county account for disbursement for the purposes provided in this subsection. A county shall account for the funds separately from other county funds as crime prevention funds. The county, in consultation with the sheriff, must expend such funds for crime prevention programs in the county, including safe neighborhood programs under §§ 163.501-163.523.

(3) The purpose of this section is to provide uniform penalty authorization for criminal offenses and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

775.084. Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.

(1) As used in this act:

(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4)(a), if it finds that:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.

2. The felony for which the defendant is to be sentenced was committed:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or

b. Within 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.

3. The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of § 893.13 relating to the purchase or the possession of a controlled substance.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.

5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any post-conviction proceeding.

(b) "Habitual violent felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4)(b), if it finds that:

1. The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

a. Arson;
b. Sexual battery;
c. Robbery;
d. Kidnapping;
e. Aggravated child abuse;
f. Aggravated abuse of an elderly person or disabled adult;
g. Aggravated assault with a deadly weapon;
h. Murder;
i. Manslaughter;
j. Aggravated manslaughter of an elderly person or disabled adult;
k. Aggravated manslaughter of a child;
l. Unlawful throwing, placing, or discharging of a destructive device or bomb;
m. Armed burglary;
n. Aggravated battery; or
o. Aggravated stalking.

2. The felony for which the defendant is to be sentenced was committed:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or

b. Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.

3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this paragraph.

4. A conviction of a crime necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(c) "Three-time violent felony offender" means a defendant for whom the court must impose a mandatory minimum term of imprisonment, as provided in paragraph (4)(c), if it finds that:

1. The defendant has previously been convicted as an adult two or more times of a felony, or an attempt to commit a felony, and two or more of such convictions were for committing, or attempting to commit, any of the following offenses or combination thereof:

a. Arson;

b. Sexual battery;

c. Robbery;

d. Kidnapping;

e. Aggravated child abuse;

f. Aggravated abuse of an elderly person or disabled adult;

g. Aggravated assault with a deadly weapon;

h. Murder;

i. Manslaughter;

j. Aggravated manslaughter of an elderly person or disabled adult;

k. Aggravated manslaughter of a child;

l. Unlawful throwing, placing, or discharging of a destructive device or bomb;

m. Armed burglary;

n. Aggravated battery;

o. Aggravated stalking;

p. Home invasion/robbery;

q. Carjacking; or

r. An offense which is in violation of a law of any other jurisdiction if the elements of the offense are substantially similar to the elements of any felony offense enumerated in sub-subparagraphs a.-q., or an attempt to commit any such felony offense.

2. The felony for which the defendant is to be sentenced is one of the felonies enumerated in sub-subparagraphs 1.a.-q. and was committed:

a. While the defendant was serving a prison sentence or other sentence imposed as a result of a prior conviction for any offense enumerated in sub-subparagraphs 1.a.-r.; or

b. Within 5 years after the date of the conviction of the last prior offense enumerated in sub-subparagraphs 1.a.-r., or within 5 years after the defendant's release from a prison sentence, probation, community control, or other sentence imposed as a result of a prior conviction for any offense enumerated in sub-subparagraphs 1.a.-r., whichever is later.

3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this paragraph.

4. A conviction of a crime necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(d) "Violent career criminal" means a defendant for whom the court must impose imprisonment pursuant to paragraph (4)(d), if it finds that:

1. The defendant has previously been convicted as an adult three or more times for an offense in this state or other qualified offense that is:

a. Any forcible felony, as described in § 776.08;

b. Aggravated stalking, as described in § 784.048(3) and (4);

c. Aggravated child abuse, as described in § 827.03(2)(a);

d. Aggravated abuse of an elderly person or disabled adult, as described in § 825.102(2);

e. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, as described in § 800.04 or § 847.0135(5);

f. Escape, as described in § 944.40; or

g. A felony violation of chapter 790 involving the use or possession of a firearm.

2. The defendant has been incarcerated in a state prison or a federal prison.

3. The primary felony offense for which the defendant is to be sentenced is a felony enumerated in subparagraph 1. and was committed on or after October 1, 1995, and:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or

b. Within 5 years after the conviction of the last prior enumerated felony, or within 5 years after the defendant's release from a prison sentence, probation, community

control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.

5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(e) "Qualified offense" means any offense, substantially similar in elements and penalties to an offense in this state, which is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction, that was punishable under the law of such jurisdiction at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

(2) For the purposes of this section, the placing of a person on probation or community control without an adjudication of guilt shall be treated as a prior conviction.

(3) (a) In a separate proceeding, the court shall determine if the defendant is a habitual felony offender or a habitual violent felony offender. The procedure shall be as follows:

1. The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a habitual felony offender or a habitual violent felony offender.

2. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.

3. Except as provided in subparagraph 1., all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

4. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.

5. For the purpose of identification of a habitual felony offender or a habitual violent felony offender, the court shall fingerprint the defendant pursuant to § 921.241.

6. For an offense committed on or after October 1, 1995, if the state attorney pursues a habitual felony offender sanction or a habitual violent felony offender sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a habitual felony offender or a habitual violent felony offender, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public. If the court finds that it is not necessary for the protection of the public to sentence the defendant as a habitual felony offender or a habitual violent felony offender, the court shall provide written reasons; a written transcript of orally stated reasons is permissible, if filed by the court within 7 days after the date of sentencing. Each month, the court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons or transcripts in each case in which the court determines not to sentence a defendant as a habitual felony offender or a habitual violent felony offender as provided in this subparagraph.

(b) In a separate proceeding, the court shall determine if the defendant is a three-time violent felony offender. The procedure shall be as follows:

1. The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a three-time violent felony offender.

2. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.

3. Except as provided in subparagraph 1., all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

4. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.

5. For the purpose of identification of a three-time violent felony offender, the court shall fingerprint the defendant pursuant to § 921.241.

6. For an offense committed on or after the effective date of this act, if the state attorney pursues a three-time violent felony offender sanction against the defendant and the court, in a separate proceeding pursuant

to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a three-time violent felony offender, subject to imprisonment pursuant to this section as provided in paragraph (4)(c).

(c) In a separate proceeding, the court shall determine whether the defendant is a violent career criminal with respect to a primary offense committed on or after October 1, 1995. The procedure shall be as follows:

1. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.

2. All evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

3. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable only as provided in paragraph (d).

4. For the purpose of identification, the court shall fingerprint the defendant pursuant to § 921.241.

5. For an offense committed on or after October 1, 1995, if the state attorney pursues a violent career criminal sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a violent career criminal, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public. If the court finds that it is not necessary for the protection of the public to sentence the defendant as a violent career criminal, the court shall provide written reasons; a written transcript of orally stated reasons is permissible, if filed by the court within 7 days after the date of sentencing. Each month, the court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons or transcripts in each case in which the court determines not to sentence a defendant as a violent career criminal as provided in this subparagraph.

(d) 1. A person sentenced under paragraph (4)(d) as a violent career criminal has the right of direct appeal, and either the state or the defendant may petition the trial court to vacate an illegal sentence at any time. However, the determination of the trial court to impose or not to impose a violent career criminal sentence is presumed appropriate and no petition or motion for collateral or other postconviction relief may be considered based on an allegation either by the state or the defendant that such sentence is inappropriate, inadequate, or excessive.

2. It is the intent of the Legislature that, with respect to both direct appeal and collateral review of violent career criminal sentences, all claims of error or illegality be raised at the first opportunity and that no claim should be filed more than 2 years after the judgment and sentence became final, unless it is established that the basis for the claim could not have been ascertained at the time by the exercise of due diligence. Technical violations and mistakes at trials and sentencing proceedings involving violent career criminals that do not affect due process or fundamental fairness are not appealable by either the state or the defendant.

3. It is the intent of the Legislature that no funds, resources, or employees of the state or its political subdivisions be used, directly or indirectly, in appellate or collateral proceedings based on violent career criminal sentencing, except when such use is constitutionally or statutorily mandated.

(4) (a) The court, in conformity with the procedure established in paragraph (3)(a), may sentence the habitual felony offender as follows:

1. In the case of a life felony or a felony of the first degree, for life.

2. In the case of a felony of the second degree, for a term of years not exceeding 30.

3. In the case of a felony of the third degree, for a term of years not exceeding 10.

(b) The court, in conformity with the procedure established in paragraph (3)(a), may sentence the habitual violent felony offender as follows:

1. In the case of a life felony or a felony of the first degree, for life, and such offender shall not be eligible for release for 15 years.

2. In the case of a felony of the second degree, for a term of years not exceeding 30, and such offender shall not be eligible for release for 10 years.

3. In the case of a felony of the third degree, for a term of years not exceeding 10, and such offender shall not be eligible for release for 5 years.

(c) 1. The court, in conformity with the procedure established in paragraph (3)(b), must sentence the three-time violent felony

offender to a mandatory minimum term of imprisonment, as follows:

a. In the case of a felony punishable by life, to a term of imprisonment for life;

b. In the case of a felony of the first degree, to a term of imprisonment of 30 years;

c. In the case of a felony of the second degree, to a term of imprisonment of 15 years; or

d. In the case of a felony of the third degree, to a term of imprisonment of 5 years.

2. Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law.

(d) The court, in conformity with the procedure established in paragraph (3)(c), shall sentence the violent career criminal as follows:

1. In the case of a life felony or a felony of the first degree, for life.

2. In the case of a felony of the second degree, for a term of years not exceeding 40, with a mandatory minimum term of 30 years' imprisonment.

3. In the case of a felony of the third degree, for a term of years not exceeding 15, with a mandatory minimum term of 10 years' imprisonment.

(e) If the court finds, pursuant to paragraph (3)(a) or paragraph (3)(c), that it is not necessary for the protection of the public to sentence a defendant who meets the criteria for sentencing as a habitual felony offender, a habitual violent felony offender, or a violent career criminal, with respect to an offense committed on or after October 1, 1995, sentence shall be imposed without regard to this section.

(f) At any time when it appears to the court that the defendant is eligible for sentencing under this section, the court shall make that determination as provided in paragraph (3)(a), paragraph (3)(b), or paragraph (3)(c).

(g) A sentence imposed under this section shall not be increased after such imposition.

(h) A sentence imposed under this section is not subject to § 921.002.

(i) The provisions of this section do not apply to capital felonies, and a sentence authorized under this section does not preclude the imposition of the death penalty for a capital felony.

(j) The provisions of § 947.1405 shall apply to persons sentenced as habitual felony offenders and persons sentenced as habitual violent felony offenders.

(k) 1. A defendant sentenced under this section as a habitual felony offender, a habitual violent felony offender, or a violent career criminal is eligible for gain-time granted by the Department of Corrections as provided in § 944.275(4)(b).

2. For an offense committed on or after October 1, 1995, a defendant sentenced under this section as a violent career criminal is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release granted pursuant to § 947.149.

3. For an offense committed on or after July 1, 1999, a defendant sentenced under this section as a three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

(5) In order to be counted as a prior felony for purposes of sentencing under this section, the felony must have resulted in a conviction sentenced separately prior to the current offense and sentenced separately from any other felony conviction that is to be counted as a prior felony.

(6) The purpose of this section is to provide uniform punishment for those crimes made punishable under this section, and to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

775.0844. White Collar Crime Victim Protection Act.

(1) This section may be cited as the "White Collar Crime Victim Protection Act."

(2) Due to the frequency with which victims, particularly elderly victims, are deceived and cheated by criminals who commit nonviolent frauds and swindles, frequently through the use of the Internet and other electronic technology and frequently causing the loss of substantial amounts of property, it is the intent of the Legislature to enhance the sanctions imposed for nonviolent frauds and swindles, protect the public's property, and assist in prosecuting white collar criminals.

(3) As used in this section, "white collar crime" means:

(a) The commission of, or a conspiracy to commit, any felony offense specified in:

1. Chapter 560, relating to the Money Transmitters' Code.

2. Chapter 812, relating to theft, robbery, and related crimes.

3. Chapter 815, relating to computer-related crimes.

4. Chapter 817, relating to fraudulent practices.

5. Chapter 825, relating to abuse, neglect, and exploitation of elderly persons and disabled adults.

6. Chapter 831, relating to forgery and counterfeiting.

7. Chapter 832, relating to the issuance of worthless checks and drafts.

8. Chapter 838, relating to bribery and misuse of public office.

9. Chapter 839, relating to offenses by public officers and employees.

10. Chapter 895, relating to offenses concerning racketeering and illegal debts.

11. Chapter 896, relating to offenses related to financial transactions.

(b) A felony offense that is committed with intent to defraud or that involves a conspiracy to defraud.

(c) A felony offense that is committed with intent to temporarily or permanently deprive a person of his or her property or that involves a conspiracy to temporarily or permanently deprive a person of his or her property.

(d) A felony offense that involves or results in the commission of fraud or deceit upon a person or that involves a conspiracy to commit fraud or deceit upon a person.

(4) As used in this section, "aggravated white collar crime" means engaging in at least two white collar crimes that have the same or similar intents, results, accomplices, victims, or methods of commission, or that are otherwise interrelated by distinguishing characteristics and are not isolated incidents, provided that at least one of such crimes occurred after the effective date of this act.

(5) Any person who commits an aggravated white collar crime as defined in this section and in so doing either:

(a) Victimizes 10 or more elderly persons, as defined in § 825.101(5);

(b) Victimizes 20 or more persons, as defined in § 1.01; or

(c) Victimizes the State of Florida, any state agency, any of the state's political subdivisions, or any agency of the state's political subdivisions,

and thereby obtains or attempts to obtain $50,000 or more, commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(6) Notwithstanding any other provision of chapter 921 or any other law, an aggravated white collar crime shall be ranked within the offense severity ranking chart at offense severity level 9.

(7) In addition to a sentence otherwise authorized by law, a person convicted of an aggravated white collar crime may pay a fine of $500,000 or double the value of the pecuniary gain or loss, whichever is greater.

(8) A person convicted of an aggravated white collar crime under this section is liable for all court costs and shall pay restitution to each victim of the crime, regardless of whether the victim is named in the information or indictment. As used in this subsection, "victim" means a person directly and proximately harmed as a result of the commission of the offense for which restitution may be ordered, including any person directly harmed by the defendant's criminal conduct in the course of the commission of the aggravated white collar crime. The court shall hold a hearing to determine the identity of qualifying victims and shall order the defendant to pay restitution based on his or her ability to pay, in accordance with this section and § 775.089.

(a) The court shall make the payment of restitution a condition of any probation granted to the defendant by the court. Notwithstanding any other law, the court may order continued probation for a defendant convicted under this section for up to 10 years or until full restitution is made to the victim, whichever occurs earlier.

(b) The court retains jurisdiction to enforce its order to pay fines or restitution. The court may initiate proceedings against a defendant for a violation of probation or for contempt of court if the defendant willfully fails to comply with a lawful order of the court.

775.0845. Wearing mask while committing offense; reclassification.

The felony or misdemeanor degree of any criminal offense, other than a violation of §§ 876.12-876.15, shall be reclassified to the next higher degree as provided in this section if, while committing the offense, the offender was wearing a hood, mask, or other device that concealed his or her identity.

(1) (a) In the case of a misdemeanor of the second degree, the offense is reclassified to a misdemeanor of the first degree.

(b) In the case of a misdemeanor of the first degree, the offense is reclassified to a felony of the third degree. For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, such offense is ranked in level 2 of the offense severity ranking chart.

(2) (a) In the case of a felony of the third degree, the offense is reclassified to a felony of the second degree.

(b) In the case of a felony of the second degree, the offense is reclassified to a felony of the first degree.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this subsection is ranked one level above the ranking under former § 921.0012, former § 921.0013, § 921.0022, or § 921.0023 of the offense committed.

775.0846. Possession of bulletproof vest while committing certain offenses.

(1) As used in this section, the term "bulletproof vest" means a bullet-resistant soft body armor providing, as a minimum standard, the level of protection known as "threat level I," which shall mean at least seven layers of bullet-resistant material providing protection from three shots of 158-grain lead ammunition fired from a .38 caliber handgun at a velocity of 850 feet per second.

(2) No person may possess a bulletproof vest while, acting alone or with one or more other persons, he or she commits or attempts to commit any murder, sexual battery, robbery, burglary, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, criminal gang-related offense under chapter 874, controlled substance offense under chapter 893, or aircraft piracy and such possession is in the course of and in furtherance of any such crime.

(3) Any person who violates this section commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

775.0847. Possession or promotion of certain images of child pornography; reclassification.

(1) For purposes of this section:

(a) "Child" means any person, whose identity is known or unknown, less than 18 years of age.

(b) "Child pornography" means any image depicting a minor engaged in sexual conduct.

(c) "Sadomasochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

(d) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(e) "Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(f) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(2) A violation of § 827.071, § 847.0135, § 847.0137, or § 847.0138 shall be reclassified to the next higher degree as provided in subsection (3) if:

(a) The offender possesses 10 or more images of any form of child pornography regardless of content; and

(b) The content of at least one image contains one or more of the following:

1. A child who is younger than the age of 5.
2. Sadomasochistic abuse involving a child.
3. Sexual battery involving a child.
4. Sexual bestiality involving a child.
5. Any movie involving a child, regardless of length and regardless of whether the movie contains sound.

(3) (a) In the case of a felony of the third degree, the offense is reclassified to a felony of the second degree.

(b) In the case of a felony of the second degree, the offense is reclassified to a felony of the first degree.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this section is ranked one level above the ranking under § 921.0022 or § 921.0023 of the offense committed.

775.085. Evidencing prejudice while committing offense; reclassification.

(1) (a) The penalty for any felony or misdemeanor shall be reclassified as provided in this subsection if the commission of such felony or misdemeanor evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin,

homeless status, mental or physical disability, or advanced age of the victim:

1. A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.

2. A misdemeanor of the first degree is reclassified to a felony of the third degree.

3. A felony of the third degree is reclassified to a felony of the second degree.

4. A felony of the second degree is reclassified to a felony of the first degree.

5. A felony of the first degree is reclassified to a life felony.

(b) As used in paragraph (a), the term:

1. "Mental or physical disability" means that the victim suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, and has one or more physical or mental limitations that restrict the victim's ability to perform the normal activities of daily living.

2. "Advanced age" means that the victim is older than 65 years of age.

3. "Homeless status" means that the victim:

a. Lacks a fixed, regular, and adequate nighttime residence; or

b. Has a primary nighttime residence that is:

I. A supervised publicly or privately operated shelter designed to provide temporary living accommodations; or

II. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) A person or organization that establishes by clear and convincing evidence that it has been coerced, intimidated, or threatened in violation of this section has a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or in equity. Upon prevailing in such civil action, the plaintiff may recover reasonable attorney's fees and costs.

(3) It is an essential element of this section that the record reflect that the defendant perceived, knew, or had reasonable grounds to know or perceive that the victim was within the class delineated in this section.

775.0861. Offenses against persons on the grounds of religious institutions; reclassification.

(1) For purposes of this section, the term:

(a) "Religious institution" is as defined in § 496.404.

(b) "Religious service" is a religious ceremony, prayer, or other activity according to a form and order prescribed for worship, including a service related to a particular occasion.

(2) The felony or misdemeanor degree of any violation of:

(a) Section 784.011, relating to assault;

(b) Section 784.021, relating to aggravated assault;

(c) Section 784.03, relating to battery;

(d) Section 784.041, relating to felony battery;

(e) A statute defining any offense listed in § 775.084(1)(b)1.; or

(f) Any other statute defining an offense that involves the use or threat of physical force or violence against any individual

shall be reclassified as provided in this section if the offense is committed on the property of a religious institution while the victim is on the property for the purpose of participating in or attending a religious service.

(3) (a) In the case of a misdemeanor of the second degree, the offense is reclassified to a misdemeanor of the first degree.

(b) In the case of a misdemeanor of the first degree, the offense is reclassified to a felony of the third degree. For purposes of sentencing under chapter 921, such offense is ranked in level 2 of the offense severity ranking chart.

(c) In the case of a felony of the third degree, the offense is reclassified to a felony of the second degree.

(d) In the case of a felony of the second degree, the offense is reclassified to a felony of the first degree.

(e) In the case of a felony of the first degree, the offense is reclassified to a life felony.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this subsection is ranked one level above the ranking under § 921.0022 or § 921.0023 of the offense committed.

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

(1) Unless otherwise provided by law, whenever a person is charged with a felony, except a felony in which the use of a weapon or firearm is an essential element, and during the commission of such felony the defendant carries, displays, uses, threatens to use, or attempts to use any weapon or firearm, or during the commission of such felony the defendant commits an aggravated battery, the felony for which the person is charged shall be reclassified as follows:

(a) In the case of a felony of the first degree, to a life felony.

(b) In the case of a felony of the second degree, to a felony of the first degree.

(c) In the case of a felony of the third degree, to a felony of the second degree.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense which is reclassified under this section is ranked one level above the ranking under § 921.0022 or § 921.0023 of the felony offense committed.

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

a. Murder;

b. Sexual battery;

c. Robbery;

d. Burglary;

e. Arson;

f. Aggravated assault;

g. Aggravated battery;

h. Kidnapping;

i. Escape;

j. Aircraft piracy;

k. Aggravated child abuse;

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

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

n. Carjacking;

o. Home-invasion robbery;

p. Aggravated stalking;

q. Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of § 893.135(1); or

r. Possession of a firearm by a felon

and during the commission of the offense, such person actually possessed a "firearm" or "destructive device" as those terms are defined in § 790.001, shall be sentenced to a minimum term of imprisonment of 10 years, except that a person who is convicted for aggravated assault, possession of a firearm by a felon, or burglary of a conveyance shall be sentenced to a minimum term of imprisonment of 3 years if such person possessed a "firearm" or "destructive device" during the commission of the offense. However, if an offender who is convicted of the offense of possession of a firearm by a felon has a previous conviction of committing or attempting to commit a felony listed in § 775.084(1)(b)1. and actually possessed a firearm or destructive device during the commission of the prior felony, the offender shall be sentenced to a minimum term of imprisonment of 10 years.

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

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

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in addition to the minimum mandatory sentence, or from imposing a sentence of death pursuant to other applicable law. Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not authorize a court to impose a lesser sentence than otherwise required by law.

Notwithstanding § 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under § 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under § 947.149, prior to serving the minimum sentence.

(c) If the minimum mandatory terms of imprisonment imposed pursuant to this section exceed the maximum sentences authorized by § 775.082, § 775.084, or the Criminal Punishment Code under chapter 921, then the mandatory minimum sentence must be imposed. If the mandatory minimum terms

of imprisonment pursuant to this section are less than the sentences that could be imposed as authorized by § 775.082, § 775.084, or the Criminal Punishment Code under chapter 921, then the sentence imposed by the court must include the mandatory minimum term of imprisonment as required in this section.

(d) It is the intent of the Legislature that offenders who actually possess, carry, display, use, threaten to use, or attempt to use firearms or destructive devices be punished to the fullest extent of the law, and the minimum terms of imprisonment imposed pursuant to this subsection shall be imposed for each qualifying felony count for which the person is convicted. The court shall impose any term of imprisonment provided for in this subsection consecutively to any other term of imprisonment imposed for any other felony offense.

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

a. Murder;
b. Sexual battery;
c. Robbery;
d. Burglary;
e. Arson;
f. Aggravated assault;
g. Aggravated battery;
h. Kidnapping;
i. Escape;
j. Sale, manufacture, delivery, or intent to sell, manufacture, or deliver any controlled substance;
k. Aircraft piracy;
l. Aggravated child abuse;
m. Aggravated abuse of an elderly person or disabled adult;
n. Unlawful throwing, placing, or discharging of a destructive device or bomb;
o. Carjacking;
p. Home-invasion robbery;
q. Aggravated stalking; or
r. Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of § 893.135(1);

and during the commission of the offense, such person possessed a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun as defined in § 790.001, shall be sentenced to a minimum term of imprisonment of 15 years.

2. Any person who is convicted of a felony or an attempt to commit a felony listed in subparagraph (a)1., regardless of whether the use of a weapon is an element of the felony, and during the course of the commission of the felony such person discharged a semiautomatic firearm and its high-capacity box magazine or a "machine gun" as defined in § 790.001 shall be sentenced to a minimum term of imprisonment of 20 years.

3. Any person who is convicted of a felony or an attempt to commit a felony listed in subparagraph (a)1., regardless of whether the use of a weapon is an element of the felony, and during the course of the commission of the felony such person discharged a semiautomatic firearm and its high-capacity box magazine or a "machine gun" as defined in § 790.001 and, as the result of the discharge, death or great bodily harm was inflicted upon any person, the convicted person shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison.

(b) Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in addition to the minimum mandatory sentence, or from imposing a sentence of death pursuant to other applicable law. Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not authorize a court to impose a lesser sentence than otherwise required by law.

Notwithstanding § 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under § 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under § 947.149, prior to serving the minimum sentence.

(c) If the minimum mandatory terms of imprisonment imposed pursuant to this section exceed the maximum sentences authorized by § 775.082, § 775.084, or the Criminal Punishment Code under chapter 921, then the mandatory minimum sentence must be imposed. If the mandatory minimum terms of imprisonment pursuant to this section are less than the sentences that could be imposed as authorized by § 775.082, § 775.084, or the

Criminal Punishment Code under chapter 921, then the sentence imposed by the court must include the mandatory minimum term of imprisonment as required in this section.

(d) It is the intent of the Legislature that offenders who possess, carry, display, use, threaten to use, or attempt to use a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun as defined in § 790.001 be punished to the fullest extent of the law, and the minimum terms of imprisonment imposed pursuant to this subsection shall be imposed for each qualifying felony count for which the person is convicted. The court shall impose any term of imprisonment provided for in this subsection consecutively to any other term of imprisonment imposed for any other felony offense.

(e) As used in this subsection, the term:

1. "High-capacity detachable box magazine" means any detachable box magazine, for use in a semiautomatic firearm, which is capable of being loaded with more than 20 centerfire cartridges.

2. "Semiautomatic firearm" means a firearm which is capable of firing a series of rounds by separate successive depressions of the trigger and which uses the energy of discharge to perform a portion of the operating cycle.

(4) For purposes of imposition of minimum mandatory sentencing provisions of this section, with respect to a firearm, the term "possession" is defined as carrying it on the person. Possession may also be proven by demonstrating that the defendant had the firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the offense, if proven beyond a reasonable doubt.

(5) This section does not apply to law enforcement officers or to United States military personnel who are performing their lawful duties or who are traveling to or from their places of employment or assignment to perform their lawful duties.

775.0875. Unlawful taking, possession, or use of law enforcement officer's firearm; crime reclassification; penalties.

(1) A person who, without authorization, takes a firearm from a law enforcement officer lawfully engaged in law enforcement duties commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) If a person violates subsection (1) and commits any other crime involving the firearm taken from the law enforcement officer, such crime shall be reclassified as follows:

(a) 1. In the case of a felony of the first degree, to a life felony.

2. In the case of a felony of the second degree, to a felony of the first degree.

3. In the case of a felony of the third degree, to a felony of the second degree.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under § 921.0022 or § 921.0023 of the felony offense committed.

(b) In the case of a misdemeanor, to a felony of the third degree. For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, such offense is ranked in level 2 of the offense severity ranking chart.

(3) A person who possesses a firearm that he or she knows was unlawfully taken from a law enforcement officer commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

775.0877. Criminal transmission of HIV; procedures; penalties.

(1) In any case in which a person has been convicted of or has pled nolo contendere or guilty to, regardless of whether adjudication is withheld, any of the following offenses, or the attempt thereof, which offense or attempted offense involves the transmission of body fluids from one person to another:

(a) Section 794.011, relating to sexual battery;

(b) Section 826.04, relating to incest;

(c) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;

(d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d), relating to assault;

(e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b), relating to aggravated assault;

(f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c), relating to battery;

(g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a), relating to aggravated battery;

(h) Section 827.03(2)(c), relating to child abuse;

(i) Section 827.03(2)(a), relating to aggravated child abuse;

(j) Section 825.102(1), relating to abuse of an elderly person or disabled adult;

(k) Section 825.102(2), relating to aggravated abuse of an elderly person or disabled adult;

(l) Section 827.071, relating to sexual performance by person less than 18 years of age;

(m) Sections 796.03, 796.07, and 796.08, relating to prostitution; or

(n) Section 381.0041(11)(b), relating to donation of blood, plasma, organs, skin, or other human tissue,

the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health in accordance with § 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in § 381.004(2)(h)6. or § 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates, subsequent to her or his arrest for an offense enumerated in paragraphs (a)-(n) for which she or he was convicted or to which she or he pled nolo contendere or guilty. The results of an HIV test performed on an offender pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

(2) The results of the HIV test must be disclosed under the direction of the Department of Health, to the offender who has been convicted of or pled nolo contendere or guilty to an offense specified in subsection (1), the public health agency of the county in which the conviction occurred and, if different, the county of residence of the offender, and, upon request pursuant to § 960.003, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor.

(3) An offender who has undergone HIV testing pursuant to subsection (1), and to whom positive test results have been disclosed pursuant to subsection (2), who commits a second or subsequent offense enumerated in paragraphs (1)(a)-(n), commits criminal transmission of HIV, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime enumerated in paragraphs (1)(a)-(n).

(4) An offender may challenge the positive results of an HIV test performed pursuant to this section and may introduce results of a backup test performed at her or his own expense.

(5) Nothing in this section requires that an HIV infection have occurred in order for an offender to have committed criminal transmission of HIV.

(6) For an alleged violation of any offense enumerated in paragraphs (1)(a)-(n) for which the consent of the victim may be raised as a defense in a criminal prosecution, it is an affirmative defense to a charge of violating this section that the person exposed knew that the offender was infected with HIV, knew that the action being taken could result in transmission of the HIV infection, and consented to the action voluntarily with that knowledge.

775.089. Restitution.

(1) (a) In addition to any punishment, the court shall order the defendant to make restitution to the victim for:

1. Damage or loss caused directly or indirectly by the defendant's offense; and

2. Damage or loss related to the defendant's criminal episode,

unless it finds clear and compelling reasons not to order such restitution. Restitution may be monetary or nonmonetary restitution. The court shall make the payment of restitution a condition of probation in accordance with § 948.03. An order requiring the defendant to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund pursuant to chapter 960. Payment of an award by the Crimes Compensation Trust Fund shall create an order of restitution to the Crimes Compensation Trust Fund, unless specifically waived in accordance with subparagraph (b)1.

(b) 1. If the court does not order restitution, or orders restitution of only a portion of the damages, as provided in this section, it shall state on the record in detail the reasons therefor.

2. An order of restitution entered as part of a plea agreement is as definitive and binding as any other order of restitution, and a statement to such effect must be made part of the plea agreement. A plea agreement may contain provisions that order restitution relating to criminal offenses committed by the defendant to which the defendant did not specifically enter a plea.

(c) The term "victim" as used in this section and in any provision of law relating to restitution means each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, the victim's next of kin if the victim is deceased as a result of the offense, and the victim's trade association if the offense is a violation of § 540.11(3)(a)3. involving the sale, or possession for purposes of sale, of physical articles and the vic-

tim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect restitution on the victim's behalf. The restitution obligation in this paragraph relating to violations of § 540.11(3)(a)3. applies only to physical articles and does not apply to electronic articles or digital files that are distributed or made available online. As used in this paragraph, the term "trade association" means an organization founded and funded by businesses that operate in a specific industry to protect their collective interests.

(2) (a) When an offense has resulted in bodily injury to a victim, a restitution order entered under subsection (1) shall require that the defendant:

1. Pay the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing.

2. Pay the cost of necessary physical and occupational therapy and rehabilitation.

3. Reimburse the victim for income lost by the victim as a result of the offense.

4. In the case of an offense which resulted in bodily injury that also resulted in the death of a victim, pay an amount equal to the cost of necessary funeral and related services.

(b) When an offense has not resulted in bodily injury to a victim, a restitution order entered under subsection (1) may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.

(3) (a) The court may require that the defendant make restitution under this section within a specified period or in specified installments.

(b) The end of such period or the last such installment shall not be later than:

1. The end of the period of probation if probation is ordered;

2. Five years after the end of the term of imprisonment imposed if the court does not order probation; or

3. Five years after the date of sentencing in any other case.

(c) Notwithstanding this subsection, a court that has ordered restitution for a misdemeanor offense shall retain jurisdiction for the purpose of enforcing the restitution order for any period, not to exceed 5 years, that is pronounced by the court at the time restitution is ordered.

(d) If not otherwise provided by the court under this subsection, restitution must be made immediately.

If the restitution ordered by the court is not made within the time period specified, the court may continue the restitution order through the duration of the civil judgment provision set forth in subsection (5) and as provided in § 55.10.

(4) If a defendant is placed on probation or paroled, complete satisfaction of any restitution ordered under this section shall be a condition of such probation or parole. The court may revoke probation, and the Parole Commission may revoke parole, if the defendant fails to comply with such order.

(5) An order of restitution may be enforced by the state, or by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action. The outstanding unpaid amount of the order of restitution bears interest in accordance with § 55.03, and, when properly recorded, becomes a lien on real estate owned by the defendant. If civil enforcement is necessary, the defendant shall be liable for costs and attorney's fees incurred by the victim in enforcing the order.

(6) (a) The court, in determining whether to order restitution and the amount of such restitution, shall consider the amount of the loss sustained by any victim as a result of the offense.

(b) The criminal court, at the time of enforcement of the restitution order, shall consider the financial resources of the defendant, the present and potential future financial needs and earning ability of the defendant and his or her dependents, and such other factors which it deems appropriate.

(7) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the state attorney. The burden of demonstrating the present financial resources and the absence of potential future financial resources of the defendant and the financial needs of the defendant and his or her dependents is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.

(8) The conviction of a defendant for an offense involving the act giving rise to restitution under this section shall estop the defendant from denying the essential allegations of that offense in any subsequent civil

proceeding. An order of restitution hereunder will not bar any subsequent civil remedy or recovery, but the amount of such restitution shall be set off against any subsequent independent civil recovery.

(9) When a corporation or unincorporated association is ordered to make restitution, the person authorized to make disbursements from the assets of such corporation or association shall pay restitution from such assets, and such person may be held in contempt for failure to make such restitution.

(10) (a) Any default in payment of restitution may be collected by any means authorized by law for enforcement of a judgment.

(b) The restitution obligation is not subject to discharge in bankruptcy, whether voluntary or involuntary, or to any other statutory or common-law proceeding for relief against creditors.

(11) (a) The court may order the clerk of the court to collect and dispense restitution payments in any case.

(b) The court may order the Department of Corrections to collect and dispense restitution and other payments from persons remanded to its custody or supervision.

(12) (a) Issuance of income deduction order with an order for restitution.—

1. Upon the entry of an order for restitution, the court shall enter a separate order for income deduction if one has not been entered.

2. The income deduction order shall direct a payor to deduct from all income due and payable to the defendant the amount required by the court to meet the defendant's obligation.

3. The income deduction order shall be effective so long as the order for restitution upon which it is based is effective or until further order of the court.

4. When the court orders the income deduction, the court shall furnish to the defendant a statement of his or her rights, remedies, and duties in regard to the income deduction order. The statement shall state:

a. All fees or interest which shall be imposed.

b. The total amount of income to be deducted for each pay period.

c. That the income deduction order applies to current and subsequent payors and periods of employment.

d. That a copy of the income deduction order will be served on the defendant's payor or payors.

e. That enforcement of the income deduction order may only be contested on the ground of mistake of fact regarding the amount of restitution owed.

f. That the defendant is required to notify the clerk of court within 7 days after changes in the defendant's address, payors, and the addresses of his or her payors.

(b) Enforcement of income deduction orders.—

1. The clerk of court or probation officer shall serve an income deduction order and the notice to payor on the defendant's payor unless the defendant has applied for a hearing to contest the enforcement of the income deduction order.

2. a. Service by or upon any person who is a party to a proceeding under this subsection shall be made in the manner prescribed in the Florida Rules of Civil Procedure for service upon parties.

b. Service upon the defendant's payor or successor payor under this subsection shall be made by prepaid certified mail, return receipt requested, or in the manner prescribed in chapter 48.

3. The defendant, within 15 days after having an income deduction order entered against him or her, may apply for a hearing to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of restitution owed. The timely request for a hearing shall stay the service of an income deduction order on all payors of the defendant until a hearing is held and a determination is made as to whether the enforcement of the income deduction order is proper.

4. The notice to payor shall contain only information necessary for the payor to comply with the income deduction order. The notice shall:

a. Require the payor to deduct from the defendant's income the amount specified in the income deduction order and to pay that amount to the clerk of court.

b. Instruct the payor to implement the income deduction order no later than the first payment date which occurs more than 14 days after the date the income deduction order was served on the payor.

c. Instruct the payor to forward within 2 days after each payment date to the clerk of court the amount deducted from the defendant's income and a statement as to whether the amount totally or partially satisfies the periodic amount specified in the income deduction order.

d. Specify that, if a payor fails to deduct the proper amount from the defendant's income, the payor is liable for the amount the

payor should have deducted plus costs, interest, and reasonable attorney's fees.

e. Provide that the payor may collect up to $5 against the defendant's income to reimburse the payor for administrative costs for the first income deduction and up to $2 for each deduction thereafter.

f. State that the income deduction order and the notice to payor are binding on the payor until further notice by the court or until the payor no longer provides income to the defendant.

g. Instruct the payor that, when he or she no longer provides income to the defendant, the payor shall notify the clerk of court and shall also provide the defendant's last known address and the name and address of the defendant's new payor, if known, and that, if the payor violates this provision, the payor is subject to a civil penalty not to exceed $250 for the first violation or $500 for any subsequent violation.

h. State that the payor shall not discharge, refuse to employ, or take disciplinary action against the defendant because of an income deduction order and shall state that a violation of this provision subjects the payor to a civil penalty not to exceed $250 for the first violation or $500 for any subsequent violation.

i. Inform the payor that, when he or she receives income deduction orders requiring that the income of two or more defendants be deducted and sent to the same clerk of court, the payor may combine the amounts that are to be paid to the depository in a single payment as long as he or she identifies that portion of the payment attributable to each defendant.

j. Inform the payor that if the payor receives more than one income deduction order against the same defendant, he or she shall contact the court for further instructions.

5. The clerk of court shall enforce income deduction orders against the defendant's successor payor who is located in this state in the same manner prescribed in this subsection for the enforcement of an income deduction order against an original payor.

6. A person may not discharge, refuse to employ, or take disciplinary action against an employee because of the enforcement of an income deduction order. An employer who violates this provision is subject to a civil penalty not to exceed $250 for the first violation or $500 for any subsequent violation.

7. When a payor no longer provides income to a defendant, the payor shall notify the clerk of court and shall provide the defendant's last known address and the name and address of the defendant's new payor, if known. A payor who violates this provision is subject to a civil penalty not to exceed $250 for the first violation or $500 for a subsequent violation.

775.13. Registration of convicted felons, exemptions; penalties.

(1) As used in this section, the term "convicted" means, with respect to a person's felony offense, a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(2) Any person who has been convicted of a felony in any court of this state shall, within 48 hours after entering any county in this state, register with the sheriff of said county, be fingerprinted and photographed, and list the crime for which convicted, place of conviction, sentence imposed, if any, name, aliases, if any, address, and occupation. If the felony conviction is for an offense that was found, pursuant to § 874.04, to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, the registrant shall identify himself or herself as such an offender. The Department of Law Enforcement, in consultation with appropriate local law enforcement agencies, may develop standardized practices for the inclusion of gang affiliation at the time of offender registration.

(3) Any person who has been convicted of a crime in any federal court or in any court of a state other than Florida, or of any foreign state or country, which crime if committed in Florida would be a felony, shall forthwith within 48 hours after entering any county in this state register with the sheriff of said county in the same manner as provided for in subsection (2).

(4) This section does not apply to an offender:

(a) Who has had his or her civil rights restored;

(b) Who has received a full pardon for the offense for which convicted;

(c) Who has been lawfully released from incarceration or other sentence or supervision for a felony conviction for more than 5 years prior to such time for registration, unless the offender is a fugitive from justice on a felony charge or has been convicted of any offense since release from such incarceration or other sentence or supervision;

(d) Who is a parolee or probationer under the supervision of the United States Parole Commission if the commission knows of and

consents to the presence of the offender in Florida or is a probationer under the supervision of any federal probation officer in the state or who has been lawfully discharged from such parole or probation;

(e) Who is a sexual predator and has registered as required under § 775.21;

(f) Who is a sexual offender and has registered as required in § 943.0435 or § 944.607; or

(g) Who is a career offender who has registered as required in § 775.261 or § 944.609.

(5) The failure of any such convicted felon to comply with this section:

(a) With regard to any felon not listed in paragraph (b), constitutes a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(b) With regard to any felon who has been found, pursuant to § 874.04, to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, constitutes a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(6) Nothing in this section shall be construed to affect any law of this state relating to registration of criminals where the penalties for registration, notification, or reporting obligations are in addition to, or in excess of, those imposed by this section.

775.15. Time limitations; general time limitations; exceptions.

(1) A prosecution for a capital felony, a life felony, or a felony that resulted in a death may be commenced at any time. If the death penalty is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, all crimes designated as capital felonies shall be considered life felonies for the purposes of this section, and prosecution for such crimes may be commenced at any time.

(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony of the first degree must be commenced within 4 years after it is committed.

(b) A prosecution for any other felony must be commenced within 3 years after it is committed.

(c) A prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed.

(d) A prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

(3) An offense is committed either when every element has occurred or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(4) (a) Prosecution on a charge on which the defendant has previously been arrested or served with a summons is commenced by the filing of an indictment, information, or other charging document.

(b) A prosecution on a charge on which the defendant has not previously been arrested or served with a summons is commenced when either an indictment or information is filed, provided the capias, summons, or other process issued on such indictment or information is executed without unreasonable delay. In determining what is reasonable, inability to locate the defendant after diligent search or the defendant's absence from the state shall be considered. The failure to execute process on or extradite a defendant in another state who has been charged by information or indictment with a crime in this state shall not constitute an unreasonable delay.

(c) If, however, an indictment or information has been filed within the time period prescribed in this section and the indictment or information is dismissed or set aside because of a defect in its content or form after the time period has elapsed, the period for commencing prosecution shall be extended 3 months from the time the indictment or information is dismissed or set aside.

(5) The period of limitation does not run during any time when the defendant is continuously absent from the state or has no reasonably ascertainable place of abode or work within the state. This provision shall not extend the period of limitation otherwise applicable by more than 3 years, but shall not be construed to limit the prosecution of a defendant who has been timely charged by indictment or information or other charging document and who has not been arrested due to his or her absence from this state or has not been extradited for prosecution from another state.

(6) A prosecution for perjury in an official proceeding that relates to the prosecution of a capital felony may be commenced at any time.

(7) A prosecution for a felony that resulted in injury to any person, when such felony arises from the use of a "destructive device,"

as defined in § 790.001, may be commenced within 10 years.

(8) A prosecution for a felony violation of chapter 517 or § 409.920 must be commenced within 5 years after the violation is committed.

(9) A prosecution for a felony violation of chapter 403 must be commenced within 5 years after the date of discovery of the violation.

(10) A prosecution for a felony violation of § 825.102 or § 825.103 must be commenced within 5 years after it is committed.

(11) A prosecution for a felony violation of §§ 440.105 and 817.234 must be commenced within 5 years after the violation is committed.

(12) If the period prescribed in subsection (2), subsection (8), subsection (9), subsection (10), or subsection (11) has expired, a prosecution may nevertheless be commenced for:

(a) Any offense, a material element of which is either fraud or a breach of fiduciary obligation, within 1 year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself or herself not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than 3 years.

(b) Any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment, within 2 years from the time he or she leaves public office or employment, or during any time permitted by any other part of this section, whichever time is greater.

(13) (a) If the victim of a violation of § 794.011, former § 794.05, Florida Statutes 1995, § 800.04, § 826.04, or § 847.0135(5) is under the age of 18, the applicable period of limitation, if any, does not begin to run until the victim has reached the age of 18 or the violation is reported to a law enforcement agency or other governmental agency, whichever occurs earlier. Such law enforcement agency or other governmental agency shall promptly report such allegation to the state attorney for the judicial circuit in which the alleged violation occurred. If the offense is a first or second degree felony violation of § 794.011, and the offense is reported within 72 hours after its commission, the prosecution for such offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before December 31, 1984.

(b) If the offense is a first degree felony violation of § 794.011 and the victim was under 18 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before October 1, 2003.

(c) If the offense is a violation of § 794.011 and the victim was under 16 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before July 1, 2010.

(14) A prosecution for a first or second degree felony violation of § 794.011, if the victim is 18 years of age or older at the time of the offense and the offense is reported to a law enforcement agency within 72 hours after commission of the offense, may be commenced at any time. If the offense is not reported within 72 hours after the commission of the offense, the prosecution must be commenced within the time periods prescribed in subsection (2).

(15) (a) In addition to the time periods prescribed in this section, a prosecution for any of the following offenses may be commenced within 1 year after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused:

1. An offense of sexual battery under chapter 794.

2. A lewd or lascivious offense under § 800.04 or § 825.1025.

(b) This subsection applies to any offense that is not otherwise barred from prosecution between July 1, 2004, and June 30, 2006.

(16) (a) In addition to the time periods prescribed in this section, a prosecution for any of the following offenses may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused:

1. Aggravated battery or any felony battery offense under chapter 784.

2. Kidnapping under § 787.01 or false imprisonment under § 787.02.

3. An offense of sexual battery under chapter 794.

4. A lewd or lascivious offense under § 800.04, § 825.1025, or § 847.0135(5).

5. A burglary offense under § 810.02.

6. A robbery offense under § 812.13, § 812.131, or § 812.135.

7. Carjacking under § 812.133.

8. Aggravated child abuse under § 827.03.

(b) This subsection applies to any offense that is not otherwise barred from prosecution on or after July 1, 2006.

(17) In addition to the time periods prescribed in this section, a prosecution for video voyeurism in violation of § 810.145 may be commenced within 1 year after the date on which the victim of video voyeurism obtains actual knowledge of the existence of such a recording or the date on which the recording is confiscated by a law enforcement agency, whichever occurs first. Any dissemination of such a recording before the victim obtains actual knowledge thereof or before its confiscation by a law enforcement agency does not affect any provision of this subsection.

775.16. Drug offenses; additional penalties.

In addition to any other penalty provided by law, a person who has been convicted of sale of or trafficking in, or conspiracy to sell or traffic in, a controlled substance under chapter 893, if such offense is a felony, or who has been convicted of an offense under the laws of any state or country which, if committed in this state, would constitute the felony of selling or trafficking in, or conspiracy to sell or traffic in, a controlled substance under chapter 893, is:

(1) Disqualified from applying for employment by any agency of the state, unless:

(a) The person has completed all sentences of imprisonment or supervisory sanctions imposed by the court, by the Parole Commission, or by law; or

(b) The person has complied with the conditions of subparagraphs 1. and 2. which shall be monitored by the Department of Corrections while the person is under any supervisory sanctions. The person under supervision may:

1. Seek evaluation and enrollment in, and once enrolled maintain enrollment in until completion, a drug treatment and rehabilitation program which is approved by the Department of Children and Family Services, unless it is deemed by the program that the person does not have a substance abuse problem. The treatment and rehabilitation program may be specified by:

a. The court, in the case of court-ordered supervisory sanctions;

b. The Parole Commission, in the case of parole, control release, or conditional release; or

c. The Department of Corrections, in the case of imprisonment or any other supervision required by law.

2. Submit to periodic urine drug testing pursuant to procedures prescribed by the Department of Corrections. If the person is indigent, the costs shall be paid by the Department of Corrections.

(2) Disqualified from applying for a license, permit, or certificate required by any agency of the state to practice, pursue, or engage in any occupation, trade, vocation, profession, or business, unless:

(a) The person has completed all sentences of imprisonment or supervisory sanctions imposed by the court, by the Parole Commission, or by law;

(b) The person has complied with the conditions of subparagraphs 1. and 2. which shall be monitored by the Department of Corrections while the person is under any supervisory sanction. If the person fails to comply with provisions of these subparagraphs by either failing to maintain treatment or by testing positive for drug use, the department shall notify the licensing, permitting, or certifying agency, which may refuse to reissue or reinstate such license, permit, or certification. The licensee, permittee, or certificateholder under supervision may:

1. Seek evaluation and enrollment in, and once enrolled maintain enrollment in until completion, a drug treatment and rehabilitation program which is approved or regulated by the Department of Children and Family Services, unless it is deemed by the program that the person does not have a substance abuse problem. The treatment and rehabilitation program may be specified by:

a. The court, in the case of court-ordered supervisory sanctions;

b. The Parole Commission, in the case of parole, control release, or conditional release; or

c. The Department of Corrections, in the case of imprisonment or any other supervision required by law.

2. Submit to periodic urine drug testing pursuant to procedures prescribed by the Department of Corrections. If the person is

indigent, the costs shall be paid by the Department of Corrections; or

(c) The person has successfully completed an appropriate program under the Correctional Education Program.

The provisions of this section do not apply to any of the taxes, fees, or permits regulated, controlled, or administered by the Department of Revenue in accordance with the provisions of § 213.05.

775.21. The Florida Sexual Predators Act.

(1) SHORT TITLE.—This section may be cited as "The Florida Sexual Predators Act."

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

(a) "Change in enrollment or employment status" means the commencement or termination of enrollment or employment or a change in location of enrollment or employment.

(b) "Chief of police" means the chief law enforcement officer of a municipality.

(c) "Child care facility" has the same meaning as provided in § 402.302.

(d) "Community" means any county where the sexual predator lives or otherwise establishes or maintains a temporary or permanent residence.

(e) "Conviction" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction for a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

(f) "Department" means the Department of Law Enforcement.

(g) "Electronic mail address" has the same meaning as provided in § 668.602.

(h) "Entering the county" includes being discharged from a correctional facility or jail or secure treatment facility within the county or being under supervision within the county for the commission of a violation enumerated in subsection (4).

(i) "Instant message name" means an identifier that allows a person to communicate in real time with another person using the Internet.

(j) "Institution of higher education" means a career center, community college, college, state university, or independent postsecondary institution.

(k) "Permanent residence" means a place where the person abides, lodges, or resides for 5 or more consecutive days.

(l) "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

(m) "Transient residence" means a place or county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

(3) LEGISLATIVE FINDINGS AND PURPOSE; LEGISLATIVE INTENT.—

(a) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

(b) The high level of threat that a sexual predator presents to the public safety, and the long-term effects suffered by victims of sex offenses, provide the state with sufficient justification to implement a strategy that includes:

1. Incarcerating sexual predators and maintaining adequate facilities to ensure that decisions to release sexual predators into the community are not made on the basis of inadequate space.

2. Providing for specialized supervision of sexual predators who are in the community by specially trained probation officers with

low caseloads, as described in §§ 947.1405(7) and 948.30. The sexual predator is subject to specified terms and conditions implemented at sentencing or at the time of release from incarceration, with a requirement that those who are financially able must pay all or part of the costs of supervision.

3. Requiring the registration of sexual predators, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities, communities, and the public.

4. Providing for community and public notification concerning the presence of sexual predators.

5. Prohibiting sexual predators from working with children, either for compensation or as a volunteer.

(c) The state has a compelling interest in protecting the public from sexual predators and in protecting children from predatory sexual activity, and there is sufficient justification for requiring sexual predators to register and for requiring community and public notification of the presence of sexual predators.

(d) It is the purpose of the Legislature that, upon the court's written finding that an offender is a sexual predator, in order to protect the public, it is necessary that the sexual predator be registered with the department and that members of the community and the public be notified of the sexual predator's presence. The designation of a person as a sexual predator is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.

(e) It is the intent of the Legislature to address the problem of sexual predators by:

1. Requiring sexual predators supervised in the community to have special conditions of supervision and to be supervised by probation officers with low caseloads;

2. Requiring sexual predators to register with the Florida Department of Law Enforcement, as provided in this section; and

3. Requiring community and public notification of the presence of a sexual predator, as provided in this section.

(4) SEXUAL PREDATOR CRITERIA.—

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a "sexual predator" under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

a. A capital, life, or first-degree felony violation, or any attempt thereof, of § 787.01 or § 787.02, where the victim is a minor and the defendant is not the victim's parent or guardian, or § 794.011, § 800.04, or § 847.0145, or a violation of a similar law of another jurisdiction; or

b. Any felony violation, or any attempt thereof, of § 787.01, § 787.02, or § 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; § 787.06(3)(b), (d), (f), (g), or (h); § 794.011, excluding § 794.011(10); § 794.05; § 796.03; § 796.035; § 800.04; § 810.145(8)(b); § 825.1025(2)(b); § 827.071; § 847.0135(5); § 847.0145; or § 985.701(1); or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of § 787.01, § 787.02, or § 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; § 787.06(3)(b), (d), (f), (g), or (h); § 794.011, excluding § 794.011(10); § 794.05; § 796.03; § 796.035; § 800.04; § 825.1025; § 827.071; § 847.0133; § 847.0135, excluding § 847.0135(6); § 847.0145; or § 985.701(1); or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and

3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(b) In order to be counted as a prior felony for purposes of this subsection, the felony must have resulted in a conviction sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense and sentenced or adjudicated separately from any other felony conviction that is to be counted as a prior felony regardless of the date of offense of the prior felony.

(c) If an offender has been registered as a sexual predator by the Department of Corrections, the department, or any other law enforcement agency and if:

1. The court did not, for whatever reason, make a written finding at the time of sentencing that the offender was a sexual predator; or

2. The offender was administratively registered as a sexual predator because the Department of Corrections, the department, or any other law enforcement agency obtained

information that indicated that the offender met the criteria for designation as a sexual predator based on a violation of a similar law in another jurisdiction,

the department shall remove that offender from the department's list of sexual predators and, for an offender described under subparagraph 1., shall notify the state attorney who prosecuted the offense that met the criteria for administrative designation as a sexual predator, and, for an offender described under this paragraph, shall notify the state attorney of the county where the offender establishes or maintains a permanent, temporary, or transient residence. The state attorney shall bring the matter to the court's attention in order to establish that the offender meets the criteria for designation as a sexual predator. If the court makes a written finding that the offender is a sexual predator, the offender must be designated as a sexual predator, must register or be registered as a sexual predator with the department as provided in subsection (6), and is subject to the community and public notification as provided in subsection (7). If the court does not make a written finding that the offender is a sexual predator, the offender may not be designated as a sexual predator with respect to that offense and is not required to register or be registered as a sexual predator with the department.

(d) An offender who has been determined to be a sexually violent predator pursuant to a civil commitment proceeding under chapter 394 shall be designated as a "sexual predator" under subsection (5) and subject to registration under subsection (6) and community and public notification under subsection (7).

(5) SEXUAL PREDATOR DESIGNATION.—An offender is designated as a sexual predator as follows:

(a) 1. An offender who meets the sexual predator criteria described in paragraph (4)(d) is a sexual predator, and the court shall make a written finding at the time such offender is determined to be a sexually violent predator under chapter 394 that such person meets the criteria for designation as a sexual predator for purposes of this section. The clerk shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order;

2. An offender who meets the sexual predator criteria described in paragraph (4)(a) who is before the court for sentencing for a current offense committed on or after October 1, 1993, is a sexual predator, and the sentencing court must make a written finding at the time of sentencing that the offender is a sexual predator, and the clerk of the court shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order; or

3. If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates that an offender who establishes or maintains a permanent, temporary, or transient residence in this state meets the sexual predator criteria described in paragraph (4)(a) or paragraph (4)(d) because the offender was civilly committed or committed a similar violation in another jurisdiction on or after October 1, 1993, the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney of the county where the offender establishes or maintains a permanent, temporary, or transient residence of the offender's presence in the community. The state attorney shall file a petition with the criminal division of the circuit court for the purpose of holding a hearing to determine if the offender's criminal record or record of civil commitment from another jurisdiction meets the sexual predator criteria. If the court finds that the offender meets the sexual predator criteria because the offender has violated a similar law or similar laws in another jurisdiction, the court shall make a written finding that the offender is a sexual predator.

When the court makes a written finding that an offender is a sexual predator, the court shall inform the sexual predator of the registration and community and public notification requirements described in this section. Within 48 hours after the court designating an offender as a sexual predator, the clerk of the circuit court shall transmit a copy of the court's written sexual predator finding to the department. If the offender is sentenced to a term of imprisonment or supervision, a copy of the court's written sexual predator finding must be submitted to the Department of Corrections.

(b) If a sexual predator is not sentenced to a term of imprisonment, the clerk of the court shall ensure that the sexual predator's fingerprints are taken and forwarded to the department within 48 hours after the court renders its written sexual predator finding. The fingerprints shall be clearly marked, "Sexual Predator Registration." The clerk of the court that convicts and sentences the sexual predator for the offense or offenses described in subsection (4) shall forward to the

department and to the Department of Corrections a certified copy of any order entered by the court imposing any special condition or restriction on the sexual predator that restricts or prohibits access to the victim, if the victim is a minor, or to other minors.

(c) If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates that an offender meets the sexual predator criteria but the court did not make a written finding that the offender is a sexual predator as required in paragraph (a), the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney who prosecuted the offense for offenders described in subparagraph (a)1., or the state attorney of the county where the offender establishes or maintains a residence upon first entering the state for offenders described in subparagraph (a)3. The state attorney shall bring the matter to the court's attention in order to establish that the offender meets the sexual predator criteria. If the state attorney fails to establish that an offender meets the sexual predator criteria and the court does not make a written finding that an offender is a sexual predator, the offender is not required to register with the department as a sexual predator. The Department of Corrections, the department, or any other law enforcement agency shall not administratively designate an offender as a sexual predator without a written finding from the court that the offender is a sexual predator.

(d) A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender, shall register in the manner provided in § 943.0435 or § 944.607 and shall be subject to community and public notification as provided in § 943.0435 or § 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of § 943.0435 or § 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(6) REGISTRATION.—

(a) A sexual predator must register with the department through the sheriff's office by providing the following information to the department:

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; photograph; address of legal residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; any electronic mail address and any instant message name required to be provided pursuant to subparagraph (g)4.; home telephone number and any cellular telephone number; date and place of any employment; date and place of each conviction; fingerprints; and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address.

a. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the department written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

b. If the sexual predator is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual predator shall also provide to the de-

partment the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment or employment status. Each change in enrollment or employment status shall be reported in person at the sheriff's office, or the Department of Corrections if the sexual predator is in the custody or control of or under the supervision of the Department of Corrections, within 48 hours after any change in status. The sheriff or the Department of Corrections shall promptly notify each institution of the sexual predator's presence and any change in the sexual predator's enrollment or employment status.

2. Any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers when available.

(b) If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections, or is in the custody of a private correctional facility, the sexual predator must register with the Department of Corrections. A sexual predator who is under the supervision of the Department of Corrections but who is not incarcerated must register with the Department of Corrections within 3 business days after the court finds the offender to be a sexual predator. The Department of Corrections shall provide to the department registration information and the location of, and local telephone number for, any Department of Corrections office that is responsible for supervising the sexual predator. In addition, the Department of Corrections shall notify the department if the sexual predator escapes or absconds from custody or supervision or if the sexual predator dies.

(c) If the sexual predator is in the custody of a local jail, the custodian of the local jail shall register the sexual predator within 3 business days after intake of the sexual predator for any reason and upon release, and shall forward the registration information to the department. The custodian of the local jail shall also take a digitized photograph of the sexual predator while the sexual predator remains in custody and shall provide the digitized photograph to the department. The custodian shall notify the department if the sexual predator escapes from custody or dies.

(d) If the sexual predator is under federal supervision, the federal agency responsible for supervising the sexual predator may forward to the department any information regarding the sexual predator which is consistent with the information provided by the Department of Corrections under this section, and may indicate whether use of the information is restricted to law enforcement purposes only or may be used by the department for purposes of public notification.

(e) 1. If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections or is not in the custody of a private correctional facility, the sexual predator shall register in person:

a. At the sheriff's office in the county where he or she establishes or maintains a residence within 48 hours after establishing or maintaining a residence in this state; and

b. At the sheriff's office in the county where he or she was designated a sexual predator by the court within 48 hours after such finding is made.

2. Any change in the sexual predator's permanent or temporary residence, name, or any electronic mail address and any instant message name required to be provided pursuant to subparagraph (g)4., after the sexual predator registers in person at the sheriff's office as provided in subparagraph 1., shall be accomplished in the manner provided in paragraphs (g), (i), and (j). When a sexual predator registers with the sheriff's office, the sheriff shall take a photograph and a set of fingerprints of the predator and forward the photographs and fingerprints to the department, along with the information that the predator is required to provide pursuant to this section.

(f) Within 48 hours after the registration required under paragraph (a) or paragraph (e), a sexual predator who is not incarcerated and who resides in the community, including a sexual predator under the supervision of the Department of Corrections, shall register in person at a driver's license office of the Department of Highway Safety and Motor Vehicles and shall present proof of registration. At the driver's license office the sexual predator shall:

1. If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual predator shall identify himself or herself as a sexual predator who is required to comply with this section, provide his or her place of permanent, temporary, or transient residence, including a rural route address and a post office box, and submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in

maintaining current records of sexual predators. A post office box shall not be provided in lieu of a physical residential address. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section. The driver's license or identification card issued to the sexual predator must be in compliance with § 322.141(3).

3. Provide, upon request, any additional information necessary to confirm the identity of the sexual predator, including a set of fingerprints.

(g) 1. Each time a sexual predator's driver's license or identification card is subject to renewal, and, without regard to the status of the predator's driver's license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver's license office and shall be subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in § 322.142, the Department of Highway Safety and Motor Vehicles is authorized to release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section.

2. A sexual predator who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall, within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator must provide or update all of the registration information required under paragraph (a). The sexual predator must provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

3. A sexual predator who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did vacate such residence, report in person to the sheriff's office to which he or she reported pursuant to subparagraph 2. for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under subparagraph 2. but fails to make a report as required under this subparagraph commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

4. A sexual predator must register any electronic mail address or instant message name with the department prior to using such electronic mail address or instant message name on or after October 1, 2007. The department shall establish an online system through which sexual predators may securely access and update all electronic mail address and instant message name information.

(h) The department must notify the sheriff and the state attorney of the county and, if applicable, the police chief of the municipality, where the sexual predator maintains a residence.

(i) A sexual predator who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction. The sexual predator must provide to the sheriff the address, municipality, county, and state of intended residence. The sheriff shall promptly provide to the department the in-

formation received from the sexual predator. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state or jurisdiction of residence of the sexual predator's intended residence. The failure of a sexual predator to provide his or her intended place of residence is punishable as provided in subsection (10).

(j) A sexual predator who indicates his or her intent to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida and later decides to remain in this state shall, within 48 hours after the date upon which the sexual predator indicated he or she would leave this state, report in person to the sheriff to which the sexual predator reported the intended change of residence, and report his or her intent to remain in this state. If the sheriff is notified by the sexual predator that he or she intends to remain in this state, the sheriff shall promptly report this information to the department. A sexual predator who reports his or her intent to establish a permanent, temporary, or transient residence in another state or jurisdiction, but who remains in this state without reporting to the sheriff in the manner required by this paragraph, commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(k) 1. The department is responsible for the online maintenance of current information regarding each registered sexual predator. The department must maintain hotline access for state, local, and federal law enforcement agencies to obtain instantaneous locator file and offender characteristics information on all released registered sexual predators for purposes of monitoring, tracking, and prosecution. The photograph and fingerprints do not have to be stored in a computerized format.

2. The department's sexual predator registration list, containing the information described in subparagraph (a)1., is a public record. The department is authorized to disseminate this public information by any means deemed appropriate, including operating a toll-free telephone number for this purpose. When the department provides information regarding a registered sexual predator to the public, department personnel must advise the person making the inquiry that positive identification of a person believed to be a sexual predator cannot be established unless a fingerprint comparison is made, and that it is illegal to use public information regarding a registered sexual predator to facilitate the commission of a crime.

3. The department shall adopt guidelines as necessary regarding the registration of sexual predators and the dissemination of information regarding sexual predators as required by this section.

(l) A sexual predator must maintain registration with the department for the duration of his or her life, unless the sexual predator has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that met the criteria for the sexual predator designation.

(7) COMMUNITY AND PUBLIC NOTIFICATION.—

(a) Law enforcement agencies must inform members of the community and the public of a sexual predator's presence. Upon notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator establishes or maintains a permanent or temporary residence shall notify members of the community and the public of the presence of the sexual predator in a manner deemed appropriate by the sheriff or the chief of police. Within 48 hours after receiving notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator temporarily or permanently resides shall notify each licensed child care facility, elementary school, middle school, and high school within a 1-mile radius of the temporary or permanent residence of the sexual predator of the presence of the sexual predator. Information provided to members of the community and the public regarding a sexual predator must include:

1. The name of the sexual predator;

2. A description of the sexual predator, including a photograph;

3. The sexual predator's current permanent, temporary, and transient addresses, and descriptions of registered locations that have no specific street address, including the name of the county or municipality if known;

4. The circumstances of the sexual predator's offense or offenses; and

5. Whether the victim of the sexual predator's offense or offenses was, at the time of the offense, a minor or an adult.

This paragraph does not authorize the release of the name of any victim of the sexual predator.

(b) The sheriff or the police chief may coordinate the community and public notification efforts with the department. Statewide

notification to the public is authorized, as deemed appropriate by local law enforcement personnel and the department.

(c) The department shall notify the public of all designated sexual predators through the Internet. The Internet notice shall include the information required by paragraph (a).

(d) The department shall adopt a protocol to assist law enforcement agencies in their efforts to notify the community and the public of the presence of sexual predators.

(8) VERIFICATION.—The department and the Department of Corrections shall implement a system for verifying the addresses of sexual predators. The system must be consistent with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to such verification or required to be met as a condition for the receipt of federal funds by the state. The Department of Corrections shall verify the addresses of sexual predators who are not incarcerated but who reside in the community under the supervision of the Department of Corrections and shall report to the department any failure by a sexual predator to comply with registration requirements. County and local law enforcement agencies, in conjunction with the department, shall verify the addresses of sexual predators who are not under the care, custody, control, or supervision of the Department of Corrections. Local law enforcement agencies shall report to the department any failure by a sexual predator to comply with registration requirements.

(a) A sexual predator must report in person each year during the month of the sexual predator's birthday and during every third month thereafter to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. The sheriff's office may determine the appropriate times and days for reporting by the sexual predator, which shall be consistent with the reporting requirements of this paragraph. Reregistration shall include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; any electronic mail address and any instant message name required to be provided pursuant to subparagraph (6)(g)4.; home telephone number and any cellular telephone number; date and place of any employment; vehicle make, model, color, and license tag number; fingerprints; and photograph. A post office box shall not be provided in lieu of a physical residential address.

2. If the sexual predator is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual predator shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment or employment status.

3. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

(b) The sheriff's office shall, within 2 working days, electronically submit and update all information provided by the sexual predator to the department in a manner prescribed by the department.

(9) IMMUNITY.—The department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, the Department of Juvenile Justice, any law enforcement agency in this state, and the personnel of those departments; an elected or appointed official, public employee, or school administrator; or an employee, agency, or any individual or entity acting at the request or upon the direction of any law enforcement agency is immune from civil liability for damages for good faith compliance with the requirements of this section or for the release of information under this section, and shall be presumed to have acted in good faith in compiling, recording, reporting, or releasing the information. The presumption of good faith is not overcome if a technical or clerical error

is made by the department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, the Department of Juvenile Justice, the personnel of those departments, or any individual or entity acting at the request or upon the direction of any of those departments in compiling or providing information, or if information is incomplete or incorrect because a sexual predator fails to report or falsely reports his or her current place of permanent or temporary residence.

(10) PENALTIES.—

(a) Except as otherwise specifically provided, a sexual predator who fails to register; who fails, after registration, to maintain, acquire, or renew a driver's license or identification card; who fails to provide required location information, electronic mail address information, instant message name information, home telephone number and any cellular telephone number, or change-of-name information; who fails to make a required report in connection with vacating a permanent residence; who fails to reregister as required; who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence; or who otherwise fails, by act or omission, to comply with the requirements of this section, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) A sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation, or attempted violation, of § 787.01, § 787.02, or § 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; § 794.011, excluding § 794.011(10); § 794.05; § 796.03; § 796.035; § 800.04; § 827.071; § 847.0133; § 847.0135(5); § 847.0145; or § 985.701(1); or a violation of a similar law of another jurisdiction when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, child care facility, park, playground, or other place where children regularly congregate, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) Any person who misuses public records information relating to a sexual predator, as defined in this section, or a sexual offender, as defined in § 943.0435 or § 944.607, to secure a payment from such a predator or offender; who knowingly distributes or publishes false information relating to such a predator or offender which the person misrepresents as being public records information; or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means of communication, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(d) A sexual predator who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the sexual predator, or the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

(e) An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register when the predator has been provided and advised of his or her statutory obligation to register under subsection (6). A sexual predator's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual predator charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual predator who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

(f) Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual predator of criminal liability for the failure to register.

(g) Any person who has reason to believe that a sexual predator is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sexual predator in eluding a law enforcement agency that is seeking to find the sexual predator to question the sexual predator about, or to arrest the sexual predator for, his or her noncompliance with the requirements of this section:

1. Withholds information from, or does not notify, the law enforcement agency about the sexual predator's noncompliance with the requirements of this section, and, if known, the whereabouts of the sexual predator;

2. Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sexual predator;

3. Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sexual predator; or

4. Provides information to the law enforcement agency regarding the sexual predator which the person knows to be false information,

commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. This paragraph does not apply if the sexual predator is incarcerated in or is in the custody of a state correctional facility, a private correctional facility, a local jail, or a federal correctional facility.

775.215. Residency restriction for persons convicted of certain sex offenses.

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

(a) "Child care facility" has the same meaning as provided in § 402.302.

(b) "Park" means all public and private property specifically designated as being used for recreational purposes and where children regularly congregate.

(c) "Playground" means a designated independent area in the community or neighborhood that is designated solely for children and has one or more play structures.

(d) "School" has the same meaning as provided in § 1003.01 and includes a private school as defined in § 1002.01, a voluntary prekindergarten education program as described in § 1002.53(3), a public school as described in § 402.3025(1), the Florida School for the Deaf and the Blind, the Florida Virtual School as established under § 1002.37, and a K-8 Virtual School as established under § 1002.415, but does not include facilities dedicated exclusively to the education of adults.

(2) (a) A person who has been convicted of a violation of § 794.011, § 800.04, § 827.071, § 847.0135(5), or § 847.0145, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, may not reside within 1,000 feet of any school, child care facility, park, or playground. However, a person does not violate this subsection and may not be forced to relocate if he or she is living in a residence that meets the requirements of this subsection and a school, child care facility, park, or playground is subsequently established within 1,000 feet of his or her residence.

(b) A person who violates this subsection and whose conviction under § 794.011, § 800.04, § 827.071, § 847.0135(5), or § 847.0145 was classified as a felony of the first degree or higher commits a felony of the third degree, punishable as provided in § 775.082 or § 775.083. A person who violates this subsection and whose conviction under § 794.011, § 800.04, § 827.071, § 847.0135(5), or § 847.0145 was classified as a felony of the second or third degree commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(c) This subsection applies to any person convicted of a violation of § 794.011, § 800.04, § 827.071, § 847.0135(5), or § 847.0145 for offenses that occur on or after October 1, 2004, excluding persons who have been removed from the requirement to register as a sexual offender or sexual predator pursuant to § 943.04354.

(3) (a) A person who has been convicted of an offense in another jurisdiction that is similar to a violation of § 794.011, § 800.04, § 827.071, § 847.0135(5), or § 847.0145, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, may not reside within 1,000 feet of any school, child care facility, park, or playground. However, a person does not violate this subsection and may not be forced to relocate if he or she is living in a residence that meets the requirements of this subsection and a school, child care facility, park, or playground is subsequently established within 1,000 feet of his or her residence.

(b) A person who violates this subsection and whose conviction in another jurisdiction resulted in a penalty that is substantially similar to a felony of the first degree or higher commits a felony of the third degree, punishable as provided in § 775.082 or § 775.083. A person who violates this subsection and whose conviction in another jurisdiction resulted in a penalty that is substantially similar to a felony of the second or third degree commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(c) This subsection applies to any person convicted of an offense in another jurisdiction that is similar to a violation of § 794.011, § 800.04, § 827.071, § 847.0135(5), or § 847.0145 if such offense occurred on or after May 26, 2010, excluding persons who

have been removed from the requirement to register as a sexual offender or sexual predator pursuant to § 943.04354.

775.25. Prosecutions for acts or omissions.

A sexual predator or sexual offender who commits any act or omission in violation of § 775.21, § 943.0435, § 944.605, § 944.606, § 944.607, or former § 947.177 may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the sexual predator or sexual offender, or the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator or sexual offender. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

775.261. The Florida Career Offender Registration Act.

(1) SHORT TITLE.—This section may be cited as "The Florida Career Offender Registration Act."

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

(a) "Career offender" means any person who is designated as a habitual violent felony offender, a violent career criminal, or a three-time violent felony offender under § 775.084 or as a prison releasee reoffender under § 775.082(9).

(b) "Chief of police" means the chief law enforcement officer of a municipality.

(c) "Community" means any county where the career offender lives or otherwise establishes or maintains a temporary or permanent residence.

(d) "Department" means the Department of Law Enforcement.

(e) "Entering the county" includes being discharged from a correctional facility, jail, or secure treatment facility within the county or being under supervision within the county with a career-offender designation as specified in paragraph (a).

(f) "Permanent residence" means a place where the career offender abides, lodges, or resides for 14 or more consecutive days.

(g) "Temporary residence" means:

1. A place where the career offender abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the career offender's permanent address;

2. For a career offender whose permanent residence is not in this state, a place where the career offender is employed, practices a vocation, or is enrolled as a student for any period of time in this state; or

3. A place where the career offender routinely abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the career offender's permanent residence, including any out-of-state address.

(3) CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.—

(a) A career offender released on or after July 1, 2002, from a sanction imposed in this state must register as required under subsection (4) and is subject to community and public notification as provided under subsection (5). For purposes of this section, a sanction imposed in this state includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, private correctional facility, or local detention facility, and:

1. The career offender has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph; or

2. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(b) This section does not apply to any person who has been designated as a sexual predator and required to register under § 775.21 or who is required to register as a sexual offender under § 943.0435 or § 944.607. However, if a person is no longer required to register as a sexual predator under § 775.21 or as a sexual offender under § 943.0435 or § 944.607, the person must register as a career offender under this section if the person is otherwise designated as a career offender as provided in this section.

(c) A person subject to registration as a career offender is not subject to registration as a convicted felon under § 775.13. However, if the person is no longer required to register as a career offender under this section, the person must register under § 775.13 if required to do so under that section.

(d) If a career offender is not sentenced to a term of imprisonment, the clerk of the court shall ensure that the career offender's fingerprints are taken and forwarded to the department within 48 hours after the court renders its finding that an offender is a career offender. The fingerprints shall be clearly marked, "Career Offender Registration."

(4) REGISTRATION.—

(a) A career offender must register with the department by providing the following information to the department, or to the sheriff's office in the county in which the career offender establishes or maintains a permanent or temporary residence, within 2 working days after establishing permanent or temporary residence in this state or within 2 working days after being released from the custody, control, or supervision of the Department of Corrections or from the custody of a private correctional facility:

1. Name, social security number, age, race, gender, date of birth, height, weight, hair and eye color, photograph, address of legal residence and address of any current temporary residence within the state or out of state, including a rural route address or a post office box, date and place of any employment, date and place of each conviction, fingerprints, and a brief description of the crime or crimes committed by the career offender. A career offender may not provide a post office box in lieu of a physical residential address. If the career offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the career offender shall also provide to the department written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a career offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the career offender shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. Any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers when available.

(b) If a career offender registers with the sheriff's office, the sheriff shall take a photograph and a set of fingerprints of the career offender and forward the photographs and fingerprints to the department, along with the information that the career offender is required to provide pursuant to this section.

(c) Within 2 working days after the registration required under paragraph (a), a career offender who is not incarcerated and who resides in the community, including a career offender under the supervision of the Department of Corrections pursuant to § 944.608, shall register in person at a driver's license office of the Department of Highway Safety and Motor Vehicles and shall present proof of registration. At the driver's license office, the career offender shall:

1. If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The career offender shall identify himself or herself as a career offender who is required to comply with this section, provide his or her place of permanent or temporary residence, including a rural route address or a post office box, and submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of career offenders. The career offender may not provide a post office box in lieu of a physical residential address. If the career offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the career offender shall also provide to the Department of Highway Safety and Motor Vehicles the vehicle identification number; the license tag number; the motor vehicle registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a career offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the career offender shall also provide to the Department of Highway Safety and Motor Vehicles the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section.

3. Provide, upon request, any additional information necessary to confirm the identity of the career offender, including a set of fingerprints.

(d) Each time a career offender's driver's license or identification card is subject to renewal, and within 2 working days after any change of the career offender's residence or change in the career offender's name by reason of marriage or other legal process, the career offender must report in person to a

driver's license office, and shall be subject to the requirements specified in paragraph (c). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by career offenders. Notwithstanding the restrictions set forth in § 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the department for purposes of public notification of career offenders as provided in this section.

(e) If the career offender registers at an office of the department, the department must notify the sheriff and, if applicable, the police chief of the municipality, where the career offender maintains a residence within 48 hours after the career offender registers with the department.

(f) A career offender who intends to establish residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence or the department within 2 working days before the date he or she intends to leave this state to establish residence in another state or jurisdiction other than the State of Florida. If the career offender is under the supervision of the Department of Corrections, the career offender shall notify the supervising probation officer of his or her intent to transfer supervision, satisfy all transfer requirements pursuant to the Interstate Compact for Supervision of Adult Offenders, as provided in § 949.07, and abide by the decision of the receiving jurisdiction to accept or deny transfer. The career offender must provide to the sheriff or department the address, municipality, county, and state of intended residence. The sheriff shall promptly provide to the department the information received from the career offender. The failure of a career offender to provide his or her intended place of residence is punishable as provided in subsection (8).

(g) A career offender who indicates his or her intent to reside in a state or jurisdiction other than the State of Florida and later decides to remain in this state shall, within 2 working days after the date upon which the career offender indicated he or she would leave this state, report in person to the sheriff or the department, whichever agency is the agency to which the career offender reported the intended change of residence, of his or her intent to remain in this state. If the sheriff is notified by the career offender that he or she intends to remain in this state, the sheriff shall promptly report this information to the department. A career offender who reports his or her intent to reside in a state or jurisdiction other than the State of Florida, but who remains in this state without reporting to the sheriff or the department in the manner required by this paragraph, commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(h) 1. The department shall maintain online computer access to the current information regarding each registered career offender. The department must maintain hotline access so that state, local, and federal law enforcement agencies may obtain instantaneous locator file and criminal characteristics information on release and registration of career offenders for purposes of monitoring, tracking, and prosecution. The photograph and fingerprints need not be stored in a computerized format.

2. The department's career offender registration list, containing the information described in subparagraph (a)1., is a public record. The department may disseminate this public information by any means deemed appropriate, including operating a toll-free telephone number for this purpose. When the department provides information regarding a career offender to the public, department personnel must advise the person making the inquiry that positive identification of a person believed to be a career offender cannot be established unless a fingerprint comparison is made, and that it is illegal to use public information regarding a career offender to facilitate the commission of a crime.

3. The department shall adopt guidelines as necessary regarding the registration of a career offender and the dissemination of information regarding a career offender as required by this section.

(i) A career offender must maintain registration with the department for the duration of his or her life, unless the career offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that meets the criteria for classifying the person as a career offender for purposes of registration. However, a registered career offender who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 20 years and has not been arrested for any felony or misdemeanor offense since release may petition the criminal division of the circuit court of the circuit in which the registered career offender resides for the purpose

of removing the requirement for registration as a career offender. The court may grant or deny such relief if the registered career offender demonstrates to the court that he or she has not been arrested for any crime since release and the court is otherwise satisfied that the registered career offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the registered career offender may again petition the court for relief, subject to the standards for relief provided in this paragraph. The department shall remove a person from classification as a career offender for purposes of registration if the person provides to the department a certified copy of the court's written findings or order that indicates that the person is no longer required to comply with the requirements for registration as a career offender.

(5) COMMUNITY AND PUBLIC NOTIFICATION.—

(a) Law enforcement agencies may inform the community and the public of the presence of a career offender in the community. Upon notification of the presence of a career offender, the sheriff of the county or the chief of police of the municipality where the career offender establishes or maintains a permanent or temporary residence may notify the community and the public of the presence of the career offender in a manner deemed appropriate by the sheriff or the chief of police.

(b) The sheriff or the police chief may coordinate the community and public notification efforts with the department. Statewide notification to the public is authorized, as deemed appropriate by local law enforcement personnel and the department.

(6) VERIFICATION.—The department and the Department of Corrections shall implement a system for verifying the addresses of career offenders. The sheriff of each county shall annually verify the addresses of career offenders who are not under the care, custody, control, or supervision of the Department of Corrections. The sheriff shall promptly provide the address verification information to the department in an electronic format. The address verification information must include the verifying person's name, agency, and phone number, the date of verification, and the method of verification, and must specify whether the address information was verified as correct, incorrect, or unconfirmed.

(7) IMMUNITY.—The department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, any law enforcement agency in this state, and the personnel of those departments; an elected or appointed official, public employee, or school administrator; or an employee, agency, or any individual or entity acting at the request or upon the direction of any law enforcement agency is immune from civil liability for damages for good faith compliance with the requirements of this section or for the release of information under this section and shall be presumed to have acted in good faith in compiling, recording, reporting, or releasing the information. The presumption of good faith is not overcome if a technical or clerical error is made by the department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, the personnel of those departments, or any individual or entity acting at the request or upon the direction of any of those departments in compiling or providing information, or if information is incomplete or incorrect because a career offender fails to report or falsely reports his or her current place of permanent or temporary residence.

(8) PENALTIES.—

(a) Except as otherwise specifically provided, a career offender who fails to register; who fails, after registration, to maintain, acquire, or renew a driver's license or identification card; who fails to provide required location information or change-of-name information; or who otherwise fails, by act or omission, to comply with the requirements of this section, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Any person who misuses public records information concerning a career offender, as defined in this section, or a career offender, as defined in § 944.608 or § 944.609, to secure a payment from such career offender; who knowingly distributes or publishes false information concerning such a career offender which the person misrepresents as being public records information; or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means

of communication, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(9) PROSECUTIONS FOR ACTS OR OMISSIONS.—A career offender who commits any act or omission in violation of this section, § 944.608, or § 944.609 may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the career offender, the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a career offender, or in the county in which he or she was designated a career offender.

(10) ASSISTING IN NONCOMPLIANCE.—It is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, for a person who has reason to believe that a career offender is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the career offender in eluding a law enforcement agency that is seeking to find the career offender to question the career offender about, or to arrest the career offender for, his or her noncompliance with the requirements of this section, to:

(a) Withhold information from, or fail to notify, the law enforcement agency about the career offender's noncompliance with the requirements of this section and, if known, the whereabouts of the career offender;

(b) Harbor or attempt to harbor, or assist another in harboring or attempting to harbor, the career offender;

(c) Conceal or attempt to conceal, or assist another in concealing or attempting to conceal, the career offender; or

(d) Provide information to the law enforcement agency regarding the career offender which the person knows to be false.

CHAPTER 776
JUSTIFIABLE USE OF FORCE

776.012. Use of force in defense of person.

A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or

(2) Under those circumstances permitted pursuant to § 776.013.

776.013. Home protection; use of deadly force; presumption of fear of death or great bodily harm.

(1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(2) The presumption set forth in subsection (1) does not apply if:

(a) The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(b) The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used; or

(c) The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(d) The person against whom the defensive force is used is a law enforcement officer, as defined in § 943.10(14), who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(3) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be

has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

(4) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(5) As used in this section, the term:

(a) "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(b) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(c) "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

776.031. Use of force in defense of others.

A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

776.032. Immunity from criminal prosecution and civil action for justifiable use of force.

(1) A person who uses force as permitted in § 776.012, § 776.013, or § 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer, as defined in § 943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.

(3) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).

776.041. Use of force by aggressor.

The justification described in the preceding sections of this chapter is not available to a person who:

(1) Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or

(2) Initially provokes the use of force against himself or herself, unless:

(a) Such force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

(b) In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

776.05. Law enforcement officers; use of force in making an arrest.

A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of any force:

(1) Which he or she reasonably believes to be necessary to defend himself or herself or

another from bodily harm while making the arrest;

(2) When necessarily committed in retaking felons who have escaped; or

(3) When necessarily committed in arresting felons fleeing from justice. However, this subsection shall not constitute a defense in any civil action for damages brought for the wrongful use of deadly force unless the use of deadly force was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:

(a) The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or

(b) The officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person.

776.051. Use of force in resisting arrest or making an arrest or in the execution of a legal duty; prohibition.

(1) A person is not justified in the use of force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.

(2) A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in the use of force if the arrest or execution of a legal duty is unlawful and known by him or her to be unlawful.

776.06. Deadly force.

(1) The term "deadly force" means force that is likely to cause death or great bodily harm and includes, but is not limited to:

(a) The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and

(b) The firing of a firearm at a vehicle in which the person to be arrested is riding.

(2) (a) The term "deadly force" does not include the discharge of a firearm by a law enforcement officer or correctional officer during and within the scope of his or her official duties which is loaded with a less-lethal munition. As used in this subsection, the term "less-lethal munition" means a projectile that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body.

(b) A law enforcement officer or a correctional officer is not liable in any civil or criminal action arising out of the use of any less-lethal munition in good faith during and within the scope of his or her official duties.

776.07. Use of force to prevent escape.

(1) A law enforcement officer or other person who has an arrested person in his or her custody is justified in the use of any force which he or she reasonably believes to be necessary to prevent the escape of the arrested person from custody.

(2) A correctional officer or other law enforcement officer is justified in the use of force, including deadly force, which he or she reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

776.08. Forcible felony.

"Forcible felony" means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

CHAPTER 777
PRINCIPAL; ACCESSORY; ATTEMPT; SOLICITATION; CONSPIRACY

777.011. Principal in first degree.

Whoever commits any criminal offense against the state, whether felony or misdemeanor, or aids, abets, counsels, hires, or otherwise procures such offense to be committed, and such offense is committed or is attempted to be committed, is a principal in the first degree and may be charged, convicted, and punished as such, whether he or she is or is not actually or constructively present at the commission of such offense.

777.03. Accessory after the fact.

(1) (a) Any person not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender, who maintains or assists the principal or an ac-

cessory before the fact, or gives the offender any other aid, knowing that the offender had committed a crime and such crime was a third degree felony, or had been an accessory thereto before the fact, with the intent that the offender avoids or escapes detection, arrest, trial, or punishment, is an accessory after the fact.

(b) Any person who maintains or assists the principal or accessory before the fact, or gives the offender any other aid, knowing that the offender had committed the offense of child abuse, neglect of a child, aggravated child abuse, aggravated manslaughter of a child under 18 years of age, or murder of a child under 18 years of age, or had been an accessory thereto before the fact, with the intent that the offender avoids or escapes detection, arrest, trial, or punishment, is an accessory after the fact unless the court finds that the person is a victim of domestic violence.

(c) Any person who maintains or assists the principal or an accessory before the fact, or gives the offender any other aid, knowing that the offender had committed a crime and such crime was a capital, life, first degree, or second degree felony, or had been an accessory thereto before the fact, with the intent that the offender avoids or escapes detection, arrest, trial, or punishment, is an accessory after the fact.

(2) (a) If the felony offense committed is a capital felony, the offense of accessory after the fact is a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) If the felony offense committed is a life felony or a felony of the first degree, the offense of accessory after the fact is a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) If the felony offense committed is a felony of the second degree or a felony of the third degree ranked in level 3, 4, 5, 6, 7, 8, 9, or 10 under § 921.0022 or § 921.0023, the offense of accessory after the fact is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(d) If the felony offense committed is a felony of the third degree ranked in level 1 or level 2 under § 921.0022 or § 921.0023, the offense of accessory after the fact is a misdemeanor of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Except as otherwise provided in § 921.0022, for purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, the offense of accessory after the fact is ranked two levels below the ranking under § 921.0022 or § 921.0023 of the felony offense committed.

777.04. Attempts, solicitation, and conspiracy.

(1) A person who attempts to commit an offense prohibited by law and in such attempt does any act toward the commission of such offense, but fails in the perpetration or is intercepted or prevented in the execution thereof, commits the offense of criminal attempt, ranked for purposes of sentencing as provided in subsection (4). Criminal attempt includes the act of an adult who, with intent to commit an offense prohibited by law, allures, seduces, coaxes, or induces a child under the age of 12 to engage in an offense prohibited by law.

(2) A person who solicits another to commit an offense prohibited by law and in the course of such solicitation commands, encourages, hires, or requests another person to engage in specific conduct which would constitute such offense or an attempt to commit such offense commits the offense of criminal solicitation, ranked for purposes of sentencing as provided in subsection (4).

(3) A person who agrees, conspires, combines, or confederates with another person or persons to commit any offense commits the offense of criminal conspiracy, ranked for purposes of sentencing as provided in subsection (4).

(4) (a) Except as otherwise provided in §§ 104.091(2), 379.2431(1), 828.125(2), 849.25(4), 893.135(5), and 921.0022, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is ranked for purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944 one level below the ranking under § 921.0022 or § 921.0023 of the offense attempted, solicited, or conspired to. If the criminal attempt, criminal solicitation, or criminal conspiracy is of an offense ranked in level 1 or level 2 under § 921.0022 or § 921.0023, such offense is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(b) If the offense attempted, solicited, or conspired to is a capital felony, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) Except as otherwise provided in § 893.135(5), if the offense attempted, solicited, or conspired to is a life felony or a felony of the first degree, the offense of criminal at-

tempt, criminal solicitation, or criminal conspiracy is a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(d) Except as otherwise provided in § 104.091(2), § 379.2431(1), § 828.125(2), or § 849.25(4), if the offense attempted, solicited, or conspired to is a:

1. Felony of the second degree;

2. Burglary that is a felony of the third degree; or

3. Felony of the third degree ranked in level 3, 4, 5, 6, 7, 8, 9, or 10 under § 921.0022 or § 921.0023,

the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(e) Except as otherwise provided in § 104.091(2), § 379.2431(1), § 849.25(4), or paragraph (d), if the offense attempted, solicited, or conspired to is a felony of the third degree, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(f) Except as otherwise provided in § 104.091(2), if the offense attempted, solicited, or conspired to is a misdemeanor of the first or second degree, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(5) It is a defense to a charge of criminal attempt, criminal solicitation, or criminal conspiracy that, under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose, the defendant:

(a) Abandoned his or her attempt to commit the offense or otherwise prevented its commission;

(b) After soliciting another person to commit an offense, persuaded such other person not to do so or otherwise prevented commission of the offense; or

(c) After conspiring with one or more persons to commit an offense, persuaded such persons not to do so or otherwise prevented commission of the offense.

777.201. Entrapment.

(1) A law enforcement officer, a person engaged in cooperation with a law enforcement officer, or a person acting as an agent of a law enforcement officer perpetrates an entrapment if, for the purpose of obtaining evidence of the commission of a crime, he or she induces or encourages and, as a direct result, causes another person to engage in conduct constituting such crime by employing methods of persuasion or inducement which create a substantial risk that such crime will be committed by a person other than one who is ready to commit it.

(2) A person prosecuted for a crime shall be acquitted if the person proves by a preponderance of the evidence that his or her criminal conduct occurred as a result of an entrapment. The issue of entrapment shall be tried by the trier of fact.

CHAPTER 782
HOMICIDE

782.02. Justifiable use of deadly force.

The use of deadly force is justifiable when a person is resisting any attempt to murder such person or to commit any felony upon him or her or upon or in any dwelling house in which such person shall be.

782.03. Excusable homicide.

Homicide is excusable when committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution, and without any unlawful intent, or by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, without any dangerous weapon being used and not done in a cruel or unusual manner.

782.035. Abrogation of common-law rule of evidence known as "year-and-a-day rule".

The common-law rule of evidence applicable to homicide prosecutions known as the "year-and-a-day rule," which provides a conclusive presumption that an injury is not the cause of death or that whether it is the cause cannot be discerned if the interval between the infliction of the injury and the victim's death exceeds a year and a day, is hereby abrogated and does not apply in this state.

782.04. Murder.

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

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

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

a. Trafficking offense prohibited by § 893.135(1),

b. Arson,

c. Sexual battery,
d. Robbery,
e. Burglary,
f. Kidnapping,
g. Escape,
h. Aggravated child abuse,
i. Aggravated abuse of an elderly person or disabled adult,
j. Aircraft piracy,
k. Unlawful throwing, placing, or discharging of a destructive device or bomb,
l. Carjacking,
m. Home-invasion robbery,
n. Aggravated stalking,
o. Murder of another human being,
p. Resisting an officer with violence to his or her person,
q. Aggravated fleeing or eluding with serious bodily injury or death,
r. Felony that is an act of terrorism or is in furtherance of an act of terrorism; or

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

is murder in the first degree and constitutes a capital felony, punishable as provided in § 775.082.

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

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

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

(a) Trafficking offense prohibited by § 893.135(1),
(b) Arson,
(c) Sexual battery,
(d) Robbery,
(e) Burglary,
(f) Kidnapping,
(g) Escape,
(h) Aggravated child abuse,
(i) Aggravated abuse of an elderly person or disabled adult,
(j) Aircraft piracy,
(k) Unlawful throwing, placing, or discharging of a destructive device or bomb,
(l) Carjacking,
(m) Home-invasion robbery,
(n) Aggravated stalking,
(o) Murder of another human being,
(p) Aggravated fleeing or eluding with serious bodily injury or death,
(q) Resisting an officer with violence to his or her person, or
(r) Felony that is an act of terrorism or is in furtherance of an act of terrorism,

by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony commits murder in the second degree, which constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in § 775.082, § 775.083, or § 775.084.

(4) The unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

(a) Trafficking offense prohibited by § 893.135(1),
(b) Arson,
(c) Sexual battery,
(d) Robbery,
(e) Burglary,
(f) Kidnapping,
(g) Escape,
(h) Aggravated child abuse,
(i) Aggravated abuse of an elderly person or disabled adult,
(j) Aircraft piracy,
(k) Unlawful throwing, placing, or discharging of a destructive device or bomb,
(l) Unlawful distribution of any substance controlled under § 893.03(1), cocaine as described in § 893.03(2)(a)4., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,
(m) Carjacking,
(n) Home-invasion robbery,
(o) Aggravated stalking,
(p) Murder of another human being,
(q) Aggravated fleeing or eluding with serious bodily injury or death,

(r) Resisting an officer with violence to his or her person, or

(s) Felony that is an act of terrorism or is in furtherance of an act of terrorism,

is murder in the third degree and constitutes a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) As used in this section, the term "terrorism" means an activity that:

(a) 1. Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or

2. Involves a violation of § 815.06; and

(b) Is intended to:

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

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

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

782.051. Attempted felony murder.

(1) Any person who perpetrates or attempts to perpetrate any felony enumerated in § 782.04(3) and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life, or as provided in § 775.082, § 775.083, or § 775.084, which is an offense ranked in level 9 of the Criminal Punishment Code. Victim injury points shall be scored under this subsection.

(2) Any person who perpetrates or attempts to perpetrate any felony other than a felony enumerated in § 782.04(3) and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084, which is an offense ranked in level 8 of the Criminal Punishment Code. Victim injury points shall be scored under this subsection.

(3) When a person is injured during the perpetration of or the attempt to perpetrate any felony enumerated in § 782.04(3) by a person other than the person engaged in the perpetration of or the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084, which is an offense ranked in level 7 of the Criminal Punishment Code. Victim injury points shall be scored under this subsection.

782.065. Murder; law enforcement officer, correctional officer, correctional probation officer.

Notwithstanding §§ 775.082, 775.0823, 782.04, 782.051, and chapter 921, a defendant shall be sentenced to life imprisonment without eligibility for release upon findings by the trier of fact that, beyond a reasonable doubt:

(1) The defendant committed murder in the first degree in violation of § 782.04(1) and a death sentence was not imposed; murder in the second or third degree in violation of § 782.04(2), (3), or (4); attempted murder in the first or second degree in violation of § 782.04(1)(a)1. or (2); or attempted felony murder in violation of § 782.051; and

(2) The victim of any offense described in subsection (1) was a law enforcement officer, part-time law enforcement officer, auxiliary law enforcement officer, correctional officer, part-time correctional officer, auxiliary correctional officer, correctional probation officer, part-time correctional probation officer, or auxiliary correctional probation officer, as those terms are defined in § 943.10, engaged in the lawful performance of a legal duty.

782.07. Manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

(1) The killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification according to the provisions of chapter 776 and in cases in which such killing shall not be excusable homicide or murder, according to the provisions of this chapter, is manslaughter, a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) A person who causes the death of any elderly person or disabled adult by culpable negligence under § 825.102(3) commits aggravated manslaughter of an elderly person or disabled adult, a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) A person who causes the death of any person under the age of 18 by culpable negligence under § 827.03(2)(b) commits aggravated manslaughter of a child, a felony of

the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) A person who causes the death, through culpable negligence, of an officer as defined in § 943.10(14), a firefighter as defined in § 112.191, an emergency medical technician as defined in § 401.23, or a paramedic as defined in § 401.23, while the officer, firefighter, emergency medical technician, or paramedic is performing duties that are within the course of his or her employment, commits aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic, a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

782.071. Vehicular homicide.

"Vehicular homicide" is the killing of a human being, or the killing of a viable fetus by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.

(1) Vehicular homicide is:

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

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

1. At the time of the accident, the person knew, or should have known, that the accident occurred; and

2. The person failed to give information and render aid as required by § 316.062.

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

(2) For purposes of this section, a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.

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

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

782.072. Vessel homicide.

"Vessel homicide" is the killing of a human being by the operation of a vessel as defined in § 327.02 by another in a reckless manner likely to cause the death of, or great bodily harm to, another. Vessel homicide is:

(1) A felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) A felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if:

(a) At the time of the accident, the person knew, or should have known, that the accident occurred; and

(b) The person failed to give information and render aid as required by § 327.30(1).

This subsection does not require that the person knew that the accident resulted in injury or death.

782.08. Assisting self-murder.

Every person deliberately assisting another in the commission of self-murder shall be guilty of manslaughter, a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

782.081. Commercial exploitation of self-murder.

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

(a) "Deliberately assisting" means carrying out a public act that is intended to:

1. Aid, abet, facilitate, permit, advocate, or encourage;

2. Publicize, promote, advertise, operate, stage, schedule, or conduct;

3. Provide or secure a venue, transportation, or security; or

4. Result in the collection of an admission or fee.

(b) "Self-murder" means the voluntary and intentional taking of one's own life. As used in this section, the term includes attempted self-murder.

(c) "Simulated self-murder" means the artistic depiction or portrayal of self-murder which is not an actual self-murder. The term includes, but is not limited to, an artistic depiction or portrayal of self-murder in a script, play, movie, or story presented to the public or during an event.

(2) A person may not for commercial or entertainment purposes:

(a) Conduct any event that the person knows or reasonably should know includes an actual self-murder as a part of the event or deliberately assist in an actual self-murder.

(b) Provide a theater, auditorium, club, or other venue or location for any event that the person knows or reasonably should know in-

cludes an actual self-murder as a part of the event.

(3) This section does not prohibit any event during which simulated self-murder will occur.

(4) It is not a defense to a prosecution under this section that an attempted self-murder did not result in a self-murder.

(5) A person who violates this section commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(6) The Attorney General or any state attorney may bring a civil proceeding for declaratory, injunctive, or other relief to enforce the provisions of this section.

782.09. Killing of unborn quick child by injury to mother.

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

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

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

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

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

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

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

(5) For purposes of this section, the definition of the term "unborn quick child" shall be determined in accordance with the definition of viable fetus as set forth in § 782.071.

782.11. Unnecessary killing to prevent unlawful act.

Whoever shall unnecessarily kill another, either while resisting an attempt by such other person to commit any felony, or to do any other unlawful act, or after such attempt shall have failed, shall be deemed guilty of manslaughter, a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

CHAPTER 784
ASSAULT; BATTERY; CULPABLE NEGLIGENCE

784.011. Assault.

(1) An "assault" is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

(2) Whoever commits an assault shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

784.021. Aggravated assault.

(1) An "aggravated assault" is an assault:

(a) With a deadly weapon without intent to kill; or

(b) With an intent to commit a felony.

(2) Whoever commits an aggravated assault shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

784.03. Battery; felony battery.

(1) (a) The offense of battery occurs when a person:

1. Actually and intentionally touches or strikes another person against the will of the other; or

2. Intentionally causes bodily harm to another person.

(b) Except as provided in subsection (2), a person who commits battery commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) A person who has one prior conviction for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a felony of the third

degree, punishable as provided in § 775.082, § 775.083, or § 775.084. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

784.041. Felony battery; domestic battery by strangulation.

(1) A person commits felony battery if he or she:

(a) Actually and intentionally touches or strikes another person against the will of the other; and

(b) Causes great bodily harm, permanent disability, or permanent disfigurement.

(2) (a) A person commits domestic battery by strangulation if the person knowingly and intentionally, against the will of another, impedes the normal breathing or circulation of the blood of a family or household member or of a person with whom he or she is in a dating relationship, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person. This paragraph does not apply to any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state.

(b) As used in this subsection, the term:

1. "Family or household member" has the same meaning as in § 741.28.

2. "Dating relationship" means a continuing and significant relationship of a romantic or intimate nature.

(3) A person who commits felony battery or domestic battery by strangulation commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

784.045. Aggravated battery.

(1) (a) A person commits aggravated battery who, in committing battery:

1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or

2. Uses a deadly weapon.

(b) A person commits aggravated battery if the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.

(2) Whoever commits aggravated battery shall be guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

784.046. Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.

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

(a) "Violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.

(b) "Repeat violence" means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.

(c) "Sexual violence" means any one incident of:

1. Sexual battery, as defined in chapter 794;

2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age;

3. Luring or enticing a child, as described in chapter 787;

4. Sexual performance by a child, as described in chapter 827; or

5. Any other forcible felony wherein a sexual act is committed or attempted,

regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

(d) "Dating violence" means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:

1. A dating relationship must have existed within the past 6 months;

2. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and

3. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordi-

nary fraternization in a business or social context.

(2) There is created a cause of action for an injunction for protection in cases of repeat violence, there is created a separate cause of action for an injunction for protection in cases of dating violence, and there is created a separate cause of action for an injunction for protection in cases of sexual violence.

(a) Any person who is the victim of repeat violence or the parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against repeat violence on behalf of the minor child has standing in the circuit court to file a sworn petition for an injunction for protection against repeat violence.

(b) Any person who is the victim of dating violence and has reasonable cause to believe he or she is in imminent danger of becoming the victim of another act of dating violence, or any person who has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of dating violence, or the parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against dating violence on behalf of that minor child, has standing in the circuit court to file a sworn petition for an injunction for protection against dating violence.

(c) A person who is the victim of sexual violence or the parent or legal guardian of a minor child who is living at home who is the victim of sexual violence has standing in the circuit court to file a sworn petition for an injunction for protection against sexual violence on his or her own behalf or on behalf of the minor child if:

1. The person has reported the sexual violence to a law enforcement agency and is cooperating in any criminal proceeding against the respondent, regardless of whether criminal charges based on the sexual violence have been filed, reduced, or dismissed by the state attorney; or

2. The respondent who committed the sexual violence against the victim or minor child was sentenced to a term of imprisonment in state prison for the sexual violence and the respondent's term of imprisonment has expired or is due to expire within 90 days following the date the petition is filed.

(d) A cause of action for an injunction may be sought whether or not any other petition, complaint, or cause of action is currently available or pending between the parties.

(e) A cause of action for an injunction does not require that the petitioner be represented by an attorney.

(3) (a) The clerk of the court shall provide a copy of this section, simplified forms, and clerical assistance for the preparation and filing of such a petition by any person who is not represented by counsel.

(b) Notwithstanding any other law, the clerk of the court may not assess a fee for filing a petition for protection against repeat violence, sexual violence, or dating violence. However, subject to legislative appropriation, the clerk of the court may, each quarter, submit to the Office of the State Courts Administrator a certified request for reimbursement for petitions for protection issued by the court under this section at the rate of $40 per petition. The request for reimbursement shall be submitted in the form and manner prescribed by the Office of the State Courts Administrator. From this reimbursement, the clerk shall pay the law enforcement agency serving the injunction the fee requested by the law enforcement agency; however, this fee may not exceed $20.

(c) No bond shall be required by the court for the entry of an injunction.

(d) The clerk of the court shall provide the petitioner with a certified copy of any injunction for protection against repeat violence, sexual violence, or dating violence entered by the court.

(4) (a) The sworn petition shall allege the incidents of repeat violence, sexual violence, or dating violence and shall include the specific facts and circumstances that form the basis upon which relief is sought. With respect to a minor child who is living at home, the parent or legal guardian seeking the protective injunction on behalf of the minor child must:

1. Have been an eyewitness to, or have direct physical evidence or affidavits from eyewitnesses of, the specific facts and circumstances that form the basis upon which relief is sought, if the party against whom the protective injunction is sought is also a parent, stepparent, or legal guardian of the minor child; or

2. Have reasonable cause to believe that the minor child is a victim of repeat sexual or dating violence to form the basis upon which relief is sought, if the party against whom the protective injunction is sought is a person other than a parent, stepparent, or legal guardian of the minor child.

(b) The sworn petition must be in substantially the following form:

PETITION FOR INJUNCTION FOR PROTECTION AGAINST REPEAT VIOLENCE, SEXUAL VIOLENCE, OR DATING VIOLENCE

Before me, the undersigned authority, personally appeared Petitioner (Name), who has been sworn and says that the following statements are true:

1. Petitioner resides at (address) (A petitioner for an injunction for protection against sexual violence may furnish an address to the court in a separate confidential filing if, for safety reasons, the petitioner requires the location of his or her current residence to be confidential pursuant to § 119.071(2)(j), Florida Statutes.)

2. Respondent resides at _____ (address).

3.a. Petitioner has suffered repeat violence as demonstrated by the fact that the respondent has: _____ (enumerate incidents of violence)

b. Petitioner has suffered sexual violence as demonstrated by the fact that the respondent has: _____ (enumerate incident of violence and include incident report number from law enforcement agency or attach notice of inmate release.)

c. Petitioner is a victim of dating violence and has reasonable cause to believe that he or she is in imminent danger of becoming the victim of another act of dating violence or has reasonable cause to believe that he or she is in imminent danger of becoming a victim of dating violence, as demonstrated by the fact that the respondent has: _____ (list the specific incident or incidents of violence and describe the length of time of the relationship, whether it has been in existence during the last 6 months, the nature of the relationship of a romantic or intimate nature, the frequency and type of interaction, and any other facts that characterize the relationship.)

4. Petitioner genuinely fears repeat violence by the respondent.

5. Petitioner seeks: an immediate injunction against the respondent, enjoining him or her from committing any further acts of violence; an injunction enjoining the respondent from committing any further acts of violence; and an injunction providing any terms the court deems necessary for the protection of the petitioner and the petitioner's immediate family, including any injunctions or directives to law enforcement agencies.

(5) Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. The respondent shall be personally served with a copy of the petition, notice of hearing, and temporary injunction, if any, prior to the hearing.

(6) (a) When it appears to the court that an immediate and present danger of violence exists, the court may grant a temporary injunction which may be granted in an ex parte hearing, pending a full hearing, and may grant such relief as the court deems proper, including an injunction enjoining the respondent from committing any acts of violence.

(b) In a hearing ex parte for the purpose of obtaining such temporary injunction, no evidence other than the verified pleading or affidavit shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing.

(c) Any such ex parte temporary injunction shall be effective for a fixed period not to exceed 15 days. However, an ex parte temporary injunction granted under subparagraph (2)(c)2. is effective for 15 days following the date the respondent is released from incarceration. A full hearing, as provided by this section, shall be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance of the ex parte injunction and the full hearing before or during a hearing, for good cause shown by any party.

(7) Upon notice and hearing, the court may grant such relief as the court deems proper, including an injunction:

(a) Enjoining the respondent from committing any acts of violence.

(b) Ordering such other relief as the court deems necessary for the protection of the petitioner, including injunctions or directives to law enforcement agencies, as provided in this section.

(c) The terms of the injunction shall remain in full force and effect until modified or dissolved. Either party may move at any time to modify or dissolve the injunction. Such relief may be granted in addition to other civil or criminal remedies.

(d) A temporary or final judgment on injunction for protection against repeat violence, sexual violence, or dating violence entered pursuant to this section shall, on its face, indicate that:

1. The injunction is valid and enforceable in all counties of the State of Florida.

2. Law enforcement officers may use their arrest powers pursuant to § 901.15(6) to enforce the terms of the injunction.

3. The court had jurisdiction over the parties and matter under the laws of Florida and that reasonable notice and opportunity to be

heard was given to the person against whom the order is sought sufficient to protect that person's right to due process.

4. The date that the respondent was served with the temporary or final order, if obtainable.

(8) (a) 1. The clerk of the court shall furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. When requested by the sheriff, the clerk of the court may transmit a facsimile copy of an injunction that has been certified by the clerk of the court, and this facsimile copy may be served in the same manner as a certified copy. Upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may transmit a facsimile copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court shall be responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required by the department to comply with the verification procedures set forth in this section. Notwithstanding any other provision of law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the chief judge's jurisdiction to effect this type of service and to receive a portion of the service fee. No person shall be authorized or permitted to serve or execute an injunction issued under this section unless the person is a law enforcement officer as defined in chapter 943.

2. When an injunction is issued, if the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner and assist in the execution or service of the injunction. A law enforcement officer shall accept a copy of an injunction for protection against repeat violence, sexual violence, or dating violence, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

(b) There shall be created a Domestic, Dating, Sexual, and Repeat Violence Injunction Statewide Verification System within the Department of Law Enforcement. The department shall establish, implement, and maintain a statewide communication system capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions, dating violence injunctions, sexual violence injunctions, and repeat violence injunctions issued by the courts throughout the state. Such information must include, but is not limited to, information as to the existence and status of any injunction for verification purposes.

(c) 1. Within 24 hours after the court issues an injunction for protection against repeat violence, sexual violence, or dating violence or changes or vacates an injunction for protection against repeat violence, sexual violence, or dating violence, the clerk of the court must forward a copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner.

2. Within 24 hours after service of process of an injunction for protection against repeat violence, sexual violence, or dating violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against repeat violence, sexual violence, or dating violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5. a. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection. The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction

upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against repeat violence, sexual violence, or dating violence was served. When a petitioner makes a request for notification, the clerk must apprise the petitioner of her or his right to request in writing that the information specified in sub-subparagraph b. be held exempt from public records requirements for 5 years. The Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

b. Upon implementation of the automated process, information held by clerks and law enforcement agencies in conjunction with the automated process developed under sub-subparagraph a. which reveals the home or employment telephone number, cellular telephone number, home or employment address, electronic mail address, or other electronic means of identification of a petitioner requesting notification of service of an injunction for protection against repeat violence, sexual violence, or dating violence and other court actions related to the injunction for protection is exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution, upon written request by the petitioner. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this sub-subparagraph. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with § 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

6. Within 24 hours after an injunction for protection against repeat violence, sexual violence, or dating violence is lifted, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff or local law enforcement agency receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the department of such action of the court.

(9) (a) The court shall enforce, through a civil or criminal contempt proceeding, a violation of an injunction for protection. The court may enforce the respondent's compliance with the injunction by imposing a monetary assessment. The clerk of the court shall collect and receive such assessments. On a monthly basis, the clerk shall transfer the moneys collected pursuant to this paragraph to the State Treasury for deposit in the Crimes Compensation Trust Fund established in § 960.21.

(b) If the respondent is arrested by a law enforcement officer under § 901.15(6) for committing an act of repeat violence, sexual violence, or dating violence in violation of an injunction for protection, the respondent shall be held in custody until brought before the court as expeditiously as possible for the purpose of enforcing the injunction and for admittance to bail in accordance with chapter 903 and the applicable rules of criminal procedure, pending a hearing.

(10) The petitioner or the respondent may move the court to modify or dissolve an injunction at any time.

(11) Any law enforcement officer who investigates an alleged incident of dating violence shall assist the victim to obtain medical treatment if such is required as a result of the alleged incident to which the officer responds. Any law enforcement officer who investigates an alleged incident of dating violence shall advise the victim of such violence that there is a domestic violence center from which the victim may receive services. The law enforcement officer shall give the victim immediate notice of the legal rights and remedies available on a standard form developed and distributed by the Department of Law Enforcement. As necessary, the Department of Law Enforcement shall revise the Legal Rights and Remedies Notice to Victims to include a general summary of this section, using simple English as well as Spanish, and shall distribute the notice as a model form to be used by all law enforcement agencies throughout the state. The notice shall include:

(a) The resource listing, including telephone number, for the area domestic violence center designated by the Department of Children and Family Services; and

(b) A copy of the following statement: "IF YOU ARE THE VICTIM OF DATING VIOLENCE, you may ask the state attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an injunction for protection from dating violence which may include, but need not be limited to, provisions that restrain the abuser from further acts of abuse; direct the abuser to leave your household; and prevent the

abuser from entering your residence, school, business, or place of employment."

(12) When a law enforcement officer investigates an allegation that an incident of dating violence has occurred, the officer shall handle the incident pursuant to the arrest policy provided in § 901.15(7), and as developed in accordance with subsections (13), (14), and (16). Whether or not an arrest is made, the officer shall make a written police report that is complete and clearly indicates that the alleged offense was an incident of dating violence. Such report shall be given to the officer's supervisor and filed with the law enforcement agency in a manner that will permit data on dating violence cases to be compiled. Such report must include:

(a) A description of physical injuries observed, if any.

(b) If a law enforcement officer decides not to make an arrest or decides to arrest two or more parties, the grounds for not arresting anyone or for arresting two or more parties.

(c) A statement which indicates that a copy of the legal rights and remedies notice was given to the victim.

Whenever possible, the law enforcement officer shall obtain a written statement from the victim and witnesses concerning the alleged dating violence. The officer shall submit the report to the supervisor or other person to whom the employer's rules or policies require reports of similar allegations of criminal activity to be made. The law enforcement agency shall, without charge, send a copy of the initial police report, as well as any subsequent, supplemental, or related report, which excludes victim or witness statements or other materials that are part of an active criminal investigation and are exempt from disclosure under chapter 119, to the nearest locally certified domestic violence center within 24 hours after the agency's receipt of the report. The report furnished to the domestic violence center must include a narrative description of the dating violence incident.

(13) Whenever a law enforcement officer determines upon probable cause that an act of dating violence has been committed within the jurisdiction, or that a person has violated a condition of pretrial release as provided in § 903.047 and the original arrest was for an act of dating violence, the officer may arrest the person or persons suspected of its commission and charge such person or persons with the appropriate crime. The decision to arrest and charge shall not require consent of the victim or consideration of the relationship of the parties.

(14) (a) When complaints are received from two or more parties, the officers shall evaluate each complaint separately to determine whether there is probable cause for arrest.

(b) If a law enforcement officer has probable cause to believe that two or more persons have committed a misdemeanor or felony, or if two or more persons make complaints to the officer, the officer shall try to determine who was the primary aggressor. Arrest is the preferred response only with respect to the primary aggressor and not the preferred response with respect to a person who acts in a reasonable manner to protect or defend himself or herself or another family or household member from dating violence.

(15) A person who willfully violates a condition of pretrial release provided in § 903.047, when the original arrest was for an act of dating violence as defined in this section, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, and shall be held in custody until his or her first appearance.

(16) A law enforcement officer acting in good faith under this section and the officer's employing agency shall be immune from all liability, civil or criminal, that might otherwise be incurred or imposed by reason of the officer's or agency's actions in carrying out the provisions of this section.

784.047. Penalties for violating protective injunction against violators.

A person who willfully violates an injunction for protection against repeat violence, sexual violence, or dating violence, issued pursuant to § 784.046, or a foreign protection order accorded full faith and credit pursuant to § 741.315 by:

(1) Refusing to vacate the dwelling that the parties share;

(2) Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;

(3) Committing an act of repeat violence, sexual violence, or dating violence against the petitioner;

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

(5) Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifi-

cally allows indirect contact through a third party;

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

(7) Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or

(8) Refusing to surrender firearms or ammunition if ordered to do so by the court,

commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

784.048. Stalking; definitions; penalties.

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

(a) "Harass" means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

(b) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. The term does not include constitutionally protected activity such as picketing or other organized protests.

(c) "Credible threat" means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat is not a bar to prosecution under this section.

(d) "Cyberstalk" means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

(2) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) A person who, after an injunction for protection against repeat violence, sexual violence, or dating violence pursuant to § 784.046, or an injunction for protection against domestic violence pursuant to § 741.30, or after any other court-imposed prohibition of conduct toward the subject person or that person's property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a child under 16 years of age commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

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

(7) A person who, after having been sentenced for a violation of § 794.011, § 800.04, or § 847.0135(5) and prohibited from contacting the victim of the offense under § 921.244, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks the victim commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(8) The punishment imposed under this section shall run consecutive to any former sentence imposed for a conviction for any offense under § 794.011, § 800.04, or § 847.0135(5).

(9) (a) The sentencing court shall consider, as a part of any sentence, issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any such order be based upon the seriousness of the facts before the court, the probability of future violations by the perpetrator, and the safety of the victim and his or her family members or individuals closely associated with the victim.

(b) The order may be issued by the court even if the defendant is sentenced to a state prison or a county jail or even if the imposition of the sentence is suspended and the defendant is placed on probation.

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

(1) There is created a cause of action for an injunction for protection against stalking. For the purposes of injunctions for protection against stalking under this section, the offense of stalking shall include the offense of cyberstalking.

(a) A person who is the victim of stalking or the parent or legal guardian of a minor child who is living at home who seeks an injunction for protection against stalking on behalf of the minor child has standing in the circuit court to file a sworn petition for an injunction for protection against stalking.

(b) The cause of action for an injunction for protection may be sought regardless of whether any other cause of action is currently pending between the parties. However, the pendency of any such cause of action shall be alleged in the petition.

(c) The cause of action for an injunction may be sought by any affected person.

(d) The cause of action for an injunction does not require either party to be represented by an attorney.

(e) The court may not issue mutual orders of protection; however, the court is not precluded from issuing separate injunctions for protection against stalking if each party has complied with this section. Compliance with this section may not be waived.

(f) Notwithstanding chapter 47, a petition for an injunction for protection against stalking may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the stalking occurred. There is no minimum requirement of residency to petition for an injunction for protection.

(2) (a) Notwithstanding any other law, the clerk of court may not assess a filing fee to file a petition for protection against stalking. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for reimbursement for petitions for protection against stalking issued by the court, at the rate of $40 per petition. The request for reimbursement shall be submitted in the form and manner prescribed by the Office of the State Courts Administrator. From this reimbursement, the clerk shall pay any law enforcement agency serving the injunction the fee requested by the law enforcement agency; however, this fee may not exceed $20.

(b) A bond is not required by the court for the entry of an injunction.

(c) 1. The clerk of the court shall assist petitioners in seeking both injunctions for protection against stalking and enforcement of a violation thereof as specified in this section.

2. All offices of the clerk of the court shall provide simplified petition forms for the injunction and any modifications to and the enforcement thereof, including instructions for completion.

3. The clerk of the court shall ensure the petitioner's privacy to the extent practicable while completing the forms for an injunction for protection against stalking.

4. The clerk of the court shall provide a petitioner with a minimum of two certified copies of the order of injunction, one of which is serviceable and will inform the petitioner of the process for service and enforcement.

5. The clerk of the court and appropriate staff in each county shall receive training in the effective assistance of petitioners as provided or approved by the Florida Association of Court Clerks and Comptrollers.

6. The clerk of the court in each county shall make available informational brochures on stalking when such a brochure is provided by the local certified domestic violence center or certified rape crisis center.

7. The clerk of the court in each county shall distribute a statewide uniform informational brochure to petitioners at the time of filing for an injunction for protection against stalking when such brochures become available. The brochure must include information about the effect of giving the court false information.

(3) (a) The sworn petition shall allege the existence of such stalking and shall include the specific facts and circumstances for which relief is sought.

(b) The sworn petition shall be in substantially the following form:

PETITION FOR INJUNCTION FOR PROTECTION AGAINST STALKING

Before me, the undersigned authority, personally appeared Petitioner (Name), who has been sworn and says that the following statements are true:

1. Petitioner resides at: _____ (address)

(Petitioner may furnish the address to the court in a separate confidential filing if, for safety reasons, the petitioner requires the

location of the current residence to be confidential.)

2. Respondent resides at: _____ (last known address)

3. Respondent's last known place of employment: _____ (name of business and address)

4. Physical description of respondent: _____

5. Race: _____

6. Sex: _____

7. Date of birth: _____

8. Height: _____

9. Weight: _____

10. Eye color: _____

11. Hair color: _____

12. Distinguishing marks or scars: _____

13. Aliases of respondent: _____

(c) The petitioner shall describe any other cause of action currently pending between the petitioner and respondent. The petitioner shall also describe any previous attempt by the petitioner to obtain an injunction for protection against stalking in this or any other circuit, and the result of that attempt. _____ (Case numbers should be included, if available.)

(d) The petition must provide space for the petitioner to specifically allege that he or she is a victim of stalking because respondent has:

(Mark all sections that apply and describe in the spaces below the incidents of stalking specifying when and where they occurred, including, but not limited to, locations such as a home, school, or place of employment.)

_____ Committed stalking.

_____ Previously threatened, harassed, stalked, cyberstalked, or physically abused the petitioner.

_____ Threatened to harm the petitioner or family members or individuals closely associated with the petitioner.

_____ Intentionally injured or killed a family pet.

_____ Used, or threatened to use, against the petitioner any weapons such as guns or knives.

_____ A criminal history involving violence or the threat of violence, if known.

_____ Another order of protection issued against him or her previously or from another jurisdiction, if known.

_____ Destroyed personal property, including, but not limited to, telephones or other communication equipment, clothing, or other items belonging to the petitioner.

(e) The petitioner seeks an injunction:

(Mark appropriate section or sections.)

_____ Immediately restraining the respondent from committing any acts of stalking.

_____ Restraining the respondent from committing any acts of stalking.

_____ Providing any terms the court deems necessary for the protection of a victim of stalking, including any injunctions or directives to law enforcement agencies.

(f) Every petition for an injunction against stalking must contain, directly above the signature line, a statement in all capital letters and bold type not smaller than the surrounding text, as follows:

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION 837.02, FLORIDA STATUTES.

_____ (initials)

(4) Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. The respondent shall be personally served with a copy of the petition, notice of hearing, and temporary injunction, if any, before the hearing.

(5) (a) If it appears to the court that stalking exists, the court may grant a temporary injunction ex parte, pending a full hearing, and may grant such relief as the court deems proper, including an injunction restraining the respondent from committing any act of stalking.

(b) In a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, evidence other than verified pleadings or affidavits may not be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. If the only ground for denial is no appearance of an immediate and present danger of stalking, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. This paragraph does not affect a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

(c) Any such ex parte temporary injunction is effective for a fixed period not to exceed 15 days. A full hearing, as provided in this section, shall be set for a date no later than the date when the temporary injunction

ceases to be effective. The court may grant a continuance of the hearing before or during a hearing for good cause shown by any party, which shall include a continuance to obtain service of process. An injunction shall be extended if necessary to remain in full force and effect during any period of continuance.

(6) (a) Upon notice and hearing, when it appears to the court that the petitioner is the victim of stalking, the court may grant such relief as the court deems proper, including an injunction:

1. Restraining the respondent from committing any act of stalking.

2. Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent.

3. Referring a petitioner to appropriate services. The court may provide the petitioner with a list of certified domestic violence centers, certified rape crisis centers, and other appropriate referrals in the circuit which the petitioner may contact.

4. Ordering such other relief as the court deems necessary for the protection of a victim of stalking, including injunctions or directives to law enforcement agencies, as provided in this section.

(b) The terms of an injunction restraining the respondent under subparagraph (a)1. or ordering other relief for the protection of the victim under subparagraph (a)4. shall remain in effect until modified or dissolved. Either party may move at any time to modify or dissolve the injunction. Specific allegations are not required. Such relief may be granted in addition to other civil or criminal remedies.

(c) A temporary or final judgment on injunction for protection against stalking entered pursuant to this section shall, on its face, indicate:

1. That the injunction is valid and enforceable in all counties of this state.

2. That law enforcement officers may use their arrest powers pursuant to § 901.15(6) to enforce the terms of the injunction.

3. That the court has jurisdiction over the parties and matter under the laws of this state and that reasonable notice and opportunity to be heard was given to the person against whom the order is sought sufficient to protect that person's right to due process.

4. The date that the respondent was served with the temporary or final order, if obtainable.

(d) The fact that a separate order of protection is granted to each opposing party is not legally sufficient to deny any remedy to either party or to prove that the parties are equally at fault or equally endangered.

(e) A final judgment on an injunction for protection against stalking entered pursuant to this section must, on its face, provide that it is a violation of § 790.233 and a misdemeanor of the first degree for the respondent to have in his or her care, custody, possession, or control any firearm or ammunition.

(f) All proceedings under this subsection shall be recorded. Recording may be by electronic means as provided by the Rules of Judicial Administration.

(7) The court shall allow an advocate from a state attorney's office, a law enforcement agency, a certified rape crisis center, or a certified domestic violence center who is registered under § 39.905 to be present with the petitioner or respondent during any court proceedings or hearings related to the injunction for protection if the petitioner or respondent has made such a request and the advocate is able to be present.

(8) (a) 1. The clerk of the court shall furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. When requested by the sheriff, the clerk of the court may transmit a facsimile copy of an injunction that has been certified by the clerk of the court, and this facsimile copy may be served in the same manner as a certified copy. Upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it on the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of the court, the sheriff may transmit a facsimile copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy. The clerk of the court shall furnish to the sheriff such information concerning the respondent's physical description and location as is required by the Department of Law Enforcement to comply with the verification procedures set forth in this section. Notwithstanding any other law, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions pursuant to this section shall use service and verification procedures consistent with those of the sheriff.

2. If an injunction is issued and the petitioner requests the assistance of a law enforcement agency, the court may order that an officer from the appropriate law enforcement agency accompany the petitioner to assist in the execution or service of the injunction. A law enforcement officer shall accept a copy of an injunction for protection against stalking, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served.

3. An order issued, changed, continued, extended, or vacated subsequent to the original service of documents enumerated under subparagraph 1. shall be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was effected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

4. If the respondent has been served previously with a temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent petition for injunction seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer.

(b) 1. Within 24 hours after the court issues an injunction for protection against stalking or changes, continues, extends, or vacates an injunction for protection against stalking, the clerk of the court must forward a certified copy of the injunction for service to the sheriff having jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against stalking upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff having jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against stalking, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the Department of Law Enforcement.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the Department of Law Enforcement.

5. Within 24 hours after an injunction for protection against stalking is vacated, terminated, or otherwise rendered no longer effective by ruling of the court, the clerk of the court must notify the sheriff receiving original notification of the injunction as provided in subparagraph 2. That agency shall, within 24 hours after receiving such notification from the clerk of the court, notify the Department of Law Enforcement of such action of the court.

(9) (a) The court may enforce a violation of an injunction for protection against stalking through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a criminal violation under § 784.0487. Any assessments or fines ordered by the court enforcing such an injunction shall be collected by the clerk of the court and transferred on a monthly basis to the State Treasury for deposit into the Domestic Violence Trust Fund.

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

(10) The petitioner or the respondent may move the court to modify or dissolve an injunction at any time.

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

(1) If the injunction for protection against stalking or cyberstalking has been violated and the respondent has not been arrested, the petitioner may contact the clerk of the circuit court of the county in which the violation is alleged to have occurred. The clerk shall assist the petitioner in preparing an affidavit in support of reporting the violation or directing the petitioner to the office operated by the court that has been designated by the chief judge of that circuit as the central

intake point for violations of injunctions for protection where the petitioner can receive assistance in the preparation of the affidavit in support of the violation.

(2) The affidavit shall be immediately forwarded by the office assisting the petitioner to the state attorney of that circuit and to such judge as the chief judge determines to be the recipient of affidavits of violations of an injunction. If the affidavit alleges that a crime has been committed, the office assisting the petitioner shall also forward a copy of the petitioner's affidavit to the appropriate law enforcement agency for investigation. No later than 20 days after receiving the initial report, the local law enforcement agency shall complete its investigation and forward a report to the state attorney. The policy adopted by the state attorney in each circuit under § 741.2901(2) shall include a policy regarding intake of alleged violations of injunctions for protection against stalking or cyberstalking under this section. The intake shall be supervised by a state attorney who has been designated and assigned to handle stalking or cyberstalking cases. The state attorney shall determine within 30 working days whether his or her office will file criminal charges or prepare a motion for an order to show cause as to why the respondent should not be held in criminal contempt, or prepare both as alternative findings, or file notice that the case remains under investigation or is pending subject to some other action.

(3) If the court has knowledge that the petitioner or another person is in immediate danger if the court does not act before the decision of the state attorney to proceed, the court shall immediately issue an order of appointment of the state attorney to file a motion for an order to show cause as to why the respondent should not be held in contempt. If the court does not issue an order of appointment of the state attorney, it shall immediately notify the state attorney that the court is proceeding to enforce the violation through criminal contempt.

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

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

(b) Committing an act of stalking against the petitioner;

(c) Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;

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

(e) Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;

(f) Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or

(g) Refusing to surrender firearms or ammunition if ordered to do so by the court,

commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(5) A person who suffers an injury or loss as a result of a violation of an injunction for protection against stalking or cyberstalking may be awarded economic damages for that injury or loss by the court issuing the injunction. Damages include costs and attorney fees for enforcement of the injunction.

784.05. Culpable negligence.

(1) Whoever, through culpable negligence, exposes another person to personal injury commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) Whoever, through culpable negligence, inflicts actual personal injury on another commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) Whoever violates subsection (1) by storing or leaving a loaded firearm within the reach or easy access of a minor commits, if the minor obtains the firearm and uses it to inflict injury or death upon himself or herself or any other person, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. However, this subsection does not apply:

(a) If the firearm was stored or left in a securely locked box or container or in a location which a reasonable person would have believed to be secure, or was securely locked with a trigger lock;

(b) If the minor obtains the firearm as a result of an unlawful entry by any person;

(c) To injuries resulting from target or sport shooting accidents or hunting accidents; or

(d) To members of the Armed Forces, National Guard, or State Militia, or to police or other law enforcement officers, with respect to firearm possession by a minor which occurs during or incidental to the performance of their official duties.

When any minor child is accidentally shot by another family member, no arrest shall be made pursuant to this subsection prior to 7 days after the date of the shooting. With respect to any parent or guardian of any deceased minor, the investigating officers shall file all findings and evidence with the state attorney's office with respect to violations of this subsection. The state attorney shall evaluate such evidence and shall take such action as he or she deems appropriate under the circumstances and may file an information against the appropriate parties.

(4) [1]As used in this act, the term "minor" means any person under the age of 16.

784.062. Misuse of laser lighting devices.

(1) As used in subsection (2), the term "laser lighting device" means a handheld device, not affixed to a firearm, which emits a laser beam that is designed to be used by the operator as a pointer or highlighter to indicate, mark, or identify a specific position, place, item, or object. As used in subsection (3), the term "laser lighting device" means any device designed or used to amplify electromagnetic radiation by stimulated emission.

(2) Any person who knowingly and willfully shines, points, or focuses the beam of a laser lighting device at a law enforcement officer, engaged in the performance of his or her official duties, in such a manner that would cause a reasonable person to believe that a firearm is pointed at him or her commits a noncriminal violation, punishable as provided in § 775.083.

(3) (a) Any person who knowingly and willfully shines, points, or focuses the beam of a laser lighting device on an individual operating a motor vehicle, vessel, or aircraft commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Any person who knowingly and willfully shines, points, or focuses the beam of a laser lighting device on an individual operating a motor vehicle, vessel, or aircraft and such act results in bodily injury commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

784.07. Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.

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

(a) "Emergency medical care provider" means an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in § 401.23, medical director as defined in § 401.23, or any person authorized by an emergency medical service licensed under chapter 401 who is engaged in the performance of his or her duties. The term "emergency medical care provider" also includes physicians, employees, agents, or volunteers of hospitals as defined in chapter 395, who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital's emergency department or the security thereof.

(b) "Firefighter" means any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires.

(c) "Law enforcement explorer" means any person who is a current member of a law enforcement agency's explorer program and who is performing functions other than those required to be performed by sworn law enforcement officers on behalf of a law enforcement agency while under the direct physical supervision of a sworn officer of that agency and wearing a uniform that bears at least one patch that clearly identifies the law enforcement agency that he or she represents.

(d) "Law enforcement officer" includes a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in § 943.10, and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Parole Commission; a federal law enforcement officer as defined in § 901.1505; and law enforcement personnel of the Fish and Wildlife Conservation Commission or the Department of Law Enforcement.

(e) "Public transit employees or agents" means bus operators, train operators, reve-

nue collectors, security personnel, equipment maintenance personnel, or field supervisors, who are employees or agents of a transit agency as described in § 812.015(1)(l).

(f) "Railroad special officer" means a person employed by a Class I, Class II, or Class III railroad and appointed or pending appointment by the Governor pursuant to § 354.01.

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer, a firefighter, an emergency medical care provider, a railroad special officer, a traffic accident investigation officer as described in § 316.640, a nonsworn law enforcement agency employee who is certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI, a law enforcement explorer, a traffic infraction enforcement officer as described in § 316.640, a parking enforcement specialist as defined in § 316.640, a person licensed as a security officer as defined in § 493.6101 and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer, or a security officer employed by the board of trustees of a community college, while the officer, firefighter, emergency medical care provider, railroad special officer, traffic accident investigation officer, traffic infraction enforcement officer, inspector, analyst, operator, law enforcement explorer, parking enforcement specialist, public transit employee or agent, or security officer is engaged in the lawful performance of his or her duties, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(c) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree. Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of 3 years.

(d) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years.

(3) Any person who is convicted of a battery under paragraph (2)(b) and, during the commission of the offense, such person possessed:

(a) A "firearm" or "destructive device" as those terms are defined in § 790.001, shall be sentenced to a minimum term of imprisonment of 3 years.

(b) A semiautomatic firearm and its high-capacity detachable box magazine, as defined in § 775.087(3), or a machine gun as defined in § 790.001, shall be sentenced to a minimum term of imprisonment of 8 years.

Notwithstanding § 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under § 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under § 947.149, prior to serving the minimum sentence.

784.071. Assault or battery on a law enforcement officer; missing while in line of duty; blue alert.

(1) At the request of an authorized person employed at a law enforcement agency, the Department of Law Enforcement, in cooperation with the Department of Highway Safety and Motor Vehicles and the Department of Transportation, shall activate the emergency alert system and issue a blue alert if all of the following conditions are met:

(a) 1. A law enforcement officer has been killed, has suffered serious bodily injury, or has been assaulted with a deadly weapon; or

2. A law enforcement officer is missing while in the line of duty under circumstances evidencing concern for the law enforcement officer's safety;

(b) The suspect has fled the scene of the offense;

(c) The law enforcement agency investigating the offense determines that the suspect poses an imminent threat to the public or to other law enforcement officers;

(d) A detailed description of the suspect's vehicle, or other means of escape, or the license plate of the suspect's vehicle is available for broadcasting;

(e) Dissemination of available information to the public may help avert further harm or assist in the apprehension of the suspect; and

(f) If the law enforcement officer is missing, there is sufficient information available relating to the officer's last known location and physical description, and the description of any vehicle involved, including the license plate number or other identifying information, to be broadcast to the public and other law enforcement agencies, which could assist in locating the missing law enforcement officer.

(2) (a) The blue alert shall be immediately disseminated to the public through the emergency alert system by broadcasting the alert on television, radio, and the dynamic message signs that are located along the state's highways.

(b) If a traffic emergency arises requiring that information pertaining to the traffic emergency be displayed on a highway message sign in lieu of the blue alert information, the agency responsible for displaying information on the highway message sign is not in violation of this section.

784.074. Assault or battery on sexually violent predators detention or commitment facility staff; reclassification of offenses.

(1) Whenever a person is charged with committing an assault or aggravated assault or a battery or aggravated battery upon a staff member of a sexually violent predators detention or commitment facility as defined in part V of chapter 394, while the staff member is engaged in the lawful performance of his or her duties and when the person committing the offense knows or has reason to know the identity or employment of the victim, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

(b) In the case of an aggravated assault, from a felony of the third degree to a felony of the second degree.

(c) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(d) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(2) For purposes of this section, a staff member of the facilities listed includes persons employed by the Department of Children and Family Services, persons employed at facilities licensed by the Department of Children and Family Services, and persons employed at facilities operated under a contract with the Department of Children and Family Services.

784.075. Battery on detention or commitment facility staff or a juvenile probation officer.

A person who commits a battery on a juvenile probation officer, as defined in § 984.03 or § 985.03, on other staff of a detention center or facility as defined in § 984.03(19) or § 985.03, or on a staff member of a commitment facility as defined in § 985.03, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. For purposes of this section, a staff member of the facilities listed includes persons employed by the Department of Juvenile Justice, persons employed at facilities licensed by the Department of Juvenile Justice, and persons employed at facilities operated under a contract with the Department of Juvenile Justice.

784.076. Battery on health services personnel.

A juvenile who has been committed to or detained by the Department of Juvenile Justice pursuant to a court order, who commits battery upon a person who provides health services commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. As used in this section, the term "health services" means preventive, diagnostic, curative, or rehabilitative services and includes alcohol treatment, drug abuse treatment, and mental health services.

784.078. Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.

(1) As used in this section, the term "facility" means a state correctional institution defined in § 944.02(6); a private correctional facility defined in § 944.710 or under chapter 957; a county, municipal, or regional jail or other detention facility of local government under chapter 950 or chapter 951; or a secure facility operated and maintained by the Department of Corrections or the Department of Juvenile Justice.

(2) (a) As used in this section, the term "employee" includes any person employed by or performing contractual services for a public or private entity operating a facility or any person employed by or performing contractual services for the corporation operating the prison industry enhancement programs or the correctional work programs, pursuant to part II of chapter 946.

(b) "Employee" includes any person who is a parole examiner with the Florida Parole Commission.

(3) (a) It is unlawful for any person, while being detained in a facility and with intent to harass, annoy, threaten, or alarm a person in a facility whom he or she knows or reasonably should know to be an employee of such facility, to cause or attempt to cause such employee to come into contact with blood, masticated food, regurgitated food, saliva, seminal fluid, or urine or feces, whether by throwing, tossing, or expelling such fluid or material.

(b) Any person who violates paragraph (a) commits battery of a facility employee, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

784.08. Assault or battery on persons 65 years of age or older; reclassification of offenses; minimum sentence.

(1) A person who is convicted of an aggravated assault or aggravated battery upon a person 65 years of age or older shall be sentenced to a minimum term of imprisonment of 3 years and fined not more than $10,000 and shall also be ordered by the sentencing judge to make restitution to the victim of such offense and to perform up to 500 hours of community service work. Restitution and community service work shall be in addition to any fine or sentence which may be imposed and shall not be in lieu thereof.

(2) Whenever a person is charged with committing an assault or aggravated assault or a battery or aggravated battery upon a person 65 years of age or older, regardless of whether he or she knows or has reason to know the age of the victim, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

(b) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.

(c) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(d) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(3) Notwithstanding the provisions of § 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld.

784.081. Assault or battery on specified officials or employees; reclassification of offenses.

(1) For purposes of this section, the term "sports official" means any person who serves as a referee, an umpire, or a linesman, and any person who serves in a similar capacity as a sports official who may be known by another title, which sports official is duly registered by or is a member of a local, state, regional, or national organization that is engaged in part in providing education and training to sports officials.

(2) Whenever a person is charged with committing an assault or aggravated assault or a battery or aggravated battery upon any elected official or employee of: a school district; a private school; the Florida School for the Deaf and the Blind; a university lab school; a state university or any other entity of the state system of public education, as defined in § 1000.04; a sports official; an employee or protective investigator of the Department of Children and Family Services; an employee of a lead community-based provider and its direct service contract providers; or an employee of the Department of Health or its direct service contract providers, when the person committing the offense knows or has reason to know the identity or position or employment of the victim, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

(b) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.

(c) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(d) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(3) An assault, aggravated assault, battery, or aggravated battery upon a sports official shall be reclassified pursuant to subsection (2) only if such offense is committed upon the sports official when he or she is actively participating as a sports official in an athletic contest or immediately following such athletic contest.

784.082. Assault or battery by a person who is being detained in a prison, jail, or other detention facility upon visitor or other detainee; reclassification of offenses.

Whenever a person who is being detained in a prison, jail, or other detention facility is charged with committing an assault or aggravated assault or a battery or aggravated battery upon any visitor to the detention facility or upon any other detainee in the detention facility, the offense for which the person is charged shall be reclassified as follows:

(1) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

(2) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.

(3) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

(4) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

784.085. Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.

(1) It is unlawful for any person, except a child as defined in this section, to knowingly cause or attempt to cause a child to come into contact with blood, seminal fluid, or urine or feces by throwing, tossing, projecting, or expelling such fluid or material.

(2) Any person, except a child as defined in this section, who violates this section commits battery of a child, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) As used in this section, the term "child" means a person under 18 years of age.

CHAPTER 787
KIDNAPPING; FALSE IMPRISONMENT; LURING OR ENTICING A CHILD; CUSTODY OFFENSES

787.01. Kidnapping; kidnapping of child under age 13, aggravating circumstances.

(1) (a) The term "kidnapping" means forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to:

1. Hold for ransom or reward or as a shield or hostage.

2. Commit or facilitate commission of any felony.

3. Inflict bodily harm upon or to terrorize the victim or another person.

4. Interfere with the performance of any governmental or political function.

(b) Confinement of a child under the age of 13 is against her or his will within the meaning of this subsection if such confinement is without the consent of her or his parent or legal guardian.

(2) A person who kidnaps a person is guilty of a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in § 775.082, § 775.083, or § 775.084.

(3) (a) A person who commits the offense of kidnapping upon a child under the age of 13 and who, in the course of committing the offense, commits one or more of the following:

1. Aggravated child abuse, as defined in § 827.03;

2. Sexual battery, as defined in chapter 794, against the child;

3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of § 800.04 or § 847.0135(5);

4. A violation of § 796.03 or § 796.04, relating to prostitution, upon the child; or

5. Exploitation of the child or allowing the child to be exploited, in violation of § 450.151,

commits a life felony, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Pursuant to § 775.021(4), nothing contained herein shall be construed to prohibit the imposition of separate judgments and sentences for the life felony described in paragraph (a) and for each separate offense enumerated in subparagraphs (a)1.-5.

787.02. False imprisonment; false imprisonment of child under age 13, aggravating circumstances.

(1) (a) The term "false imprisonment" means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will.

(b) Confinement of a child under the age of 13 is against her or his will within the meaning of this section if such confinement is without the consent of her or his parent or legal guardian.

(2) A person who commits the offense of false imprisonment is guilty of a felony of

the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) (a) A person who commits the offense of false imprisonment upon a child under the age of 13 and who, in the course of committing the offense, commits any offense enumerated in subparagraphs 1.-5., commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in § 775.082, § 775.083, or § 775.084.

1. Aggravated child abuse, as defined in § 827.03;

2. Sexual battery, as defined in chapter 794, against the child;

3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of § 800.04 or § 847.0135(5);

4. A violation of § 796.03 or § 796.04, relating to prostitution, upon the child; or

5. Exploitation of the child or allowing the child to be exploited, in violation of § 450.151.

(b) Pursuant to § 775.021(4), nothing contained herein shall be construed to prohibit the imposition of separate judgments and sentences for the first degree offense described in paragraph (a) and for each separate offense enumerated in subparagraphs (a)1.-5.

787.025. Luring or enticing a child.

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

(a) "Structure" means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.

(b) "Dwelling" means a building or conveyance of any kind, either temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging together therein at night, together with the curtilage thereof.

(c) "Conveyance" means any motor vehicle, ship, vessel, railroad car, trailer, aircraft, or sleeping car.

(d) "Convicted" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(2) (a) A person 18 years of age or older who intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(b) A person 18 years of age or older who, having been previously convicted of a violation of paragraph (a), intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) A person 18 years of age or older who, having been previously convicted of a violation of chapter 794, § 800.04, or § 847.0135(5), or a violation of a similar law of another jurisdiction, intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) It is an affirmative defense to a prosecution under this section that:

(a) The person reasonably believed that his or her action was necessary to prevent the child from being seriously injured.

(b) The person lured or enticed, or attempted to lure or entice, the child under the age of 12 into a structure, dwelling, or conveyance for a lawful purpose.

(c) The person's actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of the child.

787.03. Interference with custody.

(1) Whoever, without lawful authority, knowingly or recklessly takes or entices, or aids, abets, hires, or otherwise procures another to take or entice, any minor or any incompetent person from the custody of the minor's or incompetent person's parent, his or her guardian, a public agency having the lawful charge of the minor or incompetent person, or any other lawful custodian commits the offense of interference with custody and commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) In the absence of a court order determining rights to custody or visitation with any minor or with any incompetent person, any parent of the minor or incompetent person, whether natural or adoptive, stepparent, legal guardian, or relative of the minor or incompetent person who has custody thereof and who takes, detains, conceals, or entices away that minor or incompetent person within or without the state with malicious intent to deprive another person of his or her right to custody of the minor or incompetent person commits a felony of the third

degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) A subsequently obtained court order for custody or visitation does not affect application of this section.

(4) It is a defense that:

(a) The defendant had reasonable cause to believe that his or her action was necessary to preserve the minor or the incompetent person from danger to his or her welfare.

(b) The defendant was the victim of an act of domestic violence or had reasonable cause to believe that he or she was about to become the victim of an act of domestic violence as defined in § 741.28, and the defendant had reasonable cause to believe that the action was necessary in order for the defendant to escape from, or protect himself or herself from, the domestic violence or to preserve the minor or incompetent person from exposure to the domestic violence.

(c) The minor or incompetent person was taken away at his or her own instigation without enticement and without purpose to commit a criminal offense with or against the minor or incompetent person, and the defendant establishes that it was reasonable to rely on the instigating acts of the minor or incompetent person.

(5) Proof that a person has not attained the age of 18 years creates the presumption that the defendant knew the minor's age or acted in reckless disregard thereof.

(6) (a) The offenses prescribed in subsections (1) and (2) do not apply in cases in which a person having a legal right to custody of a minor or incompetent person is the victim of any act of domestic violence, has reasonable cause to believe he or she is about to become the victim of any act of domestic violence, as defined in § 741.28, or believes that his or her action was necessary to preserve the minor or the incompetent person from danger to his or her welfare and seeks shelter from such acts or possible acts and takes with him or her the minor or incompetent person.

(b) In order to gain the exception conferred by paragraph (a), a person who takes a minor or incompetent person under this subsection must:

1. Within 10 days after taking the minor or incompetent person, make a report to the sheriff's office or state attorney's office for the county in which the minor or incompetent person resided at the time he or she was taken, which report must include the name of the person taking the minor or incompetent person, the current address and telephone number of the person and minor or incompetent person, and the reasons the minor or incompetent person was taken.

2. Within a reasonable time after taking a minor, commence a custody proceeding that is consistent with the federal Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, or the Uniform Child Custody Jurisdiction and Enforcement Act, §§ 61.501-61.542.

3. Inform the sheriff's office or state attorney's office for the county in which the minor or incompetent person resided at the time he or she was taken of any change of address or telephone number of the person and the minor or incompetent person.

(c) 1. The current address and telephone number of the person and the minor or incompetent person which are contained in the report made to a sheriff or state attorney under paragraph (b) are confidential and exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution.

2. A sheriff or state attorney may allow an agency, as defined in § 119.011, to inspect and copy records made confidential and exempt under this paragraph in the furtherance of that agency's duties and responsibilities.

787.04. Removing minors from state or concealing minors contrary to state agency order or court order.

(1) It is unlawful for any person, in violation of a court order, to lead, take, entice, or remove a minor beyond the limits of this state, or to conceal the location of a minor, with personal knowledge of the order.

(2) It is unlawful for any person, with criminal intent, to lead, take, entice, or remove a minor beyond the limits of this state, or to conceal the location of a minor, during the pendency of any action or proceeding affecting custody of the minor, after having received notice as required by law of the pendency of the action or proceeding, without the permission of the court in which the action or proceeding is pending.

(3) It is unlawful for any person to knowingly and willfully lead, take, entice, or remove a minor beyond the limits of this state, or to knowingly and willfully conceal the location of a minor, during the pendency of a dependency proceeding affecting such minor or during the pendency of any investigation, action, or proceeding concerning the alleged abuse or neglect of such minor, after having received actual or constructive notice of the pendency of such investigation, action, or proceeding and without the permission of the state agency or court in which the investigation, action, or proceeding is pending.

(4) It is unlawful for any person, who has carried beyond the limits of this state any minor whose custody is involved in any action or proceeding pending in this state pursuant to the order of the court in which the action or proceeding is pending or pursuant to the permission of the court, thereafter, to fail to produce the minor in the court or deliver the minor to the person designated by the court.

(5) It is a defense under this section that a person who leads, takes, entices, or removes a minor beyond the limits of the state reasonably believes that his or her action was necessary to protect the minor from child abuse as defined in § 827.03.

(6) Any person who violates this section is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

787.06. Human trafficking.

(1) (a) The Legislature finds that human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, and adults. Thousands of victims are trafficked annually across international borders worldwide. Many of these victims are trafficked into this state. Victims of human trafficking also include citizens of the United States and those persons trafficked domestically within the borders of the United States. The Legislature finds that victims of human trafficking are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.

(b) The Legislature finds that while many victims of human trafficking are forced to work in prostitution or the sexual entertainment industry, trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.

(c) The Legislature finds that traffickers use various techniques to instill fear in victims and to keep them enslaved. Some traffickers keep their victims under lock and key. However, the most frequently used practices are less obvious techniques that include isolating victims from the public and family members; confiscating passports, visas, or other identification documents; using or threatening to use violence toward victims or their families; telling victims that they will be imprisoned or deported for immigration violations if they contact authorities; and controlling the victims' funds by holding the money ostensibly for safekeeping.

(d) It is the intent of the Legislature that the perpetrators of human trafficking be penalized for their illegal conduct and that the victims of trafficking be protected and assisted by this state and its agencies. In furtherance of this policy, it is the intent of the Legislature that the state Supreme Court, The Florida Bar, and relevant state agencies prepare and implement training programs in order that judges, attorneys, law enforcement personnel, investigators, and others are able to identify traffickers and victims of human trafficking and direct victims to appropriate agencies for assistance. It is the intent of the Legislature that the Department of Children and Family Services and other state agencies cooperate with other state and federal agencies to ensure that victims of human trafficking can access social services and benefits to alleviate their plight.

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

(a) "Coercion" means:

1. Using or threatening to use physical force against any person;

2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;

3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;

4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;

5. Causing or threatening to cause financial harm to any person;

6. Enticing or luring any person by fraud or deceit; or

7. Providing a controlled substance as outlined in Schedule I or Schedule II of § 893.03 to any person for the purpose of exploitation of that person.

(b) "Commercial sexual activity" means any violation of chapter 796 or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography.

(c) "Financial harm" includes extortionate extension of credit, loan sharking as defined in § 687.071, or employment contracts that violate the statute of frauds as provided in § 725.01.

(d) "Human trafficking" means transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

(e) "Labor" means work of economic or financial value.

(f) "Maintain" means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service.

(g) "Obtain" means, in relation to labor or services, to secure performance thereof.

(h) "Services" means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.

(i) "Sexually explicit performance" means an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

(j) "Unauthorized alien" means an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. § 1324a(h)(3). The term shall be interpreted consistently with that section and any applicable federal rules or regulations.

(k) "Venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

(3) Any person who knowingly, or in reckless disregard of the facts, engages in, or attempts to engage in, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:

(a) Using coercion for labor or services commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Using coercion for commercial sexual activity commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) Using coercion for labor or services of any individual who is an unauthorized alien commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(d) Using coercion for commercial sexual activity of any individual who is an unauthorized alien commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(e) Using coercion for labor or services who does so by the transfer or transport of any individual from outside this state to within the state commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(f) Using coercion for commercial sexual activity who does so by the transfer or transport of any individual from outside this state to within the state commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(g) For commercial sexual activity in which any child under the age of 18 is involved commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life, or as provided in § 775.082, § 775.083, or § 775.084. In a prosecution under this paragraph in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the state need not prove that the defendant knew that the person had not attained the age of 18 years.

(h) For commercial sexual activity in which any child under the age of 15 is involved commits a life felony, punishable as provided in § 775.082, § 775.083, or § 775.084. In a prosecution under this paragraph in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the state need not prove that the defendant knew that the person had not attained the age of 15 years.

For each instance of human trafficking of any individual under this subsection, a separate crime is committed and a separate punishment is authorized.

(4) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking commits a first degree felony, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5)-(6) [Intentionally omitted.]

(7) Any real property or personal property that was used, attempted to be used, or intended to be used in violation of any provision of this section may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.

787.07. Human smuggling.

(1) A person who transports into this state an individual who the person knows, or

should know, is illegally entering the United States from another country commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) A person commits a separate offense for each individual he or she transports into this state in violation of this section.

CHAPTER 790
WEAPONS AND FIREARMS

790.001. Definitions.

As used in this chapter, except where the context otherwise requires:

(1) "Antique firearm" means any firearm manufactured in or before 1918 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica thereof, whether actually manufactured before or after the year 1918, and also any firearm using fixed ammunition manufactured in or before 1918, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(2) "Concealed firearm" means any firearm, as defined in subsection (6), which is carried on or about a person in such a manner as to conceal the firearm from the ordinary sight of another person.

(3) (a) "Concealed weapon" means any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person.

(b) "Tear gas gun" or "chemical weapon or device" means any weapon of such nature, except a device known as a "self-defense chemical spray." "Self-defense chemical spray" means a device carried solely for purposes of lawful self-defense that is compact in size, designed to be carried on or about the person, and contains not more than two ounces of chemical.

(4) "Destructive device" means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. "Destructive device" does not include:

(a) A device which is not designed, redesigned, used, or intended for use as a weapon;

(b) Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device;

(c) Any shotgun other than a short-barreled shotgun; or

(d) Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

(5) "Explosive" means any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon application of heat, flame, or shock, including but not limited to dynamite, nitroglycerin, trinitrotoluene, or ammonium nitrate when combined with other ingredients to form an explosive mixture, blasting caps, and detonators; but not including:

(a) Shotgun shells, cartridges, or ammunition for firearms;

(b) Fireworks as defined in § 791.01;

(c) Smokeless propellant powder or small arms ammunition primers, if possessed, purchased, sold, transported, or used in compliance with § 552.241;

(d) Black powder in quantities not to exceed that authorized by chapter 552, or by any rules adopted thereunder by the Department of Financial Services, when used for, or intended to be used for, the manufacture of target and sporting ammunition or for use in muzzle-loading flint or percussion weapons.

The exclusions contained in paragraphs (a)-(d) do not apply to the term "explosive" as used in the definition of "firearm" in subsection (6).

(6) "Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

(7) "Indictment" means an indictment or an information in any court under which a crime punishable by imprisonment for a term exceeding 1 year may be prosecuted.

(8) "Law enforcement officer" means:

(a) All officers or employees of the United States or the State of Florida, or any agency, commission, department, board, division, municipality, or subdivision thereof, who have authority to make arrests;

(b) Officers or employees of the United States or the State of Florida, or any agency, commission, department, board, division, municipality, or subdivision thereof, duly authorized to carry a concealed weapon;

(c) Members of the Armed Forces of the United States, the organized reserves, state militia, or Florida National Guard, when on duty, when preparing themselves for, or going to or from, military duty, or under orders;

(d) An employee of the state prisons or correctional systems who has been so designated by the Department of Corrections or by a warden of an institution;

(e) All peace officers;

(f) All state attorneys and United States attorneys and their respective assistants and investigators.

(9) "Machine gun" means any firearm, as defined herein, which shoots, or is designed to shoot, automatically more than one shot, without manually reloading, by a single function of the trigger.

(10) "Short-barreled shotgun" means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches.

(11) "Short-barreled rifle" means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches.

(12) "Slungshot" means a small mass of metal, stone, sand, or similar material fixed on a flexible handle, strap, or the like, used as a weapon.

(13) "Weapon" means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.

(14) "Electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

(15) "Dart-firing stun gun" means any device having one or more darts that are capable of delivering an electrical current.

(16) "Readily accessible for immediate use" means that a firearm or other weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person.

(17) "Securely encased" means in a glove compartment, whether or not locked; snapped in a holster; in a gun case, whether or not locked; in a zippered gun case; or in a closed box or container which requires a lid or cover to be opened for access.

(18) "Sterile area" means the area of an airport to which access is controlled by the inspection of persons and property in accordance with federally approved airport security programs.

(19) "Ammunition" means an object consisting of all of the following:

(a) A fixed metallic or nonmetallic hull or casing containing a primer.

(b) One or more projectiles, one or more bullets, or shot.

(c) Gunpowder.

All of the specified components must be present for an object to be ammunition.

790.01. Carrying concealed weapons.

(1) Except as provided in subsection (4), a person who carries a concealed weapon or electric weapon or device on or about his or her person commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) A person who carries a concealed firearm on or about his or her person commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) This section does not apply to a person licensed to carry a concealed weapon or a concealed firearm pursuant to the provisions of § 790.06.

(4) It is not a violation of this section for a person to carry for purposes of lawful self-defense, in a concealed manner:

(a) A self-defense chemical spray.

(b) A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

(5) This section does not preclude any prosecution for the use of an electric weapon or device, a dart-firing stun gun, or a self-defense chemical spray during the commis-

sion of any criminal offense under § 790.07, § 790.10, § 790.23, or § 790.235, or for any other criminal offense.

790.015. Nonresidents who are United States citizens and hold a concealed weapons license in another state; reciprocity.

(1) Notwithstanding § 790.01, a nonresident of Florida may carry a concealed weapon or concealed firearm while in this state if the nonresident:

(a) Is 21 years of age or older.

(b) Has in his or her immediate possession a valid license to carry a concealed weapon or concealed firearm issued to the nonresident in his or her state of residence.

(c) Is a resident of the United States.

(2) A nonresident is subject to the same laws and restrictions with respect to carrying a concealed weapon or concealed firearm as a resident of Florida who is so licensed.

(3) If the resident of another state who is the holder of a valid license to carry a concealed weapon or concealed firearm issued in another state establishes legal residence in this state by:

(a) Registering to vote;

(b) Making a statement of domicile pursuant to § 222.17; or

(c) Filing for homestead tax exemption on property in this state,

the license shall remain in effect for 90 days following the date on which the holder of the license establishes legal state residence.

(4) This section applies only to nonresident concealed weapon or concealed firearm licenseholders from states that honor Florida concealed weapon or concealed firearm licenses.

(5) The requirement of paragraph (1)(a) does not apply to a person who:

(a) Is a servicemember, as defined in § 250.01; or

(b) Is a veteran of the United States Armed Forces who was discharged under honorable conditions.

790.02. Officer to arrest without warrant and upon probable cause.

The carrying of a concealed weapon is declared a breach of peace, and any officer authorized to make arrests under the laws of this state may make arrests without warrant of persons violating the provisions of § 790.01 when said officer has reasonable grounds or probable cause to believe that the offense of carrying a concealed weapon is being committed.

790.051. Exemption from licensing requirements; law enforcement officers.

Law enforcement officers are exempt from the licensing and penal provisions of this chapter when acting at any time within the scope or course of their official duties or when acting at any time in the line of or performance of duty.

790.052. Carrying concealed firearms; off-duty law enforcement officers.

(1) All persons holding active certifications from the Criminal Justice Standards and Training Commission as law enforcement officers or correctional officers as defined in § 943.10(1), (2), (6), (7), (8), or (9) shall have the right to carry, on or about their persons, concealed firearms, during off-duty hours, at the discretion of their superior officers, and may perform those law enforcement functions that they normally perform during duty hours, utilizing their weapons in a manner which is reasonably expected of on-duty officers in similar situations. However, nothing in this subsection shall be construed to limit the right of a law enforcement officer, correctional officer, or correctional probation officer to carry a concealed firearm off duty as a private citizen under the exemption provided in § 790.06 that allows a law enforcement officer, correctional officer, or correctional probation officer as defined in § 943.10(1), (2), (3), (6), (7), (8), or (9) to carry a concealed firearm without a concealed weapon or firearm license. The appointing or employing agency or department of an officer carrying a concealed firearm as a private citizen under § 790.06 shall not be liable for the use of the firearm in such capacity. Nothing herein limits the authority of the appointing or employing agency or department from establishing policies limiting law enforcement officers or correctional officers from carrying concealed firearms during off-duty hours in their capacity as appointees or employees of the agency or department.

(2) The superior officer of any police department or sheriff's office or the Florida Highway Patrol, if he or she elects to direct the officers under his or her supervision to carry concealed firearms while off duty, shall file a statement with the governing body of such department of his or her instructions and requirements relating to the carrying of said firearms.

790.053. Open carrying of weapons.

(1) Except as otherwise provided by law and in subsection (2), it is unlawful for any person to openly carry on or about his or her

person any firearm or electric weapon or device. It is not a violation of this section for a person licensed to carry a concealed firearm as provided in § 790.06(1), and who is lawfully carrying a firearm in a concealed manner, to briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense.

(2) A person may openly carry, for purposes of lawful self-defense:

(a) A self-defense chemical spray.

(b) A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

(3) Any person violating this section commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

790.054. Prohibited use of self-defense weapon or device against law enforcement officer; penalties.

A person who knowingly and willfully uses a self-defense chemical spray, a nonlethal stun gun or other nonlethal electric weapon or device, or a dart-firing stun gun against a law enforcement officer engaged in the performance of his or her duties commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

790.06. License to carry concealed weapon or firearm.

(1) The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or concealed firearms to persons qualified as provided in this section. Each such license must bear a color photograph of the licensee. For the purposes of this section, concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in § 790.001(9). Such licenses shall be valid throughout the state for a period of 7 years from the date of issuance. Any person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding the provisions of § 790.01. The licensee must carry the license, together with valid identification, at all times in which the licensee is in actual possession of a concealed weapon or firearm and must display both the license and proper identification upon demand by a law enforcement officer. Violations of the provisions of this subsection shall constitute a noncriminal violation with a penalty of $25, payable to the clerk of the court.

(2) The Department of Agriculture and Consumer Services shall issue a license if the applicant:

(a) Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;

(b) Is 21 years of age or older;

(c) Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;

(d) Is not ineligible to possess a firearm pursuant to § 790.23 by virtue of having been convicted of a felony;

(e) Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of chapter 893 or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;

(f) Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under chapter 397 or under the provisions of former chapter 396 or has been convicted under § 790.151 or has been deemed a habitual offender under § 856.011(3), or has had two or more convictions under § 316.193 or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;

(g) Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;

(h) Demonstrates competence with a firearm by any one of the following:

1. Completion of any hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or a similar agency of another state;

2. Completion of any National Rifle Association firearms safety or training course;

3. Completion of any firearms safety or training course or class available to the general public offered by a law enforcement, junior college, college, or private or public institution or organization or firearms training school, utilizing instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department of Agriculture and Consumer Services;

4. Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;

5. Presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;

6. Is licensed or has been licensed to carry a firearm in this state or a county or municipality of this state, unless such license has been revoked for cause; or

7. Completion of any firearms training or safety course or class conducted by a state-certified or National Rifle Association certified firearms instructor;

A photocopy of a certificate of completion of any of the courses or classes; or an affidavit from the instructor, school, club, organization, or group that conducted or taught said course or class attesting to the completion of the course or class by the applicant; or a copy of any document which shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this paragraph; any person who conducts a course pursuant to subparagraph 2., subparagraph 3., or subparagraph 7., or who, as an instructor, attests to the completion of such courses, must maintain records certifying that he or she observed the student safely handle and discharge the firearm;

(i) Has not been adjudicated an incapacitated person under § 744.331, or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;

(j) Has not been committed to a mental institution under chapter 394, or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;

(k) Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;

(l) Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and

(m) Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

(3) The Department of Agriculture and Consumer Services shall deny a license if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged. The Department of Agriculture and Consumer Services shall revoke a license if the licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding 3 years. The department shall, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license under this section, until final disposition of the case. The department shall suspend a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.

(4) The application shall be completed, under oath, on a form promulgated by the Department of Agriculture and Consumer Services and shall include:

(a) The name, address, place and date of birth, race, and occupation of the applicant;

(b) A statement that the applicant is in compliance with criteria contained within subsections (2) and (3);

(c) A statement that the applicant has been furnished a copy of this chapter and is knowledgeable of its provisions;

(d) A conspicuous warning that the application is executed under oath and that a false answer to any question, or the submission of any false document by the applicant, subjects

the applicant to criminal prosecution under § 837.06; and

(e) A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.

(5) The applicant shall submit to the Department of Agriculture and Consumer Services:

(a) A completed application as described in subsection (4).

(b) A nonrefundable license fee not to exceed $70, if he or she has not previously been issued a statewide license, or a nonrefundable license fee not to exceed $60 for renewal of a statewide license. Costs for processing the set of fingerprints as required in paragraph (c) shall be borne by the applicant. However, an individual holding an active certification from the Criminal Justice Standards and Training Commission as a "law enforcement officer," "correctional officer," or "correctional probation officer" as defined in § 943.10(1), (2), (3), (6), (7), (8), or (9) is exempt from the licensing requirements of this section. If any individual holding an active certification from the Criminal Justice Standards and Training Commission as a "law enforcement officer," a "correctional officer," or a "correctional probation officer" as defined in § 943.10(1), (2), (3), (6), (7), (8), or (9) wishes to receive a concealed weapons or firearms license, such person is exempt from the background investigation and all background investigation fees, but shall pay the current license fees regularly required to be paid by nonexempt applicants. Further, a law enforcement officer, a correctional officer, or a correctional probation officer as defined in § 943.10(1), (2), or (3) is exempt from the required fees and background investigation for a period of 1 year subsequent to the date of retirement of said officer as a law enforcement officer, a correctional officer, or a correctional probation officer.

(c) A full set of fingerprints of the applicant administered by a law enforcement agency or the Division of Licensing of the Department of Agriculture and Consumer Services.

(d) A photocopy of a certificate or an affidavit or document as described in paragraph (2)(h).

(e) A full frontal view color photograph of the applicant taken within the preceding 30 days, in which the head, including hair, measures 7/8 of an inch wide and 11/8 inches high.

(6) (a) The Department of Agriculture and Consumer Services, upon receipt of the items listed in subsection (5), shall forward the full set of fingerprints of the applicant to the Department of Law Enforcement for state and federal processing, provided the federal service is available, to be processed for any criminal justice information as defined in § 943.045. The cost of processing such fingerprints shall be payable to the Department of Law Enforcement by the Department of Agriculture and Consumer Services.

(b) The sheriff's office shall provide fingerprinting service if requested by the applicant and may charge a fee not to exceed $5 for this service.

(c) The Department of Agriculture and Consumer Services shall, within 90 days after the date of receipt of the items listed in subsection (5):

1. Issue the license; or

2. Deny the application based solely on the ground that the applicant fails to qualify under the criteria listed in subsection (2) or subsection (3). If the Department of Agriculture and Consumer Services denies the application, it shall notify the applicant in writing, stating the ground for denial and informing the applicant of any right to a hearing pursuant to chapter 120.

3. In the event the department receives criminal history information with no final disposition on a crime which may disqualify the applicant, the time limitation prescribed by this paragraph may be suspended until receipt of the final disposition or proof of restoration of civil and firearm rights.

(d) In the event a legible set of fingerprints, as determined by the Department of Agriculture and Consumer Services or the Federal Bureau of Investigation, cannot be obtained after two attempts, the Department of Agriculture and Consumer Services shall determine eligibility based upon the name checks conducted by the Florida Department of Law Enforcement.

(e) A consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country must be issued a license within 20 days after the date of the receipt of a completed application, certification document, color photograph as specified in paragraph (5)(e), and a nonrefundable license fee of $300. Consular security official licenses shall be valid for 1 year and may be renewed upon completion of the application process as provided in this section.

(7) The Department of Agriculture and Consumer Services shall maintain an automated listing of licenseholders and pertinent information, and such information shall be available online, upon request, at all times to all law enforcement agencies through the Florida Crime Information Center.

(8) Within 30 days after the changing of a permanent address, or within 30 days after having a license lost or destroyed, the licensee shall notify the Department of Agriculture and Consumer Services of such change. Failure to notify the Department of Agriculture and Consumer Services pursuant to the provisions of this subsection shall constitute a noncriminal violation with a penalty of $25.

(9) In the event that a concealed weapon or firearm license is lost or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of $15 to the Department of Agriculture and Consumer Services, obtain a duplicate, or substitute thereof, upon furnishing a notarized statement to the Department of Agriculture and Consumer Services that such license has been lost or destroyed.

(10) A license issued under this section shall be suspended or revoked pursuant to chapter 120 if the licensee:

(a) Is found to be ineligible under the criteria set forth in subsection (2);

(b) Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;

(c) Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to § 790.23;

(d) Is found guilty of a crime under the provisions of chapter 893, or similar laws of any other state, relating to controlled substances;

(e) Is committed as a substance abuser under chapter 397, or is deemed a habitual offender under § 856.011(3), or similar laws of any other state;

(f) Is convicted of a second violation of § 316.193, or a similar law of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;

(g) Is adjudicated an incapacitated person under § 744.331, or similar laws of any other state; or

(h) Is committed to a mental institution under chapter 394, or similar laws of any other state.

(11) (a) No less than 90 days before the expiration date of the license, the Department of Agriculture and Consumer Services shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of Agriculture and Consumer Services. The licensee must renew his or her license on or before the expiration date by filing with the Department of Agriculture and Consumer Services the renewal form containing a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3), a color photograph as specified in paragraph (5)(e), and the required renewal fee. Out-of-state residents must also submit a complete set of fingerprints and fingerprint processing fee. The license shall be renewed upon receipt of the completed renewal form, color photograph, appropriate payment of fees, and, if applicable, fingerprints. Additionally, a licensee who fails to file a renewal application on or before its expiration date must renew his or her license by paying a late fee of $15. A license may not be renewed 180 days or more after its expiration date, and such a license is deemed to be permanently expired. A person whose license has been permanently expired may reapply for licensure; however, an application for licensure and fees under subsection (5) must be submitted, and a background investigation shall be conducted pursuant to this section. A person who knowingly files false information under this subsection is subject to criminal prosecution under § 837.06.

(b) A license issued to a servicemember, as defined in § 250.01, is subject to paragraph (a); however, such a license does not expire while the servicemember is serving on military orders that have taken him or her over 35 miles from his or her residence and shall be extended, as provided in this paragraph, for up to 180 days after his or her return to such residence. If the license renewal requirements in paragraph (a) are met within the 180-day extension period, the servicemember may not be charged any additional costs, such as, but not limited to, late fees or delinquency fees, above the normal license fees. The servicemember must present to the Department of Agriculture and Consumer Services a copy of his or her official military orders or a written verification from the member's commanding officer before the end of the 180-day period in order to qualify for the extension.

(12) (a) A license issued under this section does not authorize any person to openly

carry a handgun or carry a concealed weapon or firearm into:

1. Any place of nuisance as defined in § 823.05;

2. Any police, sheriff, or highway patrol station;

3. Any detention facility, prison, or jail;

4. Any courthouse;

5. Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;

6. Any polling place;

7. Any meeting of the governing body of a county, public school district, municipality, or special district;

8. Any meeting of the Legislature or a committee thereof;

9. Any school, college, or professional athletic event not related to firearms;

10. Any elementary or secondary school facility or administration building;

11. Any career center;

12. Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;

13. Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;

14. The inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or

15. Any place where the carrying of firearms is prohibited by federal law.

(b) A person licensed under this section shall not be prohibited from carrying or storing a firearm in a vehicle for lawful purposes.

(c) This section does not modify the terms or conditions of § 790.251(7).

(d) Any person who knowingly and willfully violates any provision of this subsection commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(13) All moneys collected by the department pursuant to this section shall be deposited in the Division of Licensing Trust Fund, and the Legislature shall appropriate from the fund those amounts deemed necessary to administer the provisions of this section. All revenues collected, less those costs determined by the Department of Agriculture and Consumer Services to be nonrecurring or one-time costs, shall be deferred over the 7-year licensure period. Notwithstanding the provisions of § 493.6117, all moneys collected pursuant to this section shall not revert to the General Revenue Fund; however, this shall not abrogate the requirement for payment of the service charge imposed pursuant to chapter 215.

(14) All funds received by the sheriff pursuant to the provisions of this section shall be deposited into the general revenue fund of the county and shall be budgeted to the sheriff.

(15) The Legislature finds as a matter of public policy and fact that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed weapons and firearms for self-defense and finds it necessary to occupy the field of regulation of the bearing of concealed weapons or firearms for self-defense to ensure that no honest, law-abiding person who qualifies under the provisions of this section is subjectively or arbitrarily denied his or her rights. The Department of Agriculture and Consumer Services shall implement and administer the provisions of this section. The Legislature does not delegate to the Department of Agriculture and Consumer Services the authority to regulate or restrict the issuing of licenses provided for in this section, beyond those provisions contained in this section. Subjective or arbitrary actions or rules which encumber the issuing process by placing burdens on the applicant beyond those sworn statements and specified documents detailed in this section or which create restrictions beyond those specified in this section are in conflict with the intent of this section and are prohibited. This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense. This section is supplemental and additional to existing rights to bear arms, and nothing in this section shall impair or diminish such rights.

(16) The Department of Agriculture and Consumer Services shall maintain statistical information on the number of licenses issued, revoked, suspended, and denied.

(17) As amended by chapter 87-24, Laws of Florida, this section shall be known and may be cited as the "Jack Hagler Self Defense Act."

790.061. Judges and justices; exceptions from licensure provisions.

A county court judge, circuit court judge, district court of appeal judge, justice of the supreme court, federal district court judge, or federal court of appeals judge serving in this state is not required to comply with the provisions of § 790.06 in order to receive a license to carry a concealed weapon or firearm, except that any such justice or judge must comply with the provisions of § 790.06(2)(h). The Department of Agriculture and Consumer Services shall issue a license to carry a concealed weapon or firearm to any such justice or judge upon demonstration of competence of the justice or judge pursuant to § 790.06(2)(h).

790.062. Members and veterans of United States Armed Forces; exceptions from licensure provisions.

(1) Notwithstanding § 790.06(2)(b), the Department of Agriculture and Consumer Services shall issue a license to carry a concealed weapon or firearm under § 790.06 if the applicant is otherwise qualified and:

(a) Is a servicemember, as defined in § 250.01; or

(b) Is a veteran of the United States Armed Forces who was discharged under honorable conditions.

(2) The Department of Agriculture and Consumer Services shall accept fingerprints of an applicant under this section administered by any law enforcement agency, military provost, or other military unit charged with law enforcement duties or as otherwise provided for in § 790.06(5)(c).

HIST: § 1, ch. 2012-108.

790.0655. Purchase and delivery of handguns; mandatory waiting period; exceptions; penalties.

(1) (a) There shall be a mandatory 3-day waiting period, which shall be 3 days, excluding weekends and legal holidays, between the purchase and the delivery at retail of any handgun. "Purchase" means the transfer of money or other valuable consideration to the retailer. "Handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. "Retailer" means and includes every person engaged in the business of making sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in § 212.02(13).

(b) Records of handgun sales must be available for inspection by any law enforcement agency, as defined in § 934.02, during normal business hours.

(2) The 3-day waiting period shall not apply in the following circumstances:

(a) When a handgun is being purchased by a holder of a concealed weapons permit as defined in § 790.06.

(b) To a trade-in of another handgun.

(3) It is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084:

(a) For any retailer, or any employee or agent of a retailer, to deliver a handgun before the expiration of the 3-day waiting period, subject to the exceptions provided in subsection (2).

(b) For a purchaser to obtain delivery of a handgun by fraud, false pretense, or false representation.

790.07. Persons engaged in criminal offense, having weapons.

(1) Whoever, while committing or attempting to commit any felony or while under indictment, displays, uses, threatens, or attempts to use any weapon or electric weapon or device or carries a concealed weapon is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) Whoever, while committing or attempting to commit any felony, displays, uses, threatens, or attempts to use any firearm or carries a concealed firearm is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, and § 775.084.

(3) The following crimes are excluded from application of this section: Antitrust violations, unfair trade practices, restraints of trade, nonsupport of dependents, bigamy, or other similar offenses.

(4) Whoever, having previously been convicted of a violation of subsection (1) or subsection (2) and, subsequent to such conviction, displays, uses, threatens, or attempts to use any weapon, firearm, or electric weapon or device, carries a concealed weapon, or carries a concealed firearm while committing or attempting to commit any felony or while under indictment is guilty of a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Sentence shall not be suspended or deferred under the provisions of this subsection.

790.08. Taking possession of weapons and arms; reports; disposition; custody.

(1) Every officer making an arrest under § 790.07, or under any other law or municipal ordinance within the state, shall take possession of any weapons, electric weapons or devices, or arms mentioned in § 790.07 found upon the person arrested and deliver them to the sheriff of the county, or the chief of police of the municipality wherein the arrest is made, who shall retain the same until after the trial of the person arrested.

(2) If the person arrested as aforesaid is convicted of violating § 790.07, or of a similar offense under any municipal ordinance, or any other offense involving the use or attempted use of such weapons, electric weapons or devices, or arms, such weapons, electric weapons or devices, or arms shall become forfeited to the state, without any order of forfeiture being necessary, although the making of such an order shall be deemed proper, and such weapons, electric weapons or devices, or arms shall be forthwith delivered to the sheriff by the chief of police or other person having custody thereof, and the sheriff is hereby made the custodian of such weapons, electric weapons or devices, and arms for the state.

(3) If the person arrested as aforesaid is acquitted of the offenses mentioned in subsection (2), the said weapons, electric weapons or devices, or arms taken from the person as aforesaid shall be returned to him or her; however, if he or she fails to call for or receive the same within 60 days from and after his or her acquittal or the dismissal of the charges against him or her, the same shall be delivered to the sheriff as aforesaid to be held by the sheriff as hereinafter provided. This subsection shall likewise apply to persons and their weapons, electric weapons or devices, or arms who have heretofore been acquitted or the charges against them dismissed.

(4) All such weapons, electric weapons or devices, and arms now in, or hereafter coming into, the hands of any of the peace officers of this state or any of its political subdivisions, which have been found abandoned or otherwise discarded, or left in their hands and not reclaimed by the owners shall, within 60 days, be delivered by such peace officers to the sheriff of the county aforesaid.

(5) Weapons, electric weapons or devices, and arms coming into the hands of the sheriff pursuant to subsections (3) and (4) aforesaid shall, unless reclaimed by the owner thereof within 6 months from the date the same come into the hands of the said sheriff, become forfeited to the state, and no action or proceeding for their recovery shall thereafter be maintained in this state.

(6) Weapons, electric weapons or devices, and arms coming into the hands of the sheriff as aforesaid shall be listed, kept, and held by him or her as custodian for the state. Any or all such weapons, electric weapons or devices, and arms suitable for use by the sheriff may be so used. All such weapons, electric weapons or devices, and arms not needed by the said sheriff may be loaned to any other department of the state or to any county or municipality having use for such weapons, electric weapons or devices, and arms. The sheriff shall take the receipt of such other department, county, or municipality for such weapons, electric weapons or devices, and arms loaned to them. All weapons, electric weapons or devices, and arms which are not needed or which are useless or unfit for use shall be destroyed or otherwise disposed of by the sheriff as provided in chapter 705 or as provided in the Florida Contraband Forfeiture Act. All sums received from the sale or other disposition of the said weapons, electric weapons or devices, or arms disposed of by the sheriff under chapter 705 as aforesaid shall be paid into the State Treasury for the benefit of the State School Fund and shall become a part thereof. All sums received from the sale or other disposition of any such weapons, electric weapons or devices, or arms disposed of by the sheriff under the Florida Contraband Forfeiture Act shall be disbursed as provided therein.

(7) This section does not apply to any municipality in any county having home rule under the State Constitution.

790.09. Manufacturing or selling slungshot.

Whoever manufactures or causes to be manufactured, or sells or exposes for sale any instrument or weapon of the kind usually known as slungshot, or metallic knuckles, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

790.10. Improper exhibition of dangerous weapons or firearms.

If any person having or carrying any dirk, sword, sword cane, firearm, electric weapon or device, or other weapon shall, in the presence of one or more persons, exhibit the same in a rude, careless, angry, or threatening manner, not in necessary self-defense, the person so offending shall be guilty of a mis-

demeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

790.115. Possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited; penalties; exceptions.

(1) A person who exhibits any sword, sword cane, firearm, electric weapon or device, destructive device, or other weapon as defined in § 790.001(13), including a razor blade, box cutter, or common pocketknife, except as authorized in support of school-sanctioned activities, in the presence of one or more persons in a rude, careless, angry, or threatening manner and not in lawful self-defense, at a school-sponsored event or on the grounds or facilities of any school, school bus, or school bus stop, or within 1,000 feet of the real property that comprises a public or private elementary school, middle school, or secondary school, during school hours or during the time of a sanctioned school activity, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. This subsection does not apply to the exhibition of a firearm or weapon on private real property within 1,000 feet of a school by the owner of such property or by a person whose presence on such property has been authorized, licensed, or invited by the owner.

(2) (a) A person shall not possess any firearm, electric weapon or device, destructive device, or other weapon as defined in § 790.001(13), including a razor blade or box cutter, except as authorized in support of school-sanctioned activities, at a school-sponsored event or on the property of any school, school bus, or school bus stop; however, a person may carry a firearm:

1. In a case to a firearms program, class or function which has been approved in advance by the principal or chief administrative officer of the school as a program or class to which firearms could be carried;

2. In a case to a career center having a firearms training range; or

3. In a vehicle pursuant to § 790.25(5); except that school districts may adopt written and published policies that waive the exception in this subparagraph for purposes of student and campus parking privileges.

For the purposes of this section, "school" means any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.

(b) A person who willfully and knowingly possesses any electric weapon or device, destructive device, or other weapon as defined in § 790.001(13), including a razor blade or box cutter, except as authorized in support of school-sanctioned activities, in violation of this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) 1. A person who willfully and knowingly possesses any firearm in violation of this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

2. A person who stores or leaves a loaded firearm within the reach or easy access of a minor who obtains the firearm and commits a violation of subparagraph 1. commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083; except that this does not apply if the firearm was stored or left in a securely locked box or container or in a location which a reasonable person would have believed to be secure, or was securely locked with a firearm-mounted push-button combination lock or a trigger lock; if the minor obtains the firearm as a result of an unlawful entry by any person; or to members of the Armed Forces, National Guard, or State Militia, or to police or other law enforcement officers, with respect to firearm possession by a minor which occurs during or incidental to the performance of their official duties.

(d) A person who discharges any weapon or firearm while in violation of paragraph (a), unless discharged for lawful defense of himself or herself or another or for a lawful purpose, commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(e) The penalties of this subsection shall not apply to persons licensed under § 790.06. Persons licensed under § 790.06 shall be punished as provided in § 790.06(12), except that a licenseholder who unlawfully discharges a weapon or firearm on school property as prohibited by this subsection commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) This section does not apply to any law enforcement officer as defined in § 943.10(1), (2), (3), (4), (6), (7), (8), (9), or (14).

(4) Notwithstanding § 985.24, § 985.245, or § 985.25(1), any minor under 18 years of age who is charged under this section with possessing or discharging a firearm on school property shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given a probable cause hearing within 24 hours after

being taken into custody. At the hearing, the court may order that the minor continue to be held in secure detention for a period of 21 days, during which time the minor shall receive medical, psychiatric, psychological, or substance abuse examinations pursuant to § 985.18, and a written report shall be completed.

790.145. Crimes in pharmacies; possession of weapons; penalties.

(1) Unless otherwise provided by law, any person who is in possession of a concealed "firearm," as defined in § 790.001(6), or a "destructive device," as defined in § 790.001(4), within the premises of a "pharmacy," as defined in chapter 465, is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) The provisions of this section do not apply:

(a) To any law enforcement officer;

(b) To any person employed and authorized by the owner, operator, or manager of a pharmacy to carry a firearm or destructive device on such premises; or

(c) To any person licensed to carry a concealed weapon.

790.15. Discharging firearm in public or on residential property.

(1) Except as provided in subsection (2) or subsection (3), any person who knowingly discharges a firearm in any public place or on the right-of-way of any paved public road, highway, or street, who knowingly discharges any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises, or who recklessly or negligently discharges a firearm outdoors on any property used primarily as the site of a dwelling as defined in § 776.013 or zoned exclusively for residential use commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. This section does not apply to a person lawfully defending life or property or performing official duties requiring the discharge of a firearm or to a person discharging a firearm on public roads or properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Florida Forest Service.

(2) Any occupant of any vehicle who knowingly and willfully discharges any firearm from the vehicle within 1,000 feet of any person commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Any driver or owner of any vehicle, whether or not the owner of the vehicle is occupying the vehicle, who knowingly directs any other person to discharge any firearm from the vehicle commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

790.151. Using firearm while under the influence of alcoholic beverages, chemical substances, or controlled substances; penalties.

(1) As used in §§ 790.151-790.157, to "use a firearm" means to discharge a firearm or to have a firearm readily accessible for immediate discharge.

(2) For the purposes of this section, "readily accessible for immediate discharge" means loaded and in a person's hand.

(3) It is unlawful and punishable as provided in subsection (4) for any person who is under the influence of alcoholic beverages, any chemical substance set forth in § 877.111, or any substance controlled under chapter 893, when affected to the extent that his or her normal faculties are impaired, to use a firearm in this state.

(4) Any person who violates subsection (3) commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(5) This section does not apply to persons exercising lawful self-defense or defense of one's property.

790.153. Tests for impairment or intoxication; right to refuse.

(1) (a) Any person who uses a firearm within this state shall submit to an approved chemical or physical breath test to determine the alcoholic content of the blood and to a urine test to detect the presence of controlled substances, if there is probable cause to believe that the person was using a firearm while under the influence of alcoholic beverages or controlled substances or that the person is lawfully arrested for any offense allegedly committed while he or she was using a firearm while under the influence of alcoholic beverages or controlled substances. The breath test shall be incidental to a lawful arrest and administered at the request of a law enforcement officer who has probable cause to believe such person was using the firearm within this state while under the influence of alcoholic beverages. The urine test shall be incidental to a lawful arrest and administered at a detention facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has probable cause to believe such person was using a firearm within this state

while under the influence of controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of either test shall not preclude the administration of the other test. The refusal to submit to a chemical or physical breath or urine test upon the request of a law enforcement officer as provided in this section shall be admissible into evidence in any criminal proceeding. This section shall not hinder the taking of a mandatory blood test as outlined in § 790.155.

(b) If the arresting officer does not request a chemical or physical test of the person arrested for any offense allegedly committed while the person was using a firearm while under the influence of alcoholic beverages or controlled substances, such person may request the arresting officer to have a chemical or physical test made of the arrested person's breath for the purpose of determining the alcoholic content of the person's blood or a chemical test of urine or blood for the purpose of determining the presence of controlled substances; and, if so requested, the arresting officer shall have the test performed.

(c) The provisions of § 316.1932(1)(f), relating to administration of tests for determining the weight of alcohol in the defendant's blood, additional tests at the defendant's expense, availability of test information to the defendant or the defendant's attorney, and liability of medical institutions and persons administering such tests are incorporated into this act.

(2) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(3) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of § 790.151 upon request for such information.

790.155. Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.

(1) (a) Notwithstanding any recognized ability to refuse to submit to the tests provided in § 790.153, if a law enforcement officer has probable cause to believe that a firearm used by a person under the influence of alcoholic beverages or controlled substances has caused the death or serious bodily injury of a human being, such person shall submit, upon the request of a law enforcement officer, to a test of his or her blood for the purpose of determining the alcoholic content thereof or the presence of controlled substances therein. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner.

(b) The term "serious bodily injury" means a physical condition which creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(2) The provisions of § 316.1933(2), relating to blood tests for impairment or intoxication, are incorporated into this act.

(3) (a) Any criminal charge resulting from the incident giving rise to the officer's demand for testing should be tried concurrently with a charge of any violation of § 790.151. If such charges are tried separately, the fact that such person refused, resisted, obstructed, or opposed testing shall be admissible at the trial of the criminal offense which gave rise to the demand for testing.

(b) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(4) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of § 790.151 upon request for such information.

790.157. Presumption of impairment; testing methods.

(1) It is unlawful and punishable as provided in § 790.151 for any person who is under the influence of alcoholic beverages or controlled substances, when affected to the extent that his or her normal faculties are impaired, to use a firearm in this state.

(2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while using a firearm while under the influence of alcoholic beverages or controlled

substances, when affected to the extent that his or her normal faculties were impaired or to the extent that the person was deprived of full possession of his or her normal faculties, the results of any test administered in accordance with § 790.153 or § 790.155 and this section shall be admissible into evidence when otherwise admissible, and the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood or chemical or physical analysis of the person's breath, shall give rise to the following presumptions:

(a) If there was at that time 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(b) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(c) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, that fact shall be prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

The percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood. The foregoing provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(3) A chemical analysis of a person's blood to determine its alcoholic content or a chemical or physical analysis of a person's breath, in order to be considered valid under the provisions of this section, must have been performed substantially in accordance with methods approved by the Florida Department of Law Enforcement and by an individual possessing a valid permit issued by the department for this purpose. Any insubstantial differences between approved techniques and actual testing procedures in an individual case shall not render the test or test results invalid. The Florida Department of Law Enforcement may approve satisfactory techniques or methods, ascertain the qualification and competence of individuals to conduct such analyses, and issue permits which shall be subject to termination or revocation in accordance with rules adopted by the department.

(4) Any person charged with using a firearm while under the influence of alcoholic beverages or controlled substances to the extent that his or her normal faculties were impaired, whether in a municipality or not, shall be entitled to trial by jury according to the Florida Rules of Criminal Procedure.

790.16. Discharging machine guns; penalty.

(1) It is unlawful for any person to shoot or discharge any machine gun upon, across, or along any road, street, or highway in the state; upon or across any public park in the state; or in, upon, or across any public place where people are accustomed to assemble in the state. The discharge of such machine gun in, upon, or across such public street; in, upon, or across such public park; or in, upon, or across such public place, whether indoors or outdoors, including all theaters and athletic stadiums, with intent to do bodily harm to any person or with intent to do damage to property not resulting in the death of another person shall be a felony of the first degree, punishable as provided in § 775.082. A sentence not exceeding life imprisonment is specifically authorized when great bodily harm to another or serious disruption of governmental operations results.

(2) This section shall not apply to the use of such machine guns by any United States or state militia or by any law enforcement officer while in the discharge of his or her lawful duty in suppressing riots and disorderly conduct and in preserving and protecting the public peace or in the preservation of public property, or when said use is authorized by law.

790.161. Making, possessing, throwing, projecting, placing, or discharging any destructive device or attempt so to do, felony; penalties.

A person who willfully and unlawfully makes, possesses, throws, projects, places, discharges, or attempts to make, possess, throw, project, place, or discharge any destructive device:

(1) Commits a felony of the third degree, punishable as provided in § 775.082 or § 775.084.

(2) If the act is perpetrated with the intent to do bodily harm to any person, or with the intent to do property damage, or if the act results in a disruption of governmental operations, commerce, or the private affairs of another person, commits a felony of the second degree, punishable as provided in § 775.082 or § 775.084.

(3) If the act results in bodily harm to another person or in property damage, commits a felony of the first degree, punishable as provided in § 775.082 or § 775.084.

(4) If the act results in the death of another person, commits a capital felony, punishable as provided in § 775.082. In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment if convicted of murder in the first degree or of a capital felony under this subsection, and such person shall be ineligible for parole. No sentence of death shall be reduced as a result of a determination that a method of execution is held to be unconstitutional under the State Constitution or the Constitution of the United States.

790.1612. Authorization for governmental manufacture, possession, and use of destructive devices.

The governing body of any municipality or county and the Division of State Fire Marshal of the Department of Financial Services have the power to authorize the manufacture, possession, and use of destructive devices as defined in § 790.001(4).

790.1615. Unlawful throwing, projecting, placing, or discharging of destructive device or bomb that results in injury to another; penalty.

(1) A person who perpetrates any unlawful throwing, projecting, placing, or discharging of a destructive device or bomb that results in any bodily harm to a firefighter or any other person, regardless of intent or lack of intent to cause such harm, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) A person who perpetrates any unlawful throwing, projecting, placing, or discharging of a destructive device or bomb that results in great bodily harm, permanent disability, or permanent disfigurement to a firefighter or any other person, regardless of intent or lack of intent to cause such harm, commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Upon conviction and adjudication of guilt, a person may be sentenced separately, pursuant to § 775.021(4), for any violation of this section and for any unlawful throwing, projecting, placing, or discharging of a destructive device or bomb committed during the same criminal episode. A conviction for any unlawful throwing, projecting, placing, or discharging of a destructive device or bomb, however, is not necessary for a conviction under this section.

790.162. Threat to throw, project, place, or discharge any destructive device, felony; penalty.

It is unlawful for any person to threaten to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person, and any person convicted thereof commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

790.163. False report about planting bomb, explosive, or weapon of mass destruction; penalty.

(1) It is unlawful for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction as defined in § 790.166; and any person convicted thereof commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) Notwithstanding any other law, adjudication of guilt or imposition of sentence for a violation of this section may not be suspended, deferred, or withheld. However, the state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, or principals.

(3) Proof that a person accused of violating this section knowingly made a false report is prima facie evidence of the accused person's intent to deceive, mislead, or otherwise misinform any person.

(4) In addition to any other penalty provided by law with respect to any person who is convicted of a violation of this section that resulted in the mobilization or action of any law enforcement officer or any state or local agency, a person convicted of a violation of this section may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.

790.164. False reports concerning planting a bomb, explosive, or weapon of mass destruction in, or committing arson against, state-owned property; penalty; reward.

(1) It is unlawful for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction as defined in § 790.166, or concerning any act of arson or other violence to property owned by the state or any political subdivision. Any person violating this subsection commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) Notwithstanding any other law, adjudication of guilt or imposition of sentence for a violation of this section may not be suspended, deferred, or withheld. However, the state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, or principals.

(3) Proof that a person accused of violating this section knowingly made a false report is prima facie evidence of the accused person's intent to deceive, mislead, or otherwise misinform any person.

(4) (a) There shall be a $5,000 reward for the giving of information to any law enforcement agency in the state, which information leads to the arrest and conviction of any person violating the provisions of this section. Any person claiming such reward shall apply to the law enforcement agency developing the case and be paid by the Department of Law Enforcement from the deficiency fund.

(b) There shall be only one reward given for each case, regardless of how many persons are arrested and convicted in connection with the case and regardless of how many persons submit claims for the reward.

(c) The Department of Law Enforcement shall establish procedures to be used by all reward applicants, and the circuit judge in whose jurisdiction the action occurs shall review all such applications and make final determination as to those applicants entitled to receive an award.

(d) In addition to any other penalty provided by law with respect to any person who is convicted of a violation of this section that resulted in the mobilization or action of any law enforcement officer or any state or local agency, a person convicted of a violation of this section may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.

790.165. Planting of "hoax bomb" prohibited; penalties.

(1) For the purposes of this section, "hoax bomb" means any device or object that by its design, construction, content, or characteristics appears to be, or to contain, or is represented to be or to contain, a destructive device or explosive as defined in this chapter, but is, in fact, an inoperative facsimile or imitation of such a destructive device or explosive, or contains no destructive device or explosive as was represented.

(2) Any person who, without lawful authority, manufactures, possesses, sells, delivers, sends, mails, displays, uses, threatens to use, attempts to use, or conspires to use, or who makes readily accessible to others, a hoax bomb commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Any person who, while committing or attempting to commit any felony, possesses, displays, or threatens to use any hoax bomb commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Notwithstanding any other law, adjudication of guilt or imposition of sentence may not be suspended, deferred, or withheld. However, the state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, or principals.

(4) Subsection (2) does not apply to any law enforcement officer, firefighter, person, or corporation licensed pursuant to chapter 493, or member of the armed forces of the United States while engaged in training or other lawful activity within the scope of his or her employment, or to any person properly authorized to test a security system, or to any security personnel, while operating within the scope of their employment, including, but

not limited to, security personnel in airports and other controlled access areas, or to any member of a theatrical company or production using a hoax bomb as property during the course of a rehearsal or performance.

(5) In addition to any other penalty provided by law with respect to any person who is convicted of a violation of this section that resulted in the mobilization or action of any law enforcement officer or any state or local agency, a person convicted of a violation of this section may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.

790.166. Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction prohibited; definitions; penalties.

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

(a) "Weapon of mass destruction" means:

1. Any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

2. Any device or object involving a biological agent;

3. Any device or object that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life; or

4. Any biological agent, toxin, vector, or delivery system.

(b) "Hoax weapon of mass destruction" means any device or object that by its design, construction, content, or characteristics appears to be or to contain, or is represented to be, constitute, or contain, a weapon of mass destruction as defined in this section, but which is, in fact, an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction which does not meet the definition of a weapon of mass destruction or which does not actually contain or constitute a weapon, biological agent, toxin, vector, or delivery system prohibited by this section.

(c) "Biological agent" means any microorganism, virus, infectious substance, or biological product that may be engineered through biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing:

1. Death, disease, or other biological malfunction in a human, an animal, a plant, or other living organism;

2. Deterioration of food, water, equipment, supplies, or material of any kind; or

3. Deleterious alteration of the environment.

(d) "Toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of reproduction, including:

1. Any poisonous substance or biological product that may be engineered through biotechnology produced by a living organism; or

2. Any poisonous isomer or biological product, homolog, or derivative of such substance.

(e) "Delivery system" means:

1. Any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or

2. Any vector.

(f) "Vector" means a living organism or molecule, including a recombinant molecule or biological product that may be engineered through biotechnology, capable of carrying a biological agent or toxin to a host.

(2) A person who, without lawful authority, manufactures, possesses, sells, delivers, sends, mails, displays, uses, threatens to use, attempts to use, or conspires to use, or who makes readily accessible to others a weapon of mass destruction commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in § 775.082, § 775.083, or § 775.084, and if death results, commits a capital felony, punishable as provided in § 775.082.

(3) Any person who, without lawful authority, manufactures, possesses, sells, delivers, mails, sends, displays, uses, threatens to use, attempts to use, or conspires to use, or who makes readily accessible to others, a hoax weapon of mass destruction commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) Any person who, while committing or attempting to commit any felony, possesses, displays, or threatens to use any hoax weapon of mass destruction commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) Notwithstanding any other law, adjudication of guilt or imposition of sentence may not be suspended, deferred, or withheld for a violation of this section. However, the state

attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, or principals.

(6) Proof that a device or object described in subparagraph (1)(a)1. caused death or serious bodily injury to a human or animal through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors, is prima facie evidence that the device or object was designed or intended to cause such death or serious bodily injury. Proof that a device or object described in subparagraph (1)(a)3. released radiation or radioactivity at a level dangerous to human or animal life is prima facie evidence that the device or object was designed or intended for such release.

(7) This section does not apply to any member or employee of the Armed Forces of the United States, a federal or state governmental agency, or a private entity who is otherwise engaged in lawful activity within the scope of his or her employment, if such person is otherwise duly authorized or licensed to manufacture, possess, sell, deliver, display, or otherwise engage in activity relative to this section and if such person is in compliance with applicable federal and state law.

(8) For purposes of this section, the term "weapon of mass destruction" does not include:

(a) A device or instrument that emits or discharges smoke or an offensive, noxious, or irritant liquid, powder, gas, or chemical for the purpose of immobilizing, incapacitating, or thwarting an attack by a person or animal and that is lawfully possessed or used by a person for the purpose of self-protection or, as provided in subsection (7), is lawfully possessed or used by any member or employee of the Armed Forces of the United States, a federal or state governmental agency, or a private entity. A member or employee of a federal or state governmental agency includes, but is not limited to, a law enforcement officer, as defined in § 784.07; a federal law enforcement officer, as defined in § 901.1505; and an emergency service employee, as defined in § 496.404.

(b) The liquid, powder, gas, chemical, or smoke that is emitted or discharged from a device or instrument as specified in paragraph (a).

(9) In addition to any other penalty provided by law with respect to any person who is convicted of a violation of this section that resulted in the mobilization or action of any law enforcement officer or any state or local agency, a person convicted of a violation of this section may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.

790.17. Furnishing weapons to minors under 18 years of age or persons of unsound mind and furnishing firearms to minors under 18 years of age prohibited.

(1) A person who sells, hires, barters, lends, transfers, or gives any minor under 18 years of age any dirk, electric weapon or device, or other weapon, other than an ordinary pocketknife, without permission of the minor's parent or guardian, or sells, hires, barters, lends, transfers, or gives to any person of unsound mind an electric weapon or device or any dangerous weapon, other than an ordinary pocketknife, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) (a) A person may not knowingly or willfully sell or transfer a firearm to a minor under 18 years of age, except that a person may transfer ownership of a firearm to a minor with permission of the parent or guardian. A person who violates this paragraph commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) The parent or guardian must maintain possession of the firearm except pursuant to § 790.22.

790.173. Legislative findings and intent.

(1) The Legislature finds that a tragically large number of Florida children have been accidentally killed or seriously injured by negligently stored firearms; that placing firearms within the reach or easy access of children is irresponsible, encourages such accidents, and should be prohibited; and that legislative action is necessary to protect the safety of our children.

(2) It is the intent of the Legislature that adult citizens of the state retain their constitutional right to keep and bear firearms for hunting and sporting activities and for defense of self, family, home, and business and as collectibles. Nothing in this act shall be construed to reduce or limit any existing right to purchase and own firearms, or to provide authority to any state or local agency to infringe upon the privacy of any family, home, or business, except by lawful warrant.

790.174. Safe storage of firearms required.

(1) A person who stores or leaves, on a premise under his or her control, a loaded firearm, as defined in § 790.001, and who knows or reasonably should know that a minor is likely to gain access to the firearm without the lawful permission of the minor's parent or the person having charge of the minor, or without the supervision required by law, shall keep the firearm in a securely locked box or container or in a location which a reasonable person would believe to be secure or shall secure it with a trigger lock, except when the person is carrying the firearm on his or her body or within such close proximity thereto that he or she can retrieve and use it as easily and quickly as if he or she carried it on his or her body.

(2) It is a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, if a person violates subsection (1) by failing to store or leave a firearm in the required manner and as a result thereof a minor gains access to the firearm, without the lawful permission of the minor's parent or the person having charge of the minor, and possesses or exhibits it, without the supervision required by law:

(a) In a public place; or

(b) In a rude, careless, angry, or threatening manner in violation of § 790.10.

This subsection does not apply if the minor obtains the firearm as a result of an unlawful entry by any person.

(3) As used in this act, the term "minor" means any person under the age of 16.

790.175. Transfer or sale of firearms; required warnings; penalties.

(1) Upon the retail commercial sale or retail transfer of any firearm, the seller or transferor shall deliver a written warning to the purchaser or transferee, which warning states, in block letters not less than 1/4 inch in height:

"IT IS UNLAWFUL, AND PUNISHABLE BY IMPRISONMENT AND FINE, FOR ANY ADULT TO STORE OR LEAVE A FIREARM IN ANY PLACE WITHIN THE REACH OR EASY ACCESS OF A MINOR UNDER 18 YEARS OF AGE OR TO KNOWINGLY SELL OR OTHERWISE TRANSFER OWNERSHIP OR POSSESSION OF A FIREARM TO A MINOR OR A PERSON OF UNSOUND MIND."

(2) Any retail or wholesale store, shop, or sales outlet which sells firearms must conspicuously post at each purchase counter the following warning in block letters not less than 1 inch in height:

"IT IS UNLAWFUL TO STORE OR LEAVE A FIREARM IN ANY PLACE WITHIN THE REACH OR EASY ACCESS OF A MINOR UNDER 18 YEARS OF AGE OR TO KNOWINGLY SELL OR OTHERWISE TRANSFER OWNERSHIP OR POSSESSION OF A FIREARM TO A MINOR OR A PERSON OF UNSOUND MIND."

(3) Any person or business knowingly violating a requirement to provide warning under this section commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

790.18. Sale or transfer of arms to minors by dealers.

It is unlawful for any dealer in arms to sell or transfer to a minor any firearm, pistol, Springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles, slungshot, or electric weapon or device. A person who violates this section commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

790.19. Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad cars, streetcars, or other vehicles.

Whoever, wantonly or maliciously, shoots at, within, or into, or throws any missile or hurls or projects a stone or other hard substance which would produce death or great bodily harm, at, within, or in any public or private building, occupied or unoccupied, or public or private bus or any train, locomotive, railway car, caboose, cable railway car, street railway car, monorail car, or vehicle of any kind which is being used or occupied by any person, or any boat, vessel, ship, or barge lying in or plying the waters of this state, or aircraft flying through the airspace of this state shall be guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

790.22. Use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.

(1) The use for any purpose whatsoever of BB guns, air or gas-operated guns, or electric weapons or devices, by any minor under the age of 16 years is prohibited unless such use is under the supervision and in the presence

of an adult who is acting with the consent of the minor's parent.

(2) Any adult responsible for the welfare of any child under the age of 16 years who knowingly permits such child to use or have in his or her possession any BB gun, air or gas-operated gun, electric weapon or device, or firearm in violation of the provisions of subsection (1) of this section commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(3) A minor under 18 years of age may not possess a firearm, other than an unloaded firearm at his or her home, unless:

(a) The minor is engaged in a lawful hunting activity and is:

1. At least 16 years of age; or

2. Under 16 years of age and supervised by an adult.

(b) The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:

1. At least 16 years of age; or

2. Under 16 years of age and supervised by an adult who is acting with the consent of the minor's parent or guardian.

(c) The firearm is unloaded and is being transported by the minor directly to or from an event authorized in paragraph (a) or paragraph (b).

(4) (a) Any parent or guardian of a minor, or other adult responsible for the welfare of a minor, who knowingly and willfully permits the minor to possess a firearm in violation of subsection (3) commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Any natural parent or adoptive parent, whether custodial or noncustodial, or any legal guardian or legal custodian of a minor, if that minor possesses a firearm in violation of subsection (3) may, if the court finds it appropriate, be required to participate in classes on parenting education which are approved by the Department of Juvenile Justice, upon the first conviction of the minor. Upon any subsequent conviction of the minor, the court may, if the court finds it appropriate, require the parent to attend further parent education classes or render community service hours together with the child.

(c) The juvenile justice circuit advisory boards or the Department of Juvenile Justice shall establish appropriate community service programs to be available to the alternative sanctions coordinators of the circuit courts in implementing this subsection. The boards or department shall propose the implementation of a community service program in each circuit, and may submit a circuit plan, to be implemented upon approval of the circuit alternative sanctions coordinator.

(d) For the purposes of this section, community service may be provided on public property as well as on private property with the expressed permission of the property owner. Any community service provided on private property is limited to such things as removal of graffiti and restoration of vandalized property.

(5) (a) A minor who violates subsection (3) commits a misdemeanor of the first degree; for a first offense, may serve a period of detention of up to 3 days in a secure detention facility; and, in addition to any other penalty provided by law, shall be required to perform 100 hours of community service; and:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 1 year.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the minor would otherwise have become eligible.

(b) For a second or subsequent offense, a minor who violates subsection (3) commits a felony of the third degree and shall serve a period of detention of up to 15 days in a secure detention facility and shall be required to perform not less than 100 nor more than 250 hours of community service, and:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or

revocation by an additional period of up to 2 years.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.

For the purposes of this subsection, community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds.

(6) Any firearm that is possessed or used by a minor in violation of this section shall be promptly seized by a law enforcement officer and disposed of in accordance with § 790.08(1)-(6).

(7) The provisions of this section are supplemental to all other provisions of law relating to the possession, use, or exhibition of a firearm.

(8) Notwithstanding § 985.24 or § 985.25(1), if a minor is charged with an offense that involves the use or possession of a firearm, including a violation of subsection (3), or is charged for any offense during the commission of which the minor possessed a firearm, the minor shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order that the minor continue to be held in secure detention in accordance with the applicable time periods specified in § 985.26(1)-(5), if the court finds that the minor meets the criteria specified in § 985.255, or if the court finds by clear and convincing evidence that the minor is a clear and present danger to himself or herself or the community. The Department of Juvenile Justice shall prepare a form for all minors charged under this subsection which states the period of detention and the relevant demographic information, including, but not limited to, the gender, age, and race of the minor; whether or not the minor was represented by private counsel or a public defender; the current offense; and the minor's complete prior record, including any pending cases. The form shall be provided to the judge for determining whether the minor should be continued in secure detention under this subsection. An order placing a minor in secure detention because the minor is a clear and present danger to himself or herself or the community must be in writing, must specify the need for detention and the benefits derived by the minor or the community by placing the minor in secure detention, and must include a copy of the form provided by the department.

(9) Notwithstanding § 985.245, if the minor is found to have committed an offense that involves the use or possession of a firearm, as defined in § 790.001, other than a violation of subsection (3), or an offense during the commission of which the minor possessed a firearm, and the minor is not committed to a residential commitment program of the Department of Juvenile Justice, in addition to any other punishment provided by law, the court shall order:

(a) For a first offense, that the minor shall serve a minimum period of detention of 15 days in a secure detention facility; and

1. Perform 100 hours of community service; and may

2. Be placed on community control or in a nonresidential commitment program.

(b) For a second or subsequent offense, that the minor shall serve a mandatory period of detention of at least 21 days in a secure detention facility; and

1. Perform not less than 100 nor more than 250 hours of community service; and may

2. Be placed on community control or in a nonresidential commitment program.

The minor shall not receive credit for time served before adjudication. For the purposes of this subsection, community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds.

(10) If a minor is found to have committed an offense under subsection (9), the court shall impose the following penalties in addition to any penalty imposed under paragraph (9)(a) or paragraph (9)(b):

(a) For a first offense:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 1 year.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the minor would otherwise have become eligible.

(b) For a second or subsequent offense:

1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.

2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 2 years.

3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.

790.221. Possession of short-barreled rifle, short-barreled shotgun, or machine gun; penalty.

(1) It is unlawful for any person to own or to have in his or her care, custody, possession, or control any short-barreled rifle, short-barreled shotgun, or machine gun which is, or may readily be made, operable; but this section shall not apply to antique firearms.

(2) A person who violates this section commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Firearms in violation hereof which are lawfully owned and possessed under provisions of federal law are excepted.

790.225. Ballistic self-propelled knives; unlawful to manufacture, sell, or possess; forfeiture; penalty.

(1) It is unlawful for any person to manufacture, display, sell, own, possess, or use a ballistic self-propelled knife which is a device that propels a knifelike blade as a projectile and which physically separates the blade from the device by means of a coil spring, elastic material, or compressed gas A ballistic self-propelled knife is declared to be a dangerous or deadly weapon and a contraband item. It shall be subject to seizure and shall be disposed of as provided in § 790.08(1) and (6).

(2) This section shall not apply to:

(a) Any device from which a knifelike blade opens, where such blade remains physically integrated with the device when open.

(b) Any device which propels an arrow, a bolt, or a dart by means of any common bow, compound bow, crossbow, or underwater spear gun.

(3) Any person violating the provisions of subsection (1) is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

790.23. Felons and delinquents; possession of firearms, ammunition, or electric weapons or devices unlawful.

(1) It is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been:

(a) Convicted of a felony in the courts of this state;

(b) Found, in the courts of this state, to have committed a delinquent act that would be a felony if committed by an adult and such person is under 24 years of age;

(c) Convicted of or found to have committed a crime against the United States which is designated as a felony;

(d) Found to have committed a delinquent act in another state, territory, or country that would be a felony if committed by an adult and which was punishable by imprisonment for a term exceeding 1 year and such person is under 24 years of age; or

(e) Found guilty of an offense that is a felony in another state, territory, or country and which was punishable by imprisonment for a term exceeding 1 year.

(2) This section shall not apply to a person convicted of a felony whose civil rights and firearm authority have been restored.

(3) Except as otherwise provided in subsection (4), any person who violates this section commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) Notwithstanding the provisions of § 874.04, if the offense described in subsection (1) has been committed by a person who has previously qualified or currently qualifies for the penalty enhancements provided for in § 874.04, the offense is a felony of the first degree, punishable by a term of years

not exceeding life or as provided in § 775.082, § 775.083, or § 775.084.

790.233. Possession of firearm or ammunition prohibited when person is subject to an injunction against committing acts of domestic violence, stalking, or cyberstalking; penalties.

(1) A person may not have in his or her care, custody, possession, or control any firearm or ammunition if the person has been issued a final injunction that is currently in force and effect, restraining that person from committing acts of domestic violence, as issued under § 741.30 or from committing acts of stalking or cyberstalking, as issued under § 784.0485.

(2) A person who violates subsection (1) commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) It is the intent of the Legislature that the disabilities regarding possession of firearms and ammunition are consistent with federal law. Accordingly, this section does not apply to a state or local officer as defined in § 943.10(14), holding an active certification, who receives or possesses a firearm or ammunition for use in performing official duties on behalf of the officer's employing agency, unless otherwise prohibited by the employing agency.

790.235. Possession of firearm or ammunition by violent career criminal unlawful; penalty.

(1) Any person who meets the violent career criminal criteria under § 775.084(1)(d), regardless of whether such person is or has previously been sentenced as a violent career criminal, who owns or has in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or carries a concealed weapon, including a tear gas gun or chemical weapon or device, commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084. A person convicted of a violation of this section shall be sentenced to a mandatory minimum of 15 years' imprisonment; however, if the person would be sentenced to a longer term of imprisonment under § 775.084(4)(d), the person must be sentenced under that provision. A person convicted of a violation of this section is not eligible for any form of discretionary early release, other than pardon, executive clemency, or conditional medical release under § 947.149.

(2) For purposes of this section, the previous felony convictions necessary to meet the violent career criminal criteria under § 775.084(1)(d) may be convictions for felonies committed as an adult or adjudications of delinquency for felonies committed as a juvenile. In order to be counted as a prior felony for purposes of this section, the felony must have resulted in a conviction sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense, and sentenced or adjudicated separately from any other felony that is to be counted as a prior felony.

(3) This section shall not apply to a person whose civil rights and firearm authority have been restored.

790.24. Report of medical treatment of certain wounds; penalty for failure to report.

Any physician, nurse, or employee thereof and any employee of a hospital, sanitarium, clinic, or nursing home knowingly treating any person suffering from a gunshot wound or life-threatening injury indicating an act of violence, or receiving a request for such treatment, shall report the same immediately to the sheriff's department of the county in which said treatment is administered or request therefor received. This section does not affect any requirement that a person has to report abuse pursuant to chapter 39 or chapter 415. Any such person willfully failing to report such treatment or request therefor is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

790.25. Lawful ownership, possession, and use of firearms and other weapons.

(1) DECLARATION OF POLICY.—The Legislature finds as a matter of public policy and fact that it is necessary to promote firearms safety and to curb and prevent the use of firearms and other weapons in crime and by incompetent persons without prohibiting the lawful use in defense of life, home, and property, and the use by United States or state military organizations, and as otherwise now authorized by law, including the right to use and own firearms for target practice and marksmanship on target practice ranges or other lawful places, and lawful hunting and other lawful purposes.

(2) USES NOT AUTHORIZED.—

(a) This section does not authorize carrying a concealed weapon without a permit, as prohibited by §§ 790.01 and 790.02.

(b) The protections of this section do not apply to the following:

1. A person who has been adjudged mentally incompetent, who is addicted to the use of narcotics or any similar drug, or who is a habitual or chronic alcoholic, or a person using weapons or firearms in violation of §§ 790.07-790.115, 790.145-790.19, 790.22-790.24;

2. Vagrants and other undesirable persons as defined in [1]§ 856.02;

3. A person in or about a place of nuisance as defined in § 823.05, unless such person is there for law enforcement or some other lawful purpose.

(3) LAWFUL USES.—The provisions of §§ 790.053 and 790.06 do not apply in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

(a) Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;

(b) Citizens of this state subject to duty in the Armed Forces under § 2, Art. X of the State Constitution, under chapters 250 and 251, and under federal laws, when on duty or when training or preparing themselves for military duty;

(c) Persons carrying out or training for emergency management duties under chapter 252;

(d) Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state;

(e) Officers or employees of the state or United States duly authorized to carry a concealed weapon;

(f) Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state;

(g) Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits;

(h) A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;

(i) A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business;

(j) A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place;

(k) A person firing weapons in a safe and secure indoor range for testing and target practice;

(l) A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;

(m) A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business;

(n) A person possessing arms at his or her home or place of business;

(o) Investigators employed by the several public defenders of the state, while actually carrying out official duties, provided such investigators:

1. Are employed full time;

2. Meet the official training standards for firearms established by the Criminal Justice Standards and Training Commission as provided in § 943.12(5) and the requirements of §§ 493.6108(1)(a) and 943.13(1)-(4); and

3. Are individually designated by an affidavit of consent signed by the employing public defender and filed with the clerk of the circuit court in the county in which the employing public defender resides.

(p) Investigators employed by the capital collateral regional counsel, while actually carrying out official duties, provided such investigators:

1. Are employed full time;

2. Meet the official training standards for firearms as established by the Criminal Justice Standards and Training Commission as provided in § 943.12(1) and the requirements of §§ 493.6108(1)(a) and 943.13(1)-(4); and

3. Are individually designated by an affidavit of consent signed by the capital collateral regional counsel and filed with the clerk of the circuit court in the county in which the investigator is headquartered.

(4) CONSTRUCTION.—This act shall be liberally construed to carry out the declaration of policy herein and in favor of the constitutional right to keep and bear arms for lawful purposes. This act is supplemental and additional to existing rights to bear arms now guaranteed by law and decisions of the courts of Florida, and nothing herein shall impair or diminish any of such rights. This act shall supersede any law, ordinance, or regulation in conflict herewith.

(5) POSSESSION IN PRIVATE CONVEYANCE.—Notwithstanding subsection (2), it is lawful and is not a violation of § 790.01 for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use. Nothing herein contained prohibits the carrying of a legal firearm other than a handgun anywhere in a private conveyance when such firearm is being carried for a lawful use. Nothing herein contained shall be construed to authorize the carrying of a concealed firearm or other weapon on the person. This subsection shall be liberally construed in favor of the lawful use, ownership, and possession of firearms and other weapons, including lawful self-defense as provided in § 776.012.

790.27. Alteration or removal of firearm serial number or possession, sale, or delivery of firearm with serial number altered or removed prohibited; penalties.

(1) (a) It is unlawful for any person to knowingly alter or remove the manufacturer's or importer's serial number from a firearm with intent to disguise the true identity thereof.

(b) Any person violating paragraph (a) is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) (a) It is unlawful for any person to knowingly sell, deliver, or possess any firearm on which the manufacturer's or importer's serial number has been unlawfully altered or removed.

(b) Any person violating paragraph (a) is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) This section shall not apply to antique firearms.

790.29. Paramilitary training; teaching or participation prohibited.

(1) This act shall be known and may be cited as the "State Antiparamilitary Training Act."

(2) As used in this section, the term "civil disorder" means a public disturbance involving acts of violence by an assemblage of three or more persons, which disturbance causes an immediate danger of, or results in, damage or injury to the property or person of any other individual within the United States.

(3) (a) Whoever teaches or demonstrates to any other person the use, application, or making of any firearm, destructive device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that the same will be unlawfully employed for use in, or in furtherance of, a civil disorder within the United States, is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Whoever assembles with one or more persons for the purpose of training with, practicing with, or being instructed in the use of any firearm, destructive device, or technique capable of causing injury or death to persons, intending to unlawfully employ the same for use in, or in furtherance of, a civil disorder within the United States, is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) Nothing contained in this section shall be construed to prohibit any act of a law enforcement officer which is performed in connection with the lawful performance of his or her official duties or to prohibit the training or teaching of the use of weapons to be used for hunting, recreation, competition, self-defense or the protection of one's person or property, or other lawful use.

790.31. Armor-piercing or exploding ammunition or dragon's breath shotgun shells, bolo shells, or flechette shells prohibited.

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

(a) "Armor-piercing bullet" means any bullet which has a steel inner core or core of equivalent hardness and a truncated cone

and which is designed for use in a handgun as an armor-piercing or metal-piercing bullet.

(b) "Exploding bullet" means any bullet that can be fired from any firearm, if such bullet is designed or altered so as to detonate or forcibly break up through the use of an explosive or deflagrant contained wholly or partially within or attached to such bullet. The term does not include any bullet designed to expand or break up through the mechanical forces of impact alone or any signaling device or pest control device not designed to impact on any target.

(c) "Handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver.

(d) "Dragon's breath shotgun shell" means any shotgun shell that contains exothermic pyrophoric misch metal as the projectile and that is designed for the sole purpose of throwing or spewing a flame or fireball to simulate a flamethrower.

(e) "Bolo shell" means any shell that can be fired in a firearm and that expels as projectiles two or more metal balls connected by solid metal wire.

(f) "Flechette shell" means any shell that can be fired in a firearm and that expels two or more pieces of fin-stabilized solid metal wire or two or more solid dart-type projectiles.

(2) (a) Any person who manufactures, sells, offers for sale, or delivers any armor-piercing bullet or exploding bullet, or dragon's breath shotgun shell, bolo shell, or flechette shell is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Any person who possesses an armor-piercing bullet or exploding bullet with knowledge of its armor-piercing or exploding capabilities loaded in a handgun, or who possesses a dragon's breath shotgun shell, bolo shell, or flechette shell with knowledge of its capabilities loaded in a firearm, is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) Any person who possesses with intent to use an armor-piercing bullet or exploding bullet or dragon's breath shotgun shell, bolo shell, or flechette shell to assist in the commission of a criminal act is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) This section does not apply to:

(a) The possession of any item described in subsection (1) by any law enforcement officer, when possessed in connection with the performance of his or her duty as a law enforcement officer, or law enforcement agency.

(b) The manufacture of items described in subsection (1) exclusively for sale or delivery to law enforcement agencies.

(c) The sale or delivery of items described in subsection (1) to law enforcement agencies.

790.33. Field of regulation of firearms and ammunition preempted.

(1) PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.

(2) POLICY AND INTENT.—

(a) It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.

(b) It is further the intent of this section to deter and prevent the violation of this section and the violation of rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof, by the abuse of official authority that occurs when enactments are passed in violation of state law or under color of local or state authority.

(3) PROHIBITIONS; PENALTIES.—

(a) Any person, county, agency, municipality, district, or other entity that violates the Legislature's occupation of the whole field of regulation of firearms and ammunition, as declared in subsection (1), by enacting or causing to be enforced any local ordinance or administrative rule or regulation impinging upon such exclusive occupation of the field shall be liable as set forth herein.

(b) If any county, city, town, or other local government violates this section, the court shall declare the improper ordinance, regula-

tion, or rule invalid and issue a permanent injunction against the local government prohibiting it from enforcing such ordinance, regulation, or rule. It is no defense that in enacting the ordinance, regulation, or rule the local government was acting in good faith or upon advice of counsel.

(c) If the court determines that a violation was knowing and willful, the court shall assess a civil fine of up to $5,000 against the elected or appointed local government official or officials or administrative agency head under whose jurisdiction the violation occurred.

(d) Except as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated this section.

(e) A knowing and willful violation of any provision of this section by a person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance or administrative rule or regulation prohibited under paragraph (a) or otherwise under color of law shall be cause for termination of employment or contract or removal from office by the Governor.

(f) A person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of this section may file suit against any county, agency, municipality, district, or other entity in any court of this state having jurisdiction over any defendant to the suit for declaratory and injunctive relief and for actual damages, as limited herein, caused by the violation. A court shall award the prevailing plaintiff in any such suit:

1. Reasonable attorney's fees and costs in accordance with the laws of this state, including a contingency fee multiplier, as authorized by law; and

2. The actual damages incurred, but not more than $100,000.

Interest on the sums awarded pursuant to this subsection shall accrue at the legal rate from the date on which suit was filed.

(4) EXCEPTIONS.—This section does not prohibit:

(a) Zoning ordinances that encompass firearms businesses along with other businesses, except that zoning ordinances that are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited;

(b) A duly organized law enforcement agency from enacting and enforcing regulations pertaining to firearms, ammunition, or firearm accessories issued to or used by peace officers in the course of their official duties;

(c) Except as provided in § 790.251, any entity subject to the prohibitions of this section from regulating or prohibiting the carrying of firearms and ammunition by an employee of the entity during and in the course of the employee's official duties;

(d) A court or administrative law judge from hearing and resolving any case or controversy or issuing any opinion or order on a matter within the jurisdiction of that court or judge; or

(e) The Florida Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the commission.

(5) SHORT TITLE.—As created by chapter 87-23, Laws of Florida, this section may be cited as the "Joe Carlucci Uniform Firearms Act."

790.335. Prohibition of registration of firearms; electronic records.

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds and declares that:

1. The right of individuals to keep and bear arms is guaranteed under both the Second Amendment to the United States Constitution and § 8, Art. I of the State Constitution.

2. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a law enforcement tool and can become an instrument for profiling, harassing, or abusing law-abiding citizens based on their choice to own a firearm and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution. Further, such a list, record, or registry has the potential to fall into the wrong hands and become a shopping list for thieves.

3. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a tool for fighting terrorism, but rather is an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second Amendment right to

keep and bear arms as guaranteed under the United States Constitution.

4. Law-abiding firearm owners whose names have been illegally recorded in a list, record, or registry are entitled to redress.

(b) The Legislature intends through the provisions of this section to:

1. Protect the right of individuals to keep and bear arms as guaranteed under both the Second Amendment to the United States Constitution and § 8, Art. I of the State Constitution.

2. Protect the privacy rights of law-abiding firearm owners.

(2) PROHIBITIONS.—No state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of such state or other governmental entity or any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.

(3) EXCEPTIONS.—The provisions of this section shall not apply to:

(a) Records of firearms that have been used in committing any crime.

(b) Records relating to any person who has been convicted of a crime.

(c) Records of firearms that have been reported stolen that are retained for a period not in excess of 10 days after such firearms are recovered. Official documentation recording the theft of a recovered weapon may be maintained no longer than the balance of the year entered, plus 2 years.

(d) Firearm records that must be retained by firearm dealers under federal law, including copies of such records transmitted to law enforcement agencies. However, no state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of such state or other governmental entity or any other person, private or public, shall accumulate, compile, computerize, or otherwise collect or convert such written records into any form of list, registry, or database for any purpose.

(e) 1. Records kept pursuant to the record-keeping provisions of § 790.065; however, nothing in this section shall be construed to authorize the public release or inspection of records that are made confidential and exempt from the provisions of § 119.07(1) by § 790.065(4)(a).

2. Nothing in this paragraph shall be construed to allow the maintaining of records containing the names of purchasers or transferees who receive unique approval numbers or the maintaining of records of firearm transactions.

(f) Firearm records, including paper pawn transaction forms and contracts on firearm transactions, required by chapters 538 and 539.

1. Electronic firearm records held pursuant to chapter 538 may only be kept by a secondhand dealer for 30 days after the date of the purchase of the firearm by the secondhand dealer.

2. Electronic firearm records held pursuant to chapter 539 may only be kept by a pawnbroker for 30 days after the expiration of the loan that is secured by a firearm or 30 days after the date of purchase of a firearm, whichever is applicable.

3. Except as required by federal law, any firearm records kept pursuant to chapter 538 or chapter 539 shall not, at any time, be electronically transferred to any public or private entity, agency, business, or enterprise, nor shall any such records be copied or transferred for purposes of accumulation of such records into lists, registries, or databases.

4. Notwithstanding subparagraph 3., secondhand dealers and pawnbrokers may electronically submit firearm transaction records to the appropriate law enforcement agencies as required by chapters 538 and 539; however, the law enforcement agencies may not electronically submit such records to any other person or entity and must destroy such records within 60 days after receipt of such records.

5. Notwithstanding subparagraph 3., secondhand dealers and pawnbrokers may electronically submit limited firearms records consisting solely of the manufacturer, model, serial number, and caliber of pawned or purchased firearms to a third-party private provider that is exclusively incorporated, exclusively owned, and exclusively operated in the United States and that restricts access to such information to only appropriate law enforcement agencies for legitimate law enforcement purposes. Such records must be destroyed within 30 days by the third-party provider. As a condition of receipt of such records, the third-party provider must agree in writing to comply with the requirements of this section. Any pawnbroker or secondhand dealer who contracts with a third-party provider other than as provided in this act or electronically transmits any records of firearms transactions to any third-party provider other than the records specifically allowed by this paragraph commits a felony of

the second degree, punishable as provided in § 775.082 or § 775.083.

(g) Records kept by the Department of Law Enforcement of NCIC transactions to the extent required by federal law and a log of dates of requests for criminal history record checks, unique approval and nonapproval numbers, license identification numbers, and transaction numbers corresponding to such dates.

(h) Records of an insurer that, as a condition to providing insurance against theft or loss of a firearm, identify such firearm. Such records may not be sold, commingled with records relating to other firearms, or transferred to any other person or entity. The insurer may not keep a record of such firearm more than 60 days after the policy of insurance expires or after notification by the insured that the insured is no longer the owner of such firearm.

(i) Lists of customers of a firearm dealer retained by such dealer, provided that such lists do not disclose the particular firearms purchased. Such lists, or any parts thereof, may not be sold, commingled with records relating to other firearms, or transferred to any other person or entity.

(j) Sales receipts retained by the seller of firearms or by a person providing credit for such purchase, provided that such receipts shall not serve as or be used for the creation of a database for registration of firearms.

(k) Personal records of firearms maintained by the owner of such firearms.

(l) Records maintained by a business that stores or acts as the selling agent of firearms on behalf of the lawful owner of the firearms.

(m) Membership lists of organizations comprised of firearm owners.

(n) Records maintained by an employer or contracting entity of the firearms owned by its officers, employees, or agents, if such firearms are used in the course of business performed on behalf of the employer.

(o) Records maintained pursuant to § 790.06 by the Department of Agriculture and Consumer Services of a person who was a licensee within the prior 2 years.

(p) Records of firearms involved in criminal investigations, criminal prosecutions, criminal appeals, and postconviction motions, civil proceedings relating to the surrender or seizure of firearms including protective injunctions, Baker Act commitments, and sheriff's levies pursuant to court judgments, and voluntary surrender by the owner or custodian of the firearm.

(q) Paper documents relating to firearms involved in criminal cases, criminal investigations, and criminal prosecutions, civil proceedings relating to the surrender or seizure of firearms including protective injunctions, Baker Act commitments, and sheriff's levies pursuant to court judgments, and voluntary surrender by the owner or custodian of the firearm.

(r) Noncriminal records relating to the receipt, storage or return of firearms, including, but not limited to, records relating to firearms impounded for storage or safekeeping, receipts proving that a firearm was returned to the rightful owner and supporting records of identification and proof of ownership, or records relating to firearms impounded pursuant to levies or court orders, provided, however, that such records shall not be compiled, sorted, or otherwise arranged into any lists, indexes, or registries of firearms or firearms owners.

(4) PENALTIES.—

(a) Any person who, or entity that, violates a provision of this section commits a felony of the third degree, punishable as provided in § 775.082 or § 775.083.

[Remainder intentionally omitted.]

CHAPTER 791
SALE OF FIREWORKS

791.01. Definitions.

As used in this chapter, the term:

(1) "Distributor" means any person engaged in the business of selling sparklers to a wholesaler.

(2) "Division" means the Division of the State Fire Marshal of the Department of Financial Services.

(3) "Explosive compound" means any chemical compound, mixture, or device the primary or common purpose of which is to function by the substantially instantaneous release of gas and heat.

(4) (a) "Fireworks" means and includes any combustible or explosive composition or substance or combination of substances or, except as hereinafter provided, any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation. The term includes blank cartridges and toy cannons in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, skyrockets, roman candles, dago bombs, and any fireworks containing any explosives or flammable com-

pound or any tablets or other device containing any explosive substance.

(b) "Fireworks" does not include sparklers approved by the division pursuant to § 791.013; toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for the explosion; and toy pistol paper caps which contain less than twenty hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times.

(c) "Fireworks" also does not include the following novelties and trick noisemakers:

1. A snake or glow worm, which is a pressed pellet of not more than 10 grams of pyrotechnic composition that produces a large, snakelike ash which expands in length as the pellet burns and that does not contain mercuric thiocyanate.

2. A smoke device, which is a tube or sphere containing not more than 10 grams of pyrotechnic composition that, upon burning, produces white or colored smoke as the primary effect.

3. A trick noisemaker, which is a device that produces a small report intended to surprise the user and which includes:

a. A party popper, which is a small plastic or paper device containing not more than 16 milligrams of explosive composition that is friction sensitive, which is ignited by pulling a string protruding from the device, and which expels a paper streamer and produces a small report.

b. A booby trap, which is a small tube with a string protruding from both ends containing not more than 16 milligrams of explosive compound, which is ignited by pulling the ends of the string, and which produces a small report.

c. A snapper, which is a small, paper-wrapped device containing not more than four milligrams of explosive composition coated on small bits of sand, and which, when dropped, explodes, producing a small report. A snapper may not contain more than 250 milligrams of total sand and explosive composition.

d. A trick match, which is a kitchen or book match which is coated with not more than 16 milligrams of explosive or pyrotechnic composition and which, upon ignition, produces a small report or shower of sparks.

e. A cigarette load, which is a small wooden peg that has been coated with not more than 16 milligrams of explosive composition and which produces, upon ignition of a cigarette containing one of the pegs, a small report.

f. An auto burglar alarm, which is a tube which contains not more than 10 grams of pyrotechnic composition that produces a loud whistle or smoke when ignited and which is ignited by use of a squib. A small quantity of explosive, not exceeding 50 milligrams, may also be used to produce a small report.

The sale and use of items listed in this paragraph are permitted at all times.

(5) "Manufacturer" means any person engaged in the manufacture or construction of sparklers in this state.

(6) "Retailer" means any person who, at a fixed place of business, is engaged in selling sparklers to consumers at retail.

(7) "Seasonal retailer" means any person engaged in the business of selling sparklers at retail in this state from June 20 through July 5 and from December 10 through January 2 of each year.

(8) "Sparkler" means a device which emits showers of sparks upon burning, does not contain any explosive compounds, does not detonate or explode, is handheld or ground based, cannot propel itself through the air, and contains not more than 100 grams of the chemical compound which produces sparks upon burning. Any sparkler that is not approved by the division is classified as fireworks.

(9) "Wholesaler" means any person engaged in the business of selling sparklers to a retailer.

791.013. Testing and approval of sparklers; penalties.

(1) A person who wishes to sell sparklers must submit samples of his or her product to the division for testing to determine whether it is a sparkler as defined in § 791.01. Such samples must be received by the division by September 1 to be considered for approval the following year. On February 1 of each year the division shall approve those products which it has tested and found to meet the requirements for sparklers. All approved sparkler products are legal for sale until January 31 of the following year. The list of approved sparkler products shall be published in the Florida Administrative Register and shall prominently state the dates between which the products may be sold. The division shall make copies of this list available to the public. A product must be tested and approved for sale in accordance with the rules adopted to implement this section. Beginning February 1, 1988, only those products

approved by the division may be sold in the state. The State Fire Marshal shall adopt rules describing the testing, approval, and listing procedures.

(2) Any person who alters an approved sparkler product, so that it is no longer a sparkler as defined in § 791.01, and subsequently sells the product as if it were approved is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Any person who fraudulently represents a device as approved for sale as a sparkler product when it is not so approved is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) For purposes of the testing requirement by this section, the division shall perform such tests as are necessary to determine compliance with the performance standards in the definition of sparklers, pursuant to § 791.01. The State Fire Marshal shall adopt, by rule, procedures for testing products to determine compliance with this chapter. The division shall dispose of any samples which remain after testing.

791.02. Sale of fireworks regulated; rules and regulations.

(1) Except as hereinafter provided it is unlawful for any person, firm, copartnership, or corporation to offer for sale, expose for sale, sell at retail, or use or explode any fireworks; provided that the board of county commissioners shall have power to adopt reasonable rules and regulations for the granting of permits for supervised public display of fireworks by fair associations, amusement parks, and other organizations or groups of individuals when such public display is to take place outside of any municipality; provided, further, that the governing body of any municipality shall have power to adopt reasonable rules and regulations for the granting of permits for supervised public display of fireworks within the boundaries of any municipality. Every such display shall be handled by a competent operator to be approved by the chiefs of the police and fire departments of the municipality in which the display is to be held, and shall be of such a character, and so located, discharged, or fired as in the opinion of the chief of the fire department, after proper inspection, shall not be hazardous to property or endanger any person. Application for permits shall be made in writing at least 15 days in advance of the date of the display. After such privilege shall have been granted, sales, possession, use, and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

(2) A sparkler or other product authorized for sale under this chapter may not be sold by a retailer or seasonal retailer unless the product was obtained from a manufacturer, distributor, or wholesaler registered with the division pursuant to § 791.015. Each retailer and seasonal retailer shall keep, at every location where sparklers are sold, a copy of an invoice or other evidence of purchase from the manufacturer, distributor, or wholesaler, which states the registration certificate number for the particular manufacturer, distributor, or wholesaler and the specific items covered by the invoice. Each seasonal retailer shall, in addition, exhibit a copy of his or her registration certificate at each seasonal retail location.

791.05. Seizure of illegal fireworks.

Each sheriff, or his or her appointee, or any other police officer, shall seize, take, remove or cause to be removed at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter.

791.055. Restrictions upon storage of sparklers.

(1) Sparklers shall not be stored or kept for sale in any store:

(a) In which paints, oils, or varnishes are manufactured or kept for use or sale unless the paints, oils, or varnishes are in unbroken containers.

(b) In which resin, turpentine, gasoline, or flammable substances or substances which may generate vapors are used, stored, or offered for sale unless the resin, turpentine, gasoline, or substances are in unbroken containers.

(c) In which there is not at least one approved chemical fire extinguisher ready, available, and equipped for use in extinguishing fires.

(2) When sparklers are in storage to be offered for sale at retail, a sign shall be conspicuously displayed over the entrance to the room in which the sparklers are stored, which sign reads: "CAUTION SPARKLERS-NO SMOKING." No person shall be in such room while in possession of a lighted cigar, cigarette, or pipe.

791.06. Penalties.

Any firm, copartnership, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.083 or,

in the case of individuals, the members of a partnership and the responsible officers and agents of an association or corporation, punishable as provided in § 775.082 or § 775.083.

CHAPTER 794
SEXUAL BATTERY

794.005. Legislative findings and intent as to basic charge of sexual battery.

The Legislature finds that the least serious sexual battery offense, which is provided in § 794.011(5), was intended, and remains intended, to serve as the basic charge of sexual battery and to be necessarily included in the offenses charged under subsections (3) and (4), within the meaning of § 924.34; and that it was never intended that the sexual battery offense described in § 794.011(5) require any force or violence beyond the force and violence that is inherent in the accomplishment of "penetration" or "union."

794.011. Sexual battery.

(1) As used in this chapter:

(a) "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

(b) "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

(c) "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

(d) "Offender" means a person accused of a sexual offense in violation of a provision of this chapter.

(e) "Physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(f) "Retaliation" includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.

(g) "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

(h) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(i) "Victim" means a person who has been the object of a sexual offense.

(j) "Physically incapacitated" means bodily impaired or handicapped and substantially limited in ability to resist or flee.

(2) (a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in §§ 775.082 and 921.141.

(b) A person less than 18 years of age who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a life felony, punishable as provided in § 775.082, § 775.083, § 775.084, or § 794.0115.

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in § 775.082, § 775.083, § 775.084, or § 794.0115.

(4) A person who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the following circumstances, commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, § 775.084, or § 794.0115:

(a) When the victim is physically helpless to resist.

(b) When the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.

(c) When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.

(d) When the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.

(e) When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.

(f) When the victim is physically incapacitated.

(g) When the offender is a law enforcement officer, correctional officer, or correctional probation officer as defined by § 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under the provisions of § 943.1395 or is an elected official exempt from such certification by virtue of § 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

(5) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, § 775.084, or § 794.0115.

(6) The offense described in subsection (5) is included in any sexual battery offense charged under subsection (3) or subsection (4).

(7) A person who is convicted of committing a sexual battery on or after October 1, 1992, is not eligible for basic gain-time under § 944.275. This subsection may be cited as the "Junny Rios-Martinez, Jr. Act of 1992."

(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:

(a) Solicits that person to engage in any act which would constitute sexual battery under paragraph (1)(h) commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Engages in any act with that person while the person is 12 years of age or older but less than 18 years of age which constitutes sexual battery under paragraph (1)(h) commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery under paragraph (1)(h), or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life felony, punishable pursuant to subsection (2).

(9) For prosecution under paragraph (4)(g), acquiescence to a person reasonably believed by the victim to be in a position of authority or control does not constitute consent, and it is not a defense that the perpetrator was not actually in a position of control or authority if the circumstances were such as to lead the victim to reasonably believe that the person was in such a position.

(10) Any person who falsely accuses any person listed in paragraph (4)(g) or other person in a position of control or authority as an agent or employee of government of violating paragraph (4)(g) is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

794.0115. Dangerous sexual felony offender; mandatory sentencing.

(1) This section may be cited as the "Dangerous Sexual Felony Offender Act."

(2) Any person who is convicted of a violation of § 787.025(2)(c); § 794.011(2), (3), (4), (5), or (8); § 800.04(4) or (5); § 825.1025(2) or (3); § 827.071(2), (3), or (4); or § 847.0145; or of any similar offense under a former designation, which offense the person committed when he or she was 18 years of age or older, and the person:

(a) Caused serious personal injury to the victim as a result of the commission of the offense;

(b) Used or threatened to use a deadly weapon during the commission of the offense;

(c) Victimized more than one person during the course of the criminal episode applicable to the offense;

(d) Committed the offense while under the jurisdiction of a court for a felony offense under the laws of this state, for an offense that is a felony in another jurisdiction, or for an offense that would be a felony if that offense were committed in this state; or

(e) Has previously been convicted of a violation of § 787.025(2)(c); § 794.011(2), (3), (4), (5), or (8); § 800.04(4) or (5); § 825.1025(2) or (3); § 827.071(2), (3), or (4); § 847.0145; of any offense under a former statutory designation which is similar in elements to an offense described in this paragraph; or of any offense that is a felony in another jurisdiction, or would be a felony if that offense were committed in this state, and which is similar in elements to an offense described in this paragraph,

is a dangerous sexual felony offender, who must be sentenced to a mandatory minimum

term of 25 years imprisonment up to, and including, life imprisonment.

(3) "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

(4) The offense described in subsection (2) which is being charged must have been committed after the date of commission of the last prior conviction for an offense that is a prior conviction described in paragraph (2)(e).

(5) It is irrelevant that a factor listed in subsection (2) is an element of an offense described in that subsection. It is also irrelevant that such an offense was reclassified to a higher felony degree under § 794.023 or any other law.

(6) Notwithstanding § 775.082(3), chapter 958, any other law, or any interpretation or construction thereof, a person subject to sentencing under this section must be sentenced to the mandatory term of imprisonment provided under this section. If the mandatory minimum term of imprisonment imposed under this section exceeds the maximum sentence authorized under § 775.082, § 775.084, or chapter 921, the mandatory minimum term of imprisonment under this section must be imposed. If the mandatory minimum term of imprisonment under this section is less than the sentence that could be imposed under § 775.082, § 775.084, or chapter 921, the sentence imposed must include the mandatory minimum term of imprisonment under this section.

(7) A defendant sentenced to a mandatory minimum term of imprisonment under this section is not eligible for statutory gain-time under § 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under § 947.149, before serving the minimum sentence.

794.02. Common-law presumption relating to age abolished.

The common-law rule "that a boy under 14 years of age is conclusively presumed to be incapable of committing the crime of rape" shall not be in force in this state.

794.021. Ignorance or belief as to victim's age no defense.

When, in this chapter, the criminality of conduct depends upon the victim's being below a certain specified age, ignorance of the age is no defense. Neither shall misrepresentation of age by such person nor a bona fide belief that such person is over the specified age be a defense.

794.022. Rules of evidence.

(1) The testimony of the victim need not be corroborated in a prosecution under § 794.011.

(2) Specific instances of prior consensual sexual activity between the victim and any person other than the offender shall not be admitted into evidence in a prosecution under § 794.011. However, such evidence may be admitted if it is first established to the court in a proceeding in camera that such evidence may prove that the defendant was not the source of the semen, pregnancy, injury, or disease; or, when consent by the victim is at issue, such evidence may be admitted if it is first established to the court in a proceeding in camera that such evidence tends to establish a pattern of conduct or behavior on the part of the victim which is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.

(3) Notwithstanding any other provision of law, reputation evidence relating to a victim's prior sexual conduct or evidence presented for the purpose of showing that manner of dress of the victim at the time of the offense incited the sexual battery shall not be admitted into evidence in a prosecution under § 794.011.

(4) When consent of the victim is a defense to prosecution under § 794.011, evidence of the victim's mental incapacity or defect is admissible to prove that the consent was not intelligent, knowing, or voluntary; and the court shall instruct the jury accordingly.

(5) An offender's use of a prophylactic device, or a victim's request that an offender use a prophylactic device, is not, by itself, relevant to either the issue of whether or not the offense was committed or the issue of whether or not the victim consented.

794.023. Sexual battery by multiple perpetrators; reclassification of offenses.

(1) The Legislature finds that an act of sexual battery, when committed by more than one person, presents a great danger to the public and is extremely offensive to civilized society. It is therefore the intent of the Legislature to reclassify offenses for acts of sexual battery committed by more than one person.

(2) A violation of § 794.011 shall be reclassified as provided in this subsection if it is charged and proven by the prosecution that, during the same criminal transaction or episode, more than one person committed an act of sexual battery on the same victim.

(a) A felony of the second degree is reclassified to a felony of the first degree.

(b) A felony of the first degree is reclassified to a life felony.

This subsection does not apply to life felonies or capital felonies. For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this subsection is ranked one level above the ranking under § 921.0022 or § 921.0023 of the offense committed.

794.024. Unlawful to disclose identifying information.

(1) A public employee or officer who has access to the photograph, name, or address of a person who is alleged to be the victim of an offense described in this chapter, chapter 800, § 827.03, § 827.04, or § 827.071 may not willfully and knowingly disclose it to a person who is not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, a person specified in an order entered by the court having jurisdiction of the alleged offense, or organizations authorized to receive such information made exempt by § 119.071(2)(h), or to a rape crisis center or sexual assault counselor, as defined in § 90.5035(1)(b), who will be offering services to the victim.

(2) A violation of subsection (1) constitutes a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

794.027. Duty to report sexual battery; penalties.

A person who observes the commission of the crime of sexual battery and who:

(1) Has reasonable grounds to believe that he or she has observed the commission of a sexual battery;

(2) Has the present ability to seek assistance for the victim or victims by immediately reporting such offense to a law enforcement officer;

(3) Fails to seek such assistance;

(4) Would not be exposed to any threat of physical violence for seeking such assistance;

(5) Is not the husband, wife, parent, grandparent, child, grandchild, brother, or sister of the offender or victim, by consanguinity or affinity; and

(6) Is not the victim of such sexual battery

is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

794.03. Unlawful to publish or broadcast information identifying sexual offense victim.

No person shall print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other identifying fact or information of the victim of any sexual offense within this chapter, except as provided in § 119.071(2)(h) or unless the court determines that such information is no longer confidential and exempt pursuant to § 92.56. An offense under this section shall constitute a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

794.05. Unlawful sexual activity with certain minors.

(1) A person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. As used in this section, "sexual activity" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; however, sexual activity does not include an act done for a bona fide medical purpose.

(2) The provisions of this section do not apply to a person 16 or 17 years of age who has had the disabilities of nonage removed under chapter 743.

(3) The victim's prior sexual conduct is not a relevant issue in a prosecution under this section.

(4) If an offense under this section directly results in the victim giving birth to a child, paternity of that child shall be established as described in chapter 742. If it is determined that the offender is the father of the child, the offender must pay child support pursuant to the child support guidelines described in chapter 61.

794.075. Sexual predators; erectile dysfunction drugs.

(1) A person may not possess a prescription drug, as defined in § 499.003(43), for the purpose of treating erectile dysfunction if the person is designated as a sexual predator under § 775.21.

(2) A person who violates a provision of this section for the first time commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. A person who violates a provision of this section a second or subsequent time commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

794.08. Female genital mutilation.

(1) As used in this section, the term "female genital mutilation" means the circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of a female person.

(2) A person who knowingly commits, or attempts to commit, female genital mutilation upon a female person younger than 18 years of age commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) A person who knowingly removes, or causes or permits the removal of, a female person younger than 18 years of age from this state for purposes of committing female genital mutilation commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) A person who is a parent, a guardian, or in a position of familial or custodial authority to a female person younger than 18 years of age and who knowingly consents to or permits the female genital mutilation of that female person commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) This section does not apply to procedures performed by or under the direction of a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a registered nurse licensed under part I of chapter 464, a practical nurse licensed under part I of chapter 464, an advanced registered nurse practitioner licensed under part I of chapter 464, a midwife licensed under chapter 467, or a physician assistant licensed under chapter 458 or chapter 459 when necessary to preserve the physical health of a female person. This section also does not apply to any autopsy or limited dissection conducted pursuant to chapter 406.

(6) Consent of a female person younger than 18 years of age or the consent of a parent, guardian, or person who is in a position of familial or custodial authority to the female person younger than 18 years of age is not a defense to the offense of female genital mutilation.

CHAPTER 796
PROSTITUTION

796.03. Procuring person under age of 18 for prostitution.

A person who procures for prostitution, or causes to be prostituted, any person who is under the age of 18 years commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

796.035. Selling or buying of minors into prostitution; penalties.

Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will engage in prostitution commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

796.036. Violations involving minors; reclassification.

(1) The felony or misdemeanor degree of any violation of this chapter, other than § 796.03 or § 796.035, in which a minor engages in prostitution, lewdness, assignation, sexual conduct, or other conduct as defined in or prohibited by this chapter, but the minor is not the person charged with the violation, is reclassified as provided in this section.

(2) Offenses shall be reclassified as follows:

(a) A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.

(b) A misdemeanor of the first degree is reclassified to a felony of the third degree.

(c) A felony of the third degree is reclassified to a felony of the second degree.

(d) A felony of the second degree is reclassified to a felony of the first degree.

(e) A felony of the first degree is reclassified to a life felony.

796.04. Forcing, compelling, or coercing another to become a prostitute.

(1) After May 1, 1943, it shall be unlawful for anyone to force, compel, or coerce another to become a prostitute.

(2) Anyone violating this section shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

796.05. Deriving support from the proceeds of prostitution.

(1) It shall be unlawful for any person with reasonable belief or knowing another person is engaged in prostitution to live or derive support or maintenance in whole or in part from what is believed to be the earnings or proceeds of such person's prostitution.

(2) Anyone violating this section commits a felony of the third degree, punish-

able as provided in § 775.082, § 775.083, or § 775.084.

796.06. Renting space to be used for lewdness, assignation, or prostitution.

(1) It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used for the purpose of lewdness, assignation, or prostitution.

(2) A person who violates this section commits:

(a) A misdemeanor of the second degree for a first violation, punishable as provided in § 775.082 or § 775.083.

(b) A misdemeanor of the first degree for a second or subsequent violation, punishable as provided in § 775.082 or § 775.083.

796.07. Prohibiting prostitution and related acts.

(1) As used in this section:

(a) "Prostitution" means the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

(b) "Lewdness" means any indecent or obscene act.

(c) "Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.

(d) "Sexual activity" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

(2) It is unlawful:

(a) To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution.

(b) To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act.

(c) To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose.

(d) To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation.

(e) To offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation.

(f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.

(g) To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation.

(h) To aid, abet, or participate in any of the acts or things enumerated in this subsection.

(i) To purchase the services of any person engaged in prostitution.

(3) (a) In the trial of a person charged with a violation of this section, testimony concerning the reputation of any place, structure, building, or conveyance involved in the charge, testimony concerning the reputation of any person residing in, operating, or frequenting such place, structure, building, or conveyance, and testimony concerning the reputation of the defendant is admissible in evidence in support of the charge.

(b) Notwithstanding any other provision of law, a police officer may testify as an offended party in an action regarding charges filed pursuant to this section.

(4) A person who violates any provision of this section commits:

(a) A misdemeanor of the second degree for a first violation, punishable as provided in § 775.082 or § 775.083.

(b) A misdemeanor of the first degree for a second violation, punishable as provided in § 775.082 or § 775.083.

(c) A felony of the third degree for a third or subsequent violation, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) A person who is charged with a third or subsequent violation of this section shall be offered admission to a pretrial intervention program or a substance abuse treatment program as provided in § 948.08.

(6) A person who violates paragraph (2)(f) shall be assessed a civil penalty of $5,000 if the violation results in any judicial disposition other than acquittal or dismissal. Of the proceeds from each penalty assessed under this subsection, the first $500 shall be paid to the circuit court administrator for the sole purpose of paying the administrative costs of treatment-based drug court programs provided under § 397.334. The remainder of the penalty assessed shall be deposited in the Operations and Maintenance Trust Fund

of the Department of Children and Family Services for the sole purpose of funding safe houses and short-term safe houses as provided in § 409.1678.

796.08. Screening for HIV and sexually transmissible diseases; providing penalties.

(1) (a) For the purposes of this section, "sexually transmissible disease" means a bacterial, viral, fungal, or parasitic disease, determined by rule of the Department of Health to be sexually transmissible, a threat to the public health and welfare, and a disease for which a legitimate public interest is served by providing for regulation and treatment.

(b) In considering which diseases are designated as sexually transmissible diseases, the Department of Health shall consider such diseases as chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, syphilis, and human immunodeficiency virus infection for designation and shall consider the recommendations and classifications of the Centers for Disease Control and Prevention and other nationally recognized authorities. Not all diseases that are sexually transmissible need be designated for purposes of this section.

(2) A person arrested under § 796.07 may request screening for a sexually transmissible disease under direction of the Department of Health and, if infected, shall submit to appropriate treatment and counseling. A person who requests screening for a sexually transmissible disease under this subsection must pay any costs associated with such screening.

(3) A person convicted under § 796.07 of prostitution or procuring another to commit prostitution must undergo screening for a sexually transmissible disease, including, but not limited to, screening to detect exposure to the human immunodeficiency virus, under direction of the Department of Health. If the person is infected, he or she must submit to treatment and counseling prior to release from probation, community control, or incarceration. Notwithstanding the provisions of § 384.29, the results of tests conducted pursuant to this subsection shall be made available by the Department of Health to the offender, medical personnel, appropriate state agencies, state attorneys, and courts of appropriate jurisdiction in need of such information in order to enforce the provisions of this chapter.

(4) A person who commits prostitution or procures another for prostitution and who, prior to the commission of such crime, had tested positive for a sexually transmissible disease other than human immunodeficiency virus infection and knew or had been informed that he or she had tested positive for such sexually transmissible disease and could possibly communicate such disease to another person through sexual activity commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution or procurement of prostitution.

(5) A person who:

(a) Commits or offers to commit prostitution; or

(b) Procures another for prostitution by engaging in sexual activity in a manner likely to transmit the human immunodeficiency virus,

and who, prior to the commission of such crime, had tested positive for human immunodeficiency virus and knew or had been informed that he or she had tested positive for human immunodeficiency virus and could possibly communicate such disease to another person through sexual activity commits criminal transmission of HIV, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution or procurement of prostitution.

CHAPTER 798
ADULTERY; COHABITATION

798.02. Lewd and lascivious behavior.

If any man and woman, not being married to each other, lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, engages in open and gross lewdness and lascivious behavior, they shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 800
LEWDNESS; INDECENT EXPOSURE

800.02. Unnatural and lascivious act.
A person who commits any unnatural and lascivious act with another person commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. A mother's breastfeeding of her baby does not under any circumstance violate this section.

800.03. Exposure of sexual organs.
It is unlawful to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose. Violation of this section is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. A mother's breastfeeding of her baby does not under any circumstance violate this section.

800.04. Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.
(1) DEFINITIONS.—As used in this section:
(a) "Sexual activity" means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.
(b) "Consent" means intelligent, knowing, and voluntary consent, and does not include submission by coercion.
(c) "Coercion" means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance.
(d) "Victim" means a person upon whom an offense described in this section was committed or attempted or a person who has reported a violation of this section to a law enforcement officer.
(2) PROHIBITED DEFENSES.—Neither the victim's lack of chastity nor the victim's consent is a defense to the crimes proscribed by this section.
(3) IGNORANCE OR BELIEF OF VICTIM'S AGE.—The perpetrator's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the perpetrator's bona fide belief of the victim's age cannot be raised as a defense in a prosecution under this section.
(4) LEWD OR LASCIVIOUS BATTERY.—A person who:
(a) Engages in sexual activity with a person 12 years of age or older but less than 16 years of age; or
(b) Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity
commits lewd or lascivious battery, a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.
(5) LEWD OR LASCIVIOUS MOLESTATION.—
(a) A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.
(b) An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less than 12 years of age commits a life felony, punishable as provided in § 775.082(3)(a)4.
(c) 1. An offender less than 18 years of age who commits lewd or lascivious molestation against a victim less than 12 years of age; or
2. An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age
commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.
(d) An offender less than 18 years of age who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.
(6) LEWD OR LASCIVIOUS CONDUCT.—
(a) A person who:
1. Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or
2. Solicits a person under 16 years of age to commit a lewd or lascivious act
commits lewd or lascivious conduct.
(b) An offender 18 years of age or older who commits lewd or lascivious conduct commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.
(c) An offender less than 18 years of age who commits lewd or lascivious conduct com-

mits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(7) LEWD OR LASCIVIOUS EXHIBITION.—

(a) A person who:

1. Intentionally masturbates;

2. Intentionally exposes the genitals in a lewd or lascivious manner; or

3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity

in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition.

(b) An offender 18 years of age or older who commits a lewd or lascivious exhibition commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) An offender less than 18 years of age who commits a lewd or lascivious exhibition commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(8) EXCEPTION.—A mother's breastfeeding of her baby does not under any circumstance constitute a violation of this section.

800.09. Lewd or lascivious exhibition in the presence of an employee.

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

(a) "Employee" means any person employed by or performing contractual services for a public or private entity operating a facility or any person employed by or performing contractual services for the corporation operating the prison industry enhancement programs or the correctional work programs under part II of chapter 946. The term also includes any person who is a parole examiner with the Parole Commission.

(b) "Facility" means a state correctional institution as defined in § 944.02 or a private correctional facility as defined in § 944.710.

(2) (a) A person who is detained in a facility may not:

1. Intentionally masturbate;

2. Intentionally expose the genitals in a lewd or lascivious manner; or

3. Intentionally commit any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity,

in the presence of a person he or she knows or reasonably should know is an employee.

(b) A person who violates paragraph (a) commits lewd or lascivious exhibition in the presence of an employee, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

CHAPTER 806
ARSON AND CRIMINAL MISCHIEF

806.01. Arson.

(1) Any person who willfully and unlawfully, or while in the commission of any felony, by fire or explosion, damages or causes to be damaged:

(a) Any dwelling, whether occupied or not, or its contents;

(b) Any structure, or contents thereof, where persons are normally present, such as: jails, prisons, or detention centers; hospitals, nursing homes, or other health care facilities; department stores, office buildings, business establishments, churches, or educational institutions during normal hours of occupancy; or other similar structures; or

(c) Any other structure that he or she knew or had reasonable grounds to believe was occupied by a human being,

is guilty of arson in the first degree, which constitutes a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) Any person who willfully and unlawfully, or while in the commission of any felony, by fire or explosion, damages or causes to be damaged any structure, whether the property of himself or herself or another, under any circumstances not referred to in subsection (1), is guilty of arson in the second degree, which constitutes a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) As used in this chapter, "structure" means any building of any kind, any enclosed area with a roof over it, any real property and appurtenances thereto, any tent or other portable building, and any vehicle, vessel, watercraft, or aircraft.

806.031. Arson resulting in injury to another; penalty.

(1) A person who perpetrates any arson that results in any bodily harm to a firefighter or any other person, regardless of intent or lack of intent to cause such harm, is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) A person who perpetrates any arson that results in great bodily harm, permanent disability, or permanent disfigurement to a firefighter or any other person, regardless of intent or lack of intent to cause such harm, is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Upon conviction and adjudication of guilt, a person may be sentenced separately, pursuant to § 775.021(4), for any violation of this section and for any arson committed during the same criminal episode. A conviction for any arson, however, is not necessary for a conviction under this section.

806.10. Preventing or obstructing extinguishment of fire.

(1) Any person who willfully and maliciously injures, destroys, removes, or in any manner interferes with the use of, any vehicles, tools, equipment, water supplies, hydrants, towers, buildings, communication facilities, or other instruments or facilities used in the detection, reporting, suppression, or extinguishment of fire shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) Any person who willfully or unreasonably interferes with, hinders, or assaults, or attempts to interfere with or hinder, any firefighter in the performance of his or her duty shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

806.101. False alarms of fires.

Whoever, without reasonable cause, by outcry or the ringing of bells, or otherwise, makes or circulates, or causes to be made or circulated, a false alarm of fire, shall for the first conviction be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. A second or subsequent conviction under this section shall constitute a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

806.111. Fire bombs.

(1) Any person who possesses, manufactures, transports, or disposes of a fire bomb with intent that such fire bomb be willfully and unlawfully used to damage by fire or explosion any structure or property is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) For the purposes of this section:

(a) "Disposes of" means to give, give away, loan, offer, offer for sale, sell, or transfer.

(b) "Fire bomb" means a container containing flammable or combustible liquid, or any incendiary chemical mixture or compound having a wick or similar device capable of being ignited or other means capable of causing ignition; but no device commercially manufactured primarily for the purpose of illumination, heating, or cooking shall be deemed to be such a fire bomb.

(3) Subsection (1) shall not prohibit the authorized use or possession of any material, substance, or device described therein by a member of the Armed Forces of the United States or by firefighters, police officers, peace officers, or law enforcement officers so authorized by duly constituted authorities.

806.13. Criminal mischief; penalties; penalty for minor.

(1) (a) A person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages by any means any real or personal property belonging to another, including, but not limited to, the placement of graffiti thereon or other acts of vandalism thereto.

(b) 1. If the damage to such property is $200 or less, it is a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

2. If the damage to such property is greater than $200 but less than $1,000, it is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

3. If the damage is $1,000 or greater, or if there is interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs $1,000 or more in labor and supplies to restore, it is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

4. If the person has one or more previous convictions for violating this subsection, the offense under subparagraph 1. or subparagraph 2. for which the person is charged shall be reclassified as a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) Any person who willfully and maliciously defaces, injures, or damages by any means any church, synagogue, mosque, or other place of worship, or any religious article contained therein, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the damage to the property is greater than $200.

(3) Whoever, without the consent of the owner thereof, willfully destroys or substantially damages any public telephone, or tele-

phone cables, wires, fixtures, antennas, amplifiers, or any other apparatus, equipment, or appliances, which destruction or damage renders a public telephone inoperative or which opens the body of a public telephone, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084; provided, however, that a conspicuous notice of the provisions of this subsection and the penalties provided is posted on or near the destroyed or damaged instrument and visible to the public at the time of the commission of the offense.

(4) Any person who willfully and maliciously defaces, injures, or damages by any means a sexually violent predator detention or commitment facility, as defined in part V of chapter 394, or any property contained therein, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the damage to property is greater than $200.

(5) (a) The amounts of value of damage to property owned by separate persons, if the property was damaged during one scheme or course of conduct, may be aggregated in determining the grade of the offense under this section.

(b) Any person who violates this section may, in addition to any other criminal penalty, be required to pay for the damages caused by such offense.

(6) (a) Any person who violates this section when the violation is related to the placement of graffiti shall, in addition to any other criminal penalty, be required to pay a fine of:

1. Not less than $250 for a first conviction.

2. Not less than $500 for a second conviction.

3. Not less than $1,000 for a third or subsequent conviction.

(b) Any person convicted under this section when the offense is related to the placement of graffiti shall, in addition to any other criminal penalty, be required to perform at least 40 hours of community service and, if possible, perform at least 100 hours of community service that involves the removal of graffiti.

(c) If a minor commits a delinquent act prohibited under paragraph (a), the parent or legal guardian of the minor is liable along with the minor for payment of the fine. The court may decline to order a person to pay a fine under paragraph (a) if the court finds that the person is indigent and does not have the ability to pay the fine or if the court finds that the person does not have the ability to pay the fine whether or not the person is indigent.

(7) In addition to any other penalty provided by law, if a minor is found to have committed a delinquent act under this section for placing graffiti on any public property or private property, and:

(a) The minor is eligible by reason of age for a driver's license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or withhold issuance of the minor's driver's license or driving privilege for not more than 1 year.

(b) The minor's driver's license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of not more than 1 year.

(c) The minor is ineligible by reason of age for a driver's license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver's license or driving privilege for not more than 1 year after the date on which he or she would otherwise have become eligible.

(8) A minor whose driver's license or driving privilege is revoked, suspended, or withheld under subsection (7) may elect to reduce the period of revocation, suspension, or withholding by performing community service at the rate of 1 day for each hour of community service performed. In addition, if the court determines that due to a family hardship, the minor's driver's license or driving privilege is necessary for employment or medical purposes of the minor or a member of the minor's family, the court shall order the minor to perform community service and reduce the period of revocation, suspension, or withholding at the rate of 1 day for each hour of community service performed. As used in this subsection, the term "community service" means cleaning graffiti from public property.

(9) Because of the difficulty of confronting the blight of graffiti, it is the intent of the Legislature that municipalities and counties not be preempted by state law from establishing ordinances that prohibit the marking of graffiti or other graffiti-related offenses. Furthermore, as related to graffiti, such municipalities and counties are not preempted by state law from establishing higher penalties than those provided by state law and manda-

tory penalties when state law provides discretionary penalties. Such higher and mandatory penalties include fines that do not exceed the amount specified in §§ 125.69 and 162.21, community service, restitution, and forfeiture. Upon a finding that a juvenile has violated a graffiti-related ordinance, a court acting under chapter 985 may not provide a disposition of the case which is less severe than any mandatory penalty prescribed by municipal or county ordinance for such violation.

806.14. Art works in public buildings; willful damage; unauthorized removal; penalties.

(1) Whoever willfully destroys, mutilates, defaces, injures, or, without authority, removes any work of art displayed in a public building is guilty of a criminal offense.

(2) (a) If the damage to the work of art is such that the cost of restoration, in labor and supplies, or if the replacement value, is $200 or less, the offense is a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(b) If the damage to the work of art is such that the cost of restoration, in labor and supplies, or if the replacement value, is greater than $200 but less than $1,000, the offense is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(c) If the damage to the work of art is such that the cost of restoration, in labor and supplies, or if the replacement value, is $1,000 or more, the offense is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

CHAPTER 810
BURGLARY AND TRESPASS

810.011. Definitions.

As used in this chapter:

(1) "Structure" means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under chapter 252 and within the area covered by such executive order or proclamation and for purposes of §§ 810.02 and 810.08 only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

(2) "Dwelling" means a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under chapter 252 and within the area covered by such executive order or proclamation and for purposes of §§ 810.02 and 810.08 only, the term includes such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

(3) "Conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under chapter 252 and within the area covered by such executive order or proclamation and for purposes of §§ 810.02 and 810.08 only, the term "conveyance" means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist.

(4) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

(5) (a) "Posted land" is that land upon which:

1. Signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently, in letters of not less than 2 inches in height, the words "no trespassing" and in addition thereto the name of the owner, lessee, or occupant of said land. Said signs shall be placed along the boundary line of posted land in a manner and in such position as to be clearly noticeable from outside the boundary line; or

2. a. Conspicuous no trespassing notice is painted on trees or posts on the property, provided that the notice is:

I. Painted in an international orange color and displaying the stenciled words "No Trespassing" in letters no less than 2 inches high and 1 inch wide either vertically or horizontally;

II. Placed so that the bottom of the painted notice is not less than 3 feet from the ground or more than 5 feet from the ground; and

III. Placed at locations that are readily visible to any person approaching the prop-

erty and no more than 500 feet apart on agricultural land.

b. Beginning October 1, 2007, when a landowner uses the painted no trespassing posting to identify a "no trespassing" area, those painted notices shall be accompanied by signs complying with subparagraph 1. and placed conspicuously at all places where entry to the property is normally expected or known to occur.

(b) It shall not be necessary to give notice by posting on any enclosed land or place not exceeding 5 acres in area on which there is a dwelling house in order to obtain the benefits of §§ 810.09 and 810.12 pertaining to trespass on enclosed lands.

(6) "Cultivated land" is that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture, or trees or is fallow land as part of a crop rotation.

(7) "Fenced land" is that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire, or other material, which stands at least 3 feet in height. For the purpose of this chapter, it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water.

(8) Where lands are posted, cultivated, or fenced as described herein, then said lands, for the purpose of this chapter, shall be considered as enclosed and posted.

(9) "Litter" means any garbage, rubbish, trash, refuse, debris, can, bottle, box, container, paper, tobacco product, tire, domestic or commercial appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, or farm machinery or equipment; sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

(10) "Dump" means to dump, throw, discard, place, deposit, or dispose of any litter.

(11) "Commercial horticulture property" means any property that is cleared of its natural vegetation and is planted in commercially cultivated horticulture products that are planted, grown, or harvested. The term also includes property that is used for the commercial sale, use, or distribution of horticulture products.

(12) "Agricultural chemicals manufacturing facility" means any facility, and any properties or structures associated with the facility, used for the manufacture, processing, or storage of agricultural chemicals classified in Industry Group 287 contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

(13) "Construction site" means any property upon which there is construction that is subject to building permit posting requirements.

810.02. Burglary.

(1) (a) For offenses committed on or before July 1, 2001, "burglary" means entering or remaining in a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter or remain.

(b) For offenses committed after July 1, 2001, "burglary" means:

1. Entering a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter; or

2. Notwithstanding a licensed or invited entry, remaining in a dwelling, structure, or conveyance:

a. Surreptitiously, with the intent to commit an offense therein;

b. After permission to remain therein has been withdrawn, with the intent to commit an offense therein; or

c. To commit or attempt to commit a forcible felony, as defined in § 776.08.

(2) Burglary is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in § 775.082, § 775.083, or § 775.084, if, in the course of committing the offense, the offender:

(a) Makes an assault or battery upon any person; or

(b) Is or becomes armed within the dwelling, structure, or conveyance, with explosives or a dangerous weapon; or

(c) Enters an occupied or unoccupied dwelling or structure, and:

1. Uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense, and thereby damages the dwelling or structure; or

2. Causes damage to the dwelling or structure, or to property within the dwelling or structure in excess of $1,000.

(3) Burglary is a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Dwelling, and there is another person in the dwelling at the time the offender enters or remains;

(b) Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;

(c) Structure, and there is another person in the structure at the time the offender enters or remains;

(d) Conveyance, and there is another person in the conveyance at the time the offender enters or remains;

(e) Authorized emergency vehicle, as defined in § 316.003; or

(f) Structure or conveyance when the offense intended to be committed therein is theft of a controlled substance as defined in § 893.02. Notwithstanding any other law, separate judgments and sentences for burglary with the intent to commit theft of a controlled substance under this paragraph and for any applicable possession of controlled substance offense under § 893.13 or trafficking in controlled substance offense under § 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the burglary is committed within a county that is subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084. As used in this subsection, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under § 921.0022 or § 921.0023 of the offense committed.

(4) Burglary is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

(a) Structure, and there is not another person in the structure at the time the offender enters or remains; or

(b) Conveyance, and there is not another person in the conveyance at the time the offender enters or remains.

However, if the burglary is committed within a county that is subject to a state of emergency declared by the Governor under chapter 252 after the declaration of emergency is made and the perpetration of the burglary is facilitated by conditions arising from the emergency, the burglary is a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. As used in this subsection, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. A person arrested for committing a burglary within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under § 921.0022 or § 921.0023 of the offense committed.

810.06. Possession of burglary tools.

Whoever has in his or her possession any tool, machine, or implement with intent to use the same, or allow the same to be used, to commit any burglary or trespass shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

810.061. Impairing or impeding telephone or power to a dwelling; facilitating or furthering a burglary; penalty.

(1) As used in this section, the term "burglary" has the meaning ascribed in § 810.02(1)(b).

(2) A person who, for the purpose of facilitating or furthering the commission or attempted commission of a burglary of a

dwelling by any person, damages a wire or line that transmits or conveys telephone or power to that dwelling, impairs any other equipment necessary for telephone or power transmission or conveyance, or otherwise impairs or impedes such telephone or power transmission or conveyance commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

810.07. Prima facie evidence of intent.

(1) In a trial on the charge of burglary, proof of the entering of such structure or conveyance at any time stealthily and without consent of the owner or occupant thereof is prima facie evidence of entering with intent to commit an offense.

(2) In a trial on the charge of attempted burglary, proof of the attempt to enter such structure or conveyance at any time stealthily and without the consent of the owner or occupant thereof is prima facie evidence of attempting to enter with intent to commit an offense.

810.08. Trespass in structure or conveyance.

(1) Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

(2) (a) Except as otherwise provided in this subsection, trespass in a structure or conveyance is a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(b) If there is a human being in the structure or conveyance at the time the offender trespassed, attempted to trespass, or was in the structure or conveyance, the trespass in a structure or conveyance is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(c) If the offender is armed with a firearm or other dangerous weapon, or arms himself or herself with such while in the structure or conveyance, the trespass in a structure or conveyance is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Any owner or person authorized by the owner may, for prosecution purposes, take into custody and detain, in a reasonable manner, for a reasonable length of time, any person when he or she reasonably believes that a violation of this paragraph has been or is being committed, and he or she reasonably believes that the person to be taken into custody and detained has committed or is committing such violation. In the event a person is taken into custody, a law enforcement officer shall be called as soon as is practicable after the person has been taken into custody. The taking into custody and detention by such person, if done in compliance with the requirements of this paragraph, shall not render such person criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(3) As used in this section, the term "person authorized" means any owner or lessee, or his or her agent, or any law enforcement officer whose department has received written authorization from the owner or lessee, or his or her agent, to communicate an order to depart the property in the case of a threat to public safety or welfare.

810.09. Trespass on property other than structure or conveyance.

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

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

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

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

(b) As used in this section, the term "unenclosed curtilage" means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling.

(2) (a) Except as provided in this subsection, trespass on property other than a structure or conveyance is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(b) If the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on

property other than a structure or conveyance, the offender commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(c) If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he or she is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Any owner or person authorized by the owner may, for prosecution purposes, take into custody and detain, in a reasonable manner, for a reasonable length of time, any person when he or she reasonably believes that a violation of this paragraph has been or is being committed, and that the person to be taken into custody and detained has committed or is committing the violation. If a person is taken into custody, a law enforcement officer shall be called as soon as is practicable after the person has been taken into custody. The taking into custody and detention in compliance with the requirements of this paragraph does not result in criminal or civil liability for false arrest, false imprisonment, or unlawful detention.

(d) The offender commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the property trespassed is a construction site that is:

1. Greater than 1 acre in area and is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."; or

2. One acre or less in area and is identified as such with a sign that appears prominently, in letters of not less than 2 inches in height, and reads in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY." The sign shall be placed at the location on the property where the permits for construction are located. For construction sites of 1 acre or less as provided in this subparagraph, it shall not be necessary to give notice by posting as defined in § 810.011(5).

(e) The offender commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the property trespassed upon is commercial horticulture property and the property is legally posted and identified in substantially the following manner: "THIS AREA IS DESIGNATED COMMERCIAL PROPERTY FOR HORTICULTURE PRODUCTS, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(f) The offender commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the property trespassed upon is an agricultural site for testing or research purposes that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED AGRICULTURAL SITE FOR TESTING OR RESEARCH PURPOSES, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(g) The offender commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the property trespassed upon is a domestic violence center certified under § 39.905 which is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED RESTRICTED SITE AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(h) Any person who in taking or attempting to take any animal described in § 379.101(19) or (20), or in killing, attempting to kill, or endangering any animal described in § 585.01(13) knowingly propels or causes to be propelled any potentially lethal projectile over or across private land without authorization commits trespass, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. For purposes of this paragraph, the term "potentially lethal projectile" includes any projectile launched from any firearm, bow, crossbow, or similar tensile device. This section does not apply to any governmental agent or employee acting within the scope of his or her official duties.

(i) The offender commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the property trespassed upon is an agricultural chemicals manufacturing facility that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED AGRICULTURAL CHEMICALS MANUFACTURING FACILITY, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(3) As used in this section, the term "authorized person" or "person authorized" means any owner, his or her agent, or a community association authorized as an agent for the owner, or any law enforcement officer

whose department has received written authorization from the owner, his or her agent, or a community association authorized as an agent for the owner, to communicate an order to leave the property in the case of a threat to public safety or welfare.

810.095. Trespass on school property with firearm or other weapon prohibited.

(1) It is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, for a person who is trespassing upon school property to bring onto, or to possess on, such school property any weapon as defined in § 790.001(13) or any firearm.

(2) As used in this section, "school property" means the grounds or facility of any kindergarten, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.

810.097. Trespass upon grounds or facilities of a school; penalties; arrest.

(1) Any person who:

(a) Does not have legitimate business on the campus or any other authorization, license, or invitation to enter or remain upon school property; or

(b) Is a student currently under suspension or expulsion;

and who enters or remains upon the campus or any other facility owned by any such school commits a trespass upon the grounds of a school facility and is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) Any person who enters or remains upon the campus or other facility of a school after the principal of such school, or his or her designee, has directed such person to leave such campus or facility or not to enter upon the campus or facility, commits a trespass upon the grounds of a school facility and is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) The chief administrative officer of a school, or any employee thereof designated by the chief administrative officer to maintain order on such campus or facility, who has probable cause to believe that a person is trespassing upon school grounds in violation of this section may take such person into custody and detain him or her in a reasonable manner for a reasonable length of time pending arrival of a law enforcement officer. Such taking into custody and detention by an authorized person does not render that person criminally or civilly liable for false arrest, false imprisonment, or unlawful detention. If a trespasser is taken into custody, a law enforcement officer shall be called to the scene immediately after the person is taken into custody.

(4) Any law enforcement officer may arrest either on or off the premises and without warrant any person the officer has probable cause for believing has committed the offense of trespass upon the grounds of a school facility. Such arrest shall not render the law enforcement officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(5) As used in this section, the term "school" means the grounds or any facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic.

810.0975. School safety zones; definition; trespass prohibited; penalty.

(1) For the purposes of this section, the term "school safety zone" means in, on, or within 500 feet of any real property owned by or leased to any public or private elementary, middle, or high school or school board and used for elementary, middle, or high school education.

(2) (a) Each principal or designee of each public or private school in this state shall notify the appropriate law enforcement agency to prohibit any person from loitering in the school safety zone who does not have legitimate business in the school safety zone or any other authorization, or license to enter or remain in the school safety zone or does not otherwise have invitee status in the designated safety zone.

(b) 1. During the period from 1 hour prior to the start of a school session until 1 hour after the conclusion of a school session, it is unlawful for any person to enter the premises or trespass within a school safety zone or to remain on such premises or within such school safety zone when that person does not have legitimate business in the school safety zone or any other authorization, license, or invitation to enter or remain in the school safety zone.

2. a. Except as provided in sub-subparagraph b., a person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

b. A person who violates this subsection and who has been previously convicted of any offense contained in chapter 874 commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(c) 1. Except as provided in subparagraph 2., a person who does not have legitimate business in the school safety zone or any other authorization, license, or invitation to enter or remain in the school safety zone who shall willfully fail to remove himself or herself from the school safety zone after the principal or designee, having a reasonable belief that he or she will commit a crime or is engaged in harassment or intimidation of students entering or leaving school property, requests him or her to leave the school safety zone commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

2. A person who violates subparagraph 1. and who has been previously convicted of any offense contained in chapter 874 commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) This section does not abridge or infringe upon the right of any person to peaceably assemble and protest.

(4) This section does not apply to residents or persons engaged in the operation of a licensed commercial business within the school safety zone.

810.10. Posted land; removing notices unlawful; penalty.

(1) It is unlawful for any person to willfully remove, destroy, mutilate, or commit any act designed to remove, mutilate, or reduce the legibility or effectiveness of any posted notice placed by the owner, tenant, lessee, or occupant of legally enclosed or legally posted land pursuant to any law of this state for the purpose of legally enclosing the same.

(2) Any person violating the provisions of this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

810.11. Placing signs adjacent to highways; penalty.

(1) All persons are prohibited from placing, posting, or erecting signs upon land or upon trees upon land adjacent to or adjoining all public highways of the state, without the written consent of the owner of such land, or the written consent of the attorney or agent of such owner.

(2) Every person convicted of a violation of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

810.115. Breaking or injuring fences.

(1) Whoever willfully and maliciously breaks down, mars, injures, defaces, cuts, or otherwise creates or causes to be created an opening, gap, interruption, or break in any fence, or any part thereof, belonging to or enclosing land not his or her own, or whoever causes to be broken down, marred, injured, defaced, or cut any fence belonging to or enclosing land not his or her own, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. A person who commits a second or subsequent offense under this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) If the offender breaks or injures a fence as provided in subsection (1) and the fence or any part thereof is used to contain animals at the time of the offense, the offender commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) The court may require full compensation to the owner of the fence for any and all damages or losses resulting directly or indirectly from the act or commission pursuant to § 775.089.

810.12. Unauthorized entry on land; prima facie evidence of trespass.

(1) The unauthorized entry by any person into or upon any enclosed and posted land shall be prima facie evidence of the intention of such person to commit an act of trespass.

(2) The act of entry upon enclosed and posted land without permission of the owner of said land by any worker, servant, employee, or agent while actually engaged in the performance of his or her work or duties incident to such employment and while under the supervision or direction, or through the procurement, of any other person acting as supervisor, foreman, employer, or principal, or in any other capacity, shall be prima facie evidence of the causing, and of the procurement, of such act by the supervisor, foreman, employer, principal, or other person.

(3) The act committed by any person or persons of taking, transporting, operating, or driving, or the act of permitting or consenting to the taking or transporting of, any machine, tool, motor vehicle, or draft animal into or upon any enclosed and posted land without the permission of the owner of said land by any person who is not the owner of such machine, tool, vehicle, or animal, but with the knowledge or consent of the owner of such machine, tool, vehicle, or animal, or of the person then having the right to possession thereof, shall be prima facie evidence of the intent of such owner of such machine, tool, vehicle, or animal, or of the person then

entitled to the possession thereof, to cause or procure an act of trespass.

(4) As used herein, the term "owner of said land" shall include the beneficial owner, lessee, occupant, or other person having any interest in said land under and by virtue of which that person is entitled to possession thereof, and shall also include the agents or authorized employees of such owner.

(5) However, this section shall not apply to any official or employee of the state or a county, municipality, or other governmental agency now authorized by law to enter upon lands or to registered engineers and surveyors and mappers authorized to enter lands pursuant to §§ 471.027 and 472.029. The provisions of this section shall not apply to the trimming or cutting of trees or timber by municipal or private public utilities, or their employees, contractors, or subcontractors, when such trimming is required for the establishment or maintenance of the service furnished by any such utility.

(6) The unlawful dumping by any person of any litter in violation of § 403.413(4) is prima facie evidence of the intention of such person to commit an act of trespass. If any waste that is dumped in violation of § 403.413(4) is discovered to contain any article, including, but not limited to, a letter, bill, publication, or other writing that displays the name of a person thereon, addressed to such person or in any other manner indicating that the article last belonged to such person, that discovery raises a mere inference that the person so identified has violated this section. If the court finds that the discovery of the location of the article is corroborated by the existence of an independent fact or circumstance which, standing alone, would constitute evidence sufficient to prove a violation of § 403.413(4), such person is rebuttably presumed to have violated that section.

810.14. Voyeurism prohibited; penalties.

(1) A person commits the offense of voyeurism when he or she, with lewd, lascivious, or indecent intent, secretly observes another person when the other person is located in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy.

(2) A person who violates this section commits a misdemeanor of the first degree for the first violation, punishable as provided in § 775.082 or § 775.083.

(3) A person who violates this section and who has been previously convicted or adjudicated delinquent two or more times of any violation of this section commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) For purposes of this section, a person has been previously convicted or adjudicated delinquent of a violation of this section if the violation resulted in a conviction sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense.

810.145. Video voyeurism.

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

(a) "Broadcast" means electronically transmitting a visual image with the intent that it be viewed by another person.

(b) "Imaging device" means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

(c) "Place and time when a person has a reasonable expectation of privacy" means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person's undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a residential dwelling, bathroom, changing room, fitting room, dressing room, or tanning booth.

(d) "Privately exposing the body" means exposing a sexual organ.

(2) A person commits the offense of video voyeurism if that person:

(a) For his or her own amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person, intentionally uses or installs an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy;

(b) For the amusement, entertainment, sexual arousal, gratification, or profit of another, or on behalf of another, intentionally permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or

(c) For the amusement, entertainment, sexual arousal, gratification, or profit of oneself or another, or on behalf of oneself or another, intentionally uses an imaging device

to secretly view, broadcast, or record under or through the clothing being worn by another person, without that person's knowledge and consent, for the purpose of viewing the body of, or the undergarments worn by, that person.

(3) A person commits the offense of video voyeurism dissemination if that person, knowing or having reason to believe that an image was created in a manner described in this section, intentionally disseminates, distributes, or transfers the image to another person for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

(4) A person commits the offense of commercial video voyeurism dissemination if that person:

(a) Knowing or having reason to believe that an image was created in a manner described in this section, sells the image for consideration to another person; or

(b) Having created the image in a manner described in this section, disseminates, distributes, or transfers the image to another person for that person to sell the image to others.

(5) This section does not apply to any:

(a) Law enforcement agency conducting surveillance for a law enforcement purpose;

(b) Security system when a written notice is conspicuously posted on the premises stating that a video surveillance system has been installed for the purpose of security for the premises;

(c) Video surveillance device that is installed in such a manner that the presence of the device is clearly and immediately obvious; or

(d) Dissemination, distribution, or transfer of images subject to this section by a provider of an electronic communication service as defined in 18 U.S.C. § 2510(15), or a provider of a remote computing service as defined in 18 U.S.C. § 2711(2). For purposes of this section, the exceptions to the definition of "electronic communication" set forth in 18 U.S.C. § 2510(12)(a), (b), (c), and (d) do not apply, but are included within the definition of the term.

(6) Except as provided in subsections (7) and (8):

(a) A person who is under 19 years of age and who violates this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(b) A person who is 19 years of age or older and who violates this section commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(7) A person who violates this section and who has previously been convicted of or adjudicated delinquent for any violation of this section commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(8) (a) A person who is:

1. Eighteen years of age or older who is responsible for the welfare of a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child, and who commits an offense under this section against that child;

2. Eighteen years of age or older who is employed at a private school as defined in § 1002.01; a school as defined in § 1003.01; or a voluntary prekindergarten education program as described in § 1002.53(3)(a), (b), or (c) and who commits an offense under this section against a student of the private school, school, or voluntary prekindergarten education program; or

3. Twenty-four years of age or older who commits an offense under this section against a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child

commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) A person who violates this subsection and who has previously been convicted of or adjudicated delinquent for any violation of this section commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(9) For purposes of this section, a person has previously been convicted of or adjudicated delinquent for a violation of this section if the violation resulted in a conviction that was sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense.

CHAPTER 812
THEFT, ROBBERY, AND RELATED CRIMES

812.012. Definitions.

As used in §§ 812.012-812.037:

(1) "Cargo" means partial or entire shipments, containers, or cartons of property which are contained in or on a trailer, motortruck, aircraft, vessel, warehouse, freight station, freight consolidation facility, or air navigation facility.

(2) "Dealer in property" means any person in the business of buying and selling property.

(3) "Obtains or uses" means any manner of:

(a) Taking or exercising control over property.

(b) Making any unauthorized use, disposition, or transfer of property.

(c) Obtaining property by fraud, willful misrepresentation of a future act, or false promise.

(d) 1. Conduct previously known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses, fraud, or deception; or

2. Other conduct similar in nature.

(4) "Property" means anything of value, and includes:

(a) Real property, including things growing on, affixed to, and found in land.

(b) Tangible or intangible personal property, including rights, privileges, interests, and claims.

(c) Services.

(5) "Property of another" means property in which a person has an interest upon which another person is not privileged to infringe without consent, whether or not the other person also has an interest in the property.

(6) "Services" means anything of value resulting from a person's physical or mental labor or skill, or from the use, possession, or presence of property, and includes:

(a) Repairs or improvements to property.

(b) Professional services.

(c) Private, public, or government communication, transportation, power, water, or sanitation services.

(d) Lodging accommodations.

(e) Admissions to places of exhibition or entertainment.

(7) "Stolen property" means property that has been the subject of any criminally wrongful taking.

(8) "Traffic" means:

(a) To sell, transfer, distribute, dispense, or otherwise dispose of property.

(b) To buy, receive, possess, obtain control of, or use property with the intent to sell, transfer, distribute, dispense, or otherwise dispose of such property.

(9) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity.

(10) "Value" means value determined according to any of the following:

(a) 1. Value means the market value of the property at the time and place of the offense or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

2. The value of a written instrument that does not have a readily ascertainable market value, in the case of an instrument such as a check, draft, or promissory note, is the amount due or collectible or is, in the case of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation, the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

3. The value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the damage to the owner, suffered by reason of losing an advantage over those who do not know of or use the trade secret.

(b) If the value of property cannot be ascertained, the trier of fact may find the value to be not less than a certain amount; if no such minimum value can be ascertained, the value is an amount less than $100.

(c) Amounts of value of separate properties involved in thefts committed pursuant to one scheme or course of conduct, whether the thefts are from the same person or from several persons, may be aggregated in determining the grade of the offense.

812.014. Theft.

(1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

(a) Deprive the other person of a right to the property or a benefit from the property.

(b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

(2) (a) 1. If the property stolen is valued at $100,000 or more or is a semitrailer that was deployed by a law enforcement officer; or

2. If the property stolen is cargo valued at $50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or

3. If the offender commits any grand theft and:

a. In the course of committing the offense the offender uses a motor vehicle as an in-

strumentality, other than merely as a getaway vehicle, to assist in committing the offense and thereby damages the real property of another; or

b. In the course of committing the offense the offender causes damage to the real or personal property of another in excess of $1,000,

the offender commits grand theft in the first degree, punishable as a felony of the first degree, as provided in § 775.082, § 775.083, or § 775.084.

(b) 1. If the property stolen is valued at $20,000 or more, but less than $100,000;

2. The property stolen is cargo valued at less than $50,000 that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock;

3. The property stolen is emergency medical equipment, valued at $300 or more, that is taken from a facility licensed under chapter 395 or from an aircraft or vehicle permitted under chapter 401; or

4. The property stolen is law enforcement equipment, valued at $300 or more, that is taken from an authorized emergency vehicle, as defined in § 316.003,

the offender commits grand theft in the second degree, punishable as a felony of the second degree, as provided in § 775.082, § 775.083, or § 775.084. Emergency medical equipment means mechanical or electronic apparatus used to provide emergency services and care as defined in § 395.002(9) or to treat medical emergencies. Law enforcement equipment means any property, device, or apparatus used by any law enforcement officer as defined in § 943.10 in the officer's official business. However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the theft is committed after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the theft is a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under § 921.0022 or § 921.0023 of the offense committed.

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the property stolen is:

1. Valued at $300 or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a $10,000 fine shall be imposed.

8. Any fire extinguisher.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in § 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

13. Any amount of a controlled substance as defined in § 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under § 893.13 or trafficking in controlled substance offense under § 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary

or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under § 921.0022 or § 921.0023 of the offense committed.

(d) It is grand theft of the third degree and a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the property stolen is valued at $100 or more, but less than $300, and is taken from a dwelling as defined in § 810.011(2) or from the unenclosed curtilage of a dwelling pursuant to § 810.09(1).

(e) Except as provided in paragraph (d), if the property stolen is valued at $100 or more, but less than $300, the offender commits petit theft of the first degree, punishable as a misdemeanor of the first degree, as provided in § 775.082 or § 775.083.

(3) (a) Theft of any property not specified in subsection (2) is petit theft of the second degree and a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, and as provided in subsection (5), as applicable.

(b) A person who commits petit theft and who has previously been convicted of any theft commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(c) A person who commits petit theft and who has previously been convicted two or more times of any theft commits a felony of the third degree, punishable as provided in § 775.082 or § 775.083.

(d) 1. Every judgment of guilty or not guilty of a petit theft shall be in writing, signed by the judge, and recorded by the clerk of the circuit court. The judge shall cause to be affixed to every such written judgment of guilty of petit theft, in open court and in the presence of such judge, the fingerprints of the defendant against whom such judgment is rendered. Such fingerprints shall be affixed beneath the judge's signature to such judgment. Beneath such fingerprints shall be appended a certificate to the following effect:

"I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, _____, and that they were placed thereon by said defendant in my presence, in open court, this the day of _____, (year)."

Such certificate shall be signed by the judge, whose signature thereto shall be followed by the word "Judge."

2. Any such written judgment of guilty of a petit theft, or a certified copy thereof, is admissible in evidence in the courts of this state as prima facie evidence that the fingerprints appearing thereon and certified by the judge are the fingerprints of the defendant against whom such judgment of guilty of a petit theft was rendered.

(4) Failure to comply with the terms of a lease when the lease is for a term of 1 year or longer shall not constitute a violation of this section unless demand for the return of the property leased has been made in writing and the lessee has failed to return the property within 7 days of his or her receipt of the demand for return of the property. A demand mailed by certified or registered mail, evidenced by return receipt, to the last known address of the lessee shall be deemed sufficient and equivalent to the demand having been received by the lessee, whether such demand shall be returned undelivered or not.

(5) (a) No person shall drive a motor vehicle so as to cause it to leave the premises of an establishment at which gasoline offered for retail sale was dispensed into the fuel tank of such motor vehicle unless the payment of authorized charge for the gasoline dispensed has been made.

(b) In addition to the penalties prescribed in paragraph (3)(a), every judgment of guilty of a petit theft for property described in this subsection shall provide for the suspension of the convicted person's driver's license. The court shall forward the driver's license to the Department of Highway Safety and Motor Vehicles in accordance with § 322.25.

1. The first suspension of a driver's license under this subsection shall be for a period of up to 6 months.

2. The second or subsequent suspension of a driver's license under this subsection shall be for a period of 1 year.

(6) A person who individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing theft under this section where the stolen property has a value in excess of $3,000 commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

812.0145. Theft from persons 65 years of age or older; reclassification of offenses.

(1) A person who is convicted of theft of more than $1,000 from a person 65 years of age or older shall be ordered by the sentencing judge to make restitution to the victim of such offense and to perform up to 500 hours

of community service work. Restitution and community service work shall be in addition to any fine or sentence which may be imposed and shall not be in lieu thereof.

(2) Whenever a person is charged with committing theft from a person 65 years of age or older, when he or she knows or has reason to believe that the victim was 65 years of age or older, the offense for which the person is charged shall be reclassified as follows:

(a) If the funds, assets, or property involved in the theft from a person 65 years of age or older is valued at $50,000 or more, the offender commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) If the funds, assets, or property involved in the theft from a person 65 years of age or older is valued at $10,000 or more, but less than $50,000, the offender commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) If the funds, assets, or property involved in the theft from a person 65 years of age or older is valued at $300 or more, but less than $10,000, the offender commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

812.0147. Unlawful possession or use of a fifth wheel.

(1) A person may not modify, alter, attempt to alter, and if altered, sell, possess, offer for sale, move, or cause to be moved onto the highways of this state a device known as a fifth wheel with the intent to use the fifth wheel to commit or attempt to commit theft. As used in this section, the term "fifth wheel" applies only to a fifth wheel on a commercial motor vehicle.

(2) Any person who violates subsection (1) commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

812.015. Retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.

(1) As used in this section:

(a) "Merchandise" means any personal property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant.

(b) "Merchant" means an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.

(c) "Value of merchandise" means the sale price of the merchandise at the time it was stolen or otherwise removed, depriving the owner of her or his lawful right to ownership and sale of said item.

(d) "Retail theft" means the taking possession of or carrying away of merchandise, property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

(e) "Farm produce" means livestock or any item grown, produced, or manufactured by a person owning, renting, or leasing land for the purpose of growing, producing, or manufacturing items for sale or personal use, either part time or full time.

(f) "Farmer" means a person who is engaging in the growing or producing of farm produce, milk products, honey, eggs, or meat, either part time or full time, for personal consumption or for sale and who is the owner or lessee of the land or a person designated in writing by the owner or lessee to act as her or his agent. No person defined as a farm labor contractor pursuant to § 450.28 shall be designated to act as an agent for purposes of this section.

(g) "Farm theft" means the unlawful taking possession of any items that are grown or produced on land owned, rented, or leased by another person. The term includes the unlawful taking possession of equipment and associated materials used to grow or produce farm products as defined in § 823.14(3)(c).

(h) "Antishoplifting or inventory control device" means a mechanism or other device designed and operated for the purpose of detecting the removal from a mercantile establishment or similar enclosure, or from a protected area within such an enclosure, of specially marked or tagged merchandise. The term includes any electronic or digital imaging or any video recording or other film used for security purposes and the cash register tape or other record made of the register receipt.

(i) "Antishoplifting or inventory control device countermeasure" means any item or device which is designed, manufactured, modified, or altered to defeat any antishoplifting or inventory control device.

(j) "Transit fare evasion" means the unlawful refusal to pay the appropriate fare for

transportation upon a mass transit vehicle, or to evade the payment of such fare, or to enter any mass transit vehicle or facility by any door, passageway, or gate, except as provided for the entry of fare-paying passengers, and shall constitute petit theft as proscribed by this chapter.

(k) "Mass transit vehicle" means buses, rail cars, or fixed-guideway mover systems operated by, or under contract to, state agencies, political subdivisions of the state, or municipalities for the transportation of fare-paying passengers.

(l) "Transit agency" means any state agency, political subdivision of the state, or municipality which operates mass transit vehicles.

(m) "Trespass" means the violation as described in § 810.08.

(2) Upon a second or subsequent conviction for petit theft from a merchant, farmer, or transit agency, the offender shall be punished as provided in § 812.014(3), except that the court shall impose a fine of not less than $50 or more than $1,000. However, in lieu of such fine, the court may require the offender to perform public services designated by the court. In no event shall any such offender be required to perform fewer than the number of hours of public service necessary to satisfy the fine assessed by the court, as provided by this subsection, at the minimum wage prevailing in the state at the time of sentencing.

(3) (a) A law enforcement officer, a merchant, a farmer, or a transit agency's employee or agent, who has probable cause to believe that a retail theft, farm theft, a transit fare evasion, or trespass, or unlawful use or attempted use of any antishoplifting or inventory control device countermeasure, has been committed by a person and, in the case of retail or farm theft, that the property can be recovered by taking the offender into custody may, for the purpose of attempting to effect such recovery or for prosecution, take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time. In the case of a farmer, taking into custody shall be effectuated only on property owned or leased by the farmer. In the event the merchant, merchant's employee, farmer, or a transit agency's employee or agent takes the person into custody, a law enforcement officer shall be called to the scene immediately after the person has been taken into custody.

(b) The activation of an antishoplifting or inventory control device as a result of a person exiting an establishment or a protected area within an establishment shall constitute reasonable cause for the detention of the person so exiting by the owner or operator of the establishment or by an agent or employee of the owner or operator, provided sufficient notice has been posted to advise the patrons that such a device is being utilized. Each such detention shall be made only in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the device.

(c) The taking into custody and detention by a law enforcement officer, merchant, merchant's employee, farmer, or a transit agency's employee or agent, if done in compliance with all the requirements of this subsection, shall not render such law enforcement officer, merchant, merchant's employee, farmer, or a transit agency's employee or agent, criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(4) Any law enforcement officer may arrest, either on or off the premises and without warrant, any person the officer has probable cause to believe unlawfully possesses, or is unlawfully using or attempting to use or has used or attempted to use, any antishoplifting or inventory control device countermeasure or has committed theft in a retail or wholesale establishment or on commercial or private farm lands of a farmer or transit fare evasion or trespass.

(5) (a) A merchant, merchant's employee, farmer, or a transit agency's employee or agent who takes a person into custody, as provided in subsection (3), or who causes an arrest, as provided in subsection (4), of a person for retail theft, farm theft, transit fare evasion, or trespass shall not be criminally or civilly liable for false arrest or false imprisonment when the merchant, merchant's employee, farmer, or a transit agency's employee or agent has probable cause to believe that the person committed retail theft, farm theft, transit fare evasion, or trespass.

(b) If a merchant or merchant's employee takes a person into custody as provided in this section, or acts as a witness with respect to any person taken into custody as provided in this section, the merchant or merchant's employee may provide his or her business address rather than home address to any investigating law enforcement officer.

(6) An individual who, while committing or after committing theft of property, transit fare evasion, or trespass, resists the reasonable effort of a law enforcement officer, merchant, merchant's employee, farmer, or a

transit agency's employee or agent to recover the property or cause the individual to pay the proper transit fare or vacate the transit facility which the law enforcement officer, merchant, merchant's employee, farmer, or a transit agency's employee or agent had probable cause to believe the individual had concealed or removed from its place of display or elsewhere or perpetrated a transit fare evasion or trespass commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, unless the individual did not know, or did not have reason to know, that the person seeking to recover the property was a law enforcement officer, merchant, merchant's employee, farmer, or a transit agency's employee or agent. For purposes of this section the charge of theft and the charge of resisting may be tried concurrently.

(7) It is unlawful to possess, or use or attempt to use, any antishoplifting or inventory control device countermeasure within any premises used for the retail purchase or sale of any merchandise. Any person who possesses any antishoplifting or inventory control device countermeasure within any premises used for the retail purchase or sale of any merchandise commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Any person who uses or attempts to use any antishoplifting or inventory control device countermeasure within any premises used for the retail purchase or sale of any merchandise commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(8) Except as provided in subsection (9), a person who commits retail theft commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the property stolen is valued at $300 or more, and the person:

(a) Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(b) Commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(c) Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or

(d) Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.

(9) A person commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the person:

(a) Violates subsection (8) and has previously been convicted of a violation of subsection (8); or

(b) Individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of $3,000.

812.0155. Suspension of driver's license following an adjudication of guilt for theft.

(1) Except as provided in subsections (2) and (3), the court may order the suspension of the driver's license of each person adjudicated guilty of any misdemeanor violation of § 812.014 or § 812.015, regardless of the value of the property stolen. The court shall order the suspension of the driver's license of each person adjudicated guilty of any misdemeanor violation of § 812.014 or § 812.015 who has previously been convicted of such an offense. Upon ordering the suspension of the driver's license of the person adjudicated guilty, the court shall forward the driver's license of the person adjudicated guilty to the Department of Highway Safety and Motor Vehicles in accordance with § 322.25.

(a) The first suspension of a driver's license under this subsection shall be for a period of up to 6 months.

(b) A second or subsequent suspension of a driver's license under this subsection shall be for 1 year.

(2) The court may revoke, suspend, or withhold issuance of a driver's license of a person less than 18 years of age who violates § 812.014 or § 812.015 as an alternative to sentencing the person to:

(a) Probation as defined in § 985.03 or commitment to the Department of Juvenile Justice, if the person is adjudicated delinquent for such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

(b) Probation as defined in § 985.03, commitment to the Department of Juvenile Justice, probation as defined in chapter 948,

community control, or incarceration, if the person is convicted as an adult of such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

(3) As used in this subsection, the term "department" means the Department of Highway Safety and Motor Vehicles. A court that revokes, suspends, or withholds issuance of a driver's license under subsection (2) shall:

(a) If the person is eligible by reason of age for a driver's license or driving privilege, direct the department to revoke or withhold issuance of the person's driver's license or driving privilege for not less than 6 months and not more than 1 year;

(b) If the person's driver's license is under suspension or revocation for any reason, direct the department to extend the period of suspension or revocation by not less than 6 months and not more than 1 year; or

(c) If the person is ineligible by reason of age for a driver's license or driving privilege, direct the department to withhold issuance of the person's driver's license or driving privilege for not less than 6 months and not more than 1 year after the date on which the person would otherwise become eligible.

(4) Subsections (2) and (3) do not preclude the court from imposing any sanction specified or not specified in subsection (2) or subsection (3).

812.016. Possession of altered property.

Any dealer in property who knew or should have known that the identifying features, such as serial numbers and permanently affixed labels, of property in his or her possession had been removed or altered without the consent of the manufacturer, shall be guilty of a misdemeanor of the first degree, punishable as defined in §§ 775.082 and 775.083.

812.017. Use of a fraudulently obtained or false receipt.

(1) Any person who requests a refund of merchandise, money, or any other thing of value through the use of a fraudulently obtained receipt or false receipt commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) Any person who obtains merchandise, money, or any other thing of value through the use of a fraudulently obtained receipt or false receipt commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

812.019. Dealing in stolen property.

(1) Any person who traffics in, or endeavors to traffic in, property that he or she knows or should know was stolen shall be guilty of a felony of the second degree, punishable as provided in §§ 775.082, 775.083, and 775.084.

(2) Any person who initiates, organizes, plans, finances, directs, manages, or supervises the theft of property and traffics in such stolen property shall be guilty of a felony of the first degree, punishable as provided in §§ 775.082, 775.083, and 775.084.

812.0191. Dealing in property paid for in whole or in part by the Medicaid program.

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

(a) "Property paid for in whole or in part by the Medicaid program" means any devices, goods, services, drugs, or any other property furnished or intended to be furnished to a recipient of benefits under the Medicaid program.

(b) "Value" means the amount billed to Medicaid for the property dispensed or the market value of the devices, goods, services, or drugs at the time and place of the offense. If the market value cannot be determined, the term means the replacement cost of the devices, goods, services, or drugs within a reasonable time after the offense.

(2) Any person who traffics in, or endeavors to traffic in, property that he or she knows or should have known was paid for in whole or in part by the Medicaid program commits a felony.

(a) If the value of the property involved is less than $20,000, the crime is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) If the value of the property involved is $20,000 or more but less than $100,000, the crime is a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) If the value of the property involved is $100,000 or more, the crime is a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

The value of individual items of the devices, goods, services, drugs, or other property involved in distinct transactions committed during a single scheme or course of conduct, whether involving a single person or several persons, may be aggregated when determining the punishment for the offense.

(3) Any person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the obtaining of property paid

for in whole or in part by the Medicaid program and who traffics in, or endeavors to traffic in, such property commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

812.0195. Dealing in stolen property by use of the Internet.

Any person in this state who uses the Internet to sell or offer for sale any merchandise or other property that the person knows, or has reasonable cause to believe, is stolen commits:

(1) A misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, if the value of the property is less than $300; or

(2) A felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the value of the property is $300 or more.

812.022. Evidence of theft or dealing in stolen property.

(1) Proof that a person presented false identification, or identification not current with respect to name, address, place of employment, or other material aspects, in connection with the leasing of personal property, or failed to return leased property within 72 hours of the termination of the leasing agreement, unless satisfactorily explained, gives rise to an inference that such property was obtained or is now used with intent to commit theft.

(2) Except as provided in subsection (5), proof of possession of property recently stolen, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.

(3) Proof of the purchase or sale of stolen property at a price substantially below the fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that the property had been stolen.

(4) Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that it had been stolen.

(5) Proof that a dealer who regularly deals in used property possesses stolen property upon which a name and phone number of a person other than the offeror of the property are conspicuously displayed gives rise to an inference that the dealer possessing the property knew or should have known that the property was stolen.

(a) If the name and phone number are for a business that rents property, the dealer avoids the inference by contacting such business, prior to accepting the property, to verify that the property was not stolen from such business. If the name and phone number are not for a business that rents property, the dealer avoids the inference by contacting the local law enforcement agency in the jurisdiction where the dealer is located, prior to accepting the property, to verify that the property has not been reported stolen. An accurate written record, which contains the number called, the date and time of such call, and the name and place of employment of the person who verified that the property was not stolen, is sufficient evidence to avoid the inference pursuant to this subsection.

(b) This subsection does not apply to:

1. Persons, entities, or transactions exempt from chapter 538.

2. Used sports equipment that does not contain a serial number, printed or recorded materials, computer software, or videos or video games.

3. A dealer who implements, in a continuous and consistent manner, a program for identification and return of stolen property that meets the following criteria:

a. When a dealer is offered property for pawn or purchase that contains conspicuous identifying information that includes a name and phone number, or a dealer is offered property for pawn or purchase that contains ownership information that is affixed to the property pursuant to a written agreement with a business entity or group of associated business entities, the dealer will promptly contact the individual or company whose name is affixed to the property by phone to confirm that the property has not been stolen. If the individual or business contacted indicates that the property has been stolen, the dealer shall not accept the property.

b. If the dealer is unable to verify whether the property is stolen from the individual or business, and if the dealer accepts the property that is later determined to have been stolen, the dealer will voluntarily return the property at no cost and without the necessity of a replevin action, if the property owner files the appropriate theft reports with law enforcement and enters into an agreement with the dealer to actively participate in the

prosecution of the person or persons who perpetrated the crime.

c. If a dealer is required by law to complete and submit a transaction form to law enforcement, the dealer shall include all conspicuously displayed ownership information on the transaction form.

(6) Proof that a person was in possession of a stolen motor vehicle and that the ignition mechanism of the motor vehicle had been bypassed or the steering wheel locking mechanism had been broken or bypassed, unless satisfactorily explained, gives rise to an inference that the person in possession of the stolen motor vehicle knew or should have known that the motor vehicle had been stolen.

812.025. Charging theft and dealing in stolen property.

Notwithstanding any other provision of law, a single indictment or information may, under proper circumstances, charge theft and dealing in stolen property in connection with one scheme or course of conduct in separate counts that may be consolidated for trial, but the trier of fact may return a guilty verdict on one or the other, but not both, of the counts.

812.028. Defenses precluded.

It shall not constitute a defense to a prosecution for any violation of the provisions of §§ 812.012-812.037 that:

(1) Any stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed.

(2) A facility or an opportunity to engage in conduct in violation of any provision of this act was provided.

(3) Property that was not stolen was offered for sale as stolen property.

(4) A law enforcement officer solicited a person predisposed to engage in conduct in violation of any provision of §§ 812.012-812.037 in order to gain evidence against that person, provided such solicitation would not induce an ordinary law-abiding person to violate any provision of §§ 812.012-812.037.

812.032. Supplemental fine.

In addition to any other fine authorized by law, a person found guilty of violating any provision of §§ 812.012-812.037, who has thereby derived anything of value, or who has caused personal injury, property damage, or other loss, may, upon motion of the state attorney, be sentenced to pay a fine that does not exceed twice the gross value gained or twice the gross loss caused, whichever is greater, plus the cost of investigation and prosecution. The court shall hold a hearing to determine the amount of the fine to be imposed under this section.

812.035. Civil remedies; limitation on civil and criminal actions.

(1) Any circuit court may, after making due provisions for the rights of innocent persons, enjoin violations of the provisions of §§ 812.012-812.037 or § 812.081 by issuing appropriate orders and judgments, including, but not limited to:

(a) Ordering any defendant to divest himself or herself of any interest in any enterprise, including real estate.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he or she was engaged in violation of the provisions of §§ 812.012-812.037 or § 812.081.

(c) Ordering the dissolution or reorganization of any enterprise.

(d) Ordering the suspension or revocation of any license, permit, or prior approval granted to any enterprise by any department or agency of the state.

(e) Ordering the forfeiture of the charter of a corporation organized under the laws of the state or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of §§ 812.012-812.037 or § 812.081 and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

(2) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of §§ 812.012-812.037 or § 812.081 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons.

(3) Property subject to forfeiture under this section may be seized by a law enforcement officer upon court process. Seizure without process may be made if:

(a) The seizure is incident to a lawful arrest or search or an inspection under an administrative inspection warrant.

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(c) The law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to the public health or safety.

(d) The law enforcement officer has probable cause to believe that the property is otherwise subject to forfeiture under this section.

(4) In the event of a seizure under subsection (3), a forfeiture proceeding shall be instituted promptly. When property is seized under this section, pending forfeiture and final disposition, the law enforcement officer may:

(a) Place the property under seal.

(b) Remove the property to a place designated by the court.

(c) Require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(5) The Department of Legal Affairs, any state attorney, or any state agency having jurisdiction over conduct in violation of a provision of §§ 812.012-812.037 or § 812.081 may institute civil proceedings under this section. In any action brought under this section, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions, or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(6) Any aggrieved person may institute a proceeding under subsection (1). In such proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that no showing of special or irreparable damage to the person shall have to be made. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order and a preliminary injunction may be issued in any such action before a final determination on the merits.

(7) The state, including any of its agencies, instrumentalities, subdivisions, or municipalities, if it proves by clear and convincing evidence that it has been injured in any fashion by reason of any violation of the provisions of §§ 812.012-812.037 or § 812.081, has a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of $200 and shall also recover court costs and reasonable attorney's fees in the trial and appellate courts. In no event shall punitive damages be awarded under this section. The defendant shall be entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim which was without substantial fact or legal support.

(8) A final judgment or decree rendered in favor of the state in any criminal proceeding under §§ 812.012-812.037 or § 812.081 shall estop the defendant in any subsequent civil action or proceeding as to all matters as to which such judgment or decree would be an estoppel as between the parties.

(9) The Department of Legal Affairs may, upon timely application, intervene in any civil action or proceeding brought under subsection (6) or subsection (7) if he or she certifies that, in his or her opinion, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Department of Legal Affairs had instituted this action or proceeding.

(10) Notwithstanding any other provision of law, a criminal or civil action or proceeding under §§ 812.012-812.037 or § 812.081 may be commenced at any time within 5 years after the cause of action accrues; however, in a criminal proceeding under §§ 812.012-812.037 or § 812.081, the period of limitation does not run during any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state, but in no case shall this extend the period of limitation otherwise applicable by more than 1 year. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent, or restrain any violation of the provisions of §§ 812.012-812.037 or § 812.081, the running of the period of limitations prescribed by this section with respect to any cause of action arising under subsection (6) or subsection (7) which is based in whole or in part upon any matter complained of in any such prosecution, action, or proceeding shall be suspended during the pendency of such prosecution, action, or proceeding and for 2 years following its termination.

(11) The application of one civil remedy under any provision of §§ 812.012-812.037 or § 812.081 shall not preclude the application of any other remedy, civil or criminal, under §§ 812.012-812.037 or § 812.081 or any other section of the Florida Statutes.

812.037. Construction of §§ 812.012-812.037.

Notwithstanding § 775.021, §§ 812.012-812.037 shall not be construed strictly or liberally, but shall be construed in light of their purposes to achieve their remedial goals.

812.055. Physical inspection of junkyards, scrap metal processing plants, salvage yards, licensed motor vehicle or vessel dealers, repair shops, parking lots, public garages, towing and storage facilities.

(1) Any law enforcement officer shall have the right to inspect any junkyard; scrap metal processing plant; motor vehicle or vessel salvage yard; licensed motor vehicle or vessel dealer's lot; motor vehicle, vessel, or outboard repair shop; parking lot; public garage; towing and storage facility; or other establishment dealing with salvaged motor vehicle, vessel, or outboard parts.

(2) Such physical inspection shall be conducted during normal business hours and shall be for the purpose of locating stolen vehicles, vessels, or outboard motors; investigating the titling and registration of vehicles or vessels; inspecting vehicles, vessels, or outboard motors wrecked or dismantled; or inspecting records required in §§ 319.30 and 713.78.

812.062. Notification to owner and law enforcement agency initiating stolen motor vehicle report upon recovery of stolen vehicle.

(1) Whenever any law enforcement agency recovers a motor vehicle which has been unlawfully taken from its owner, it shall, within 72 hours, notify, by teletype or by any other speedy means available, the law enforcement agency which initiated the stolen vehicle report of the recovery. The law enforcement agency which initiated the stolen vehicle report shall, within 7 days after notification, notify, if known, the registered owner, the insurer, and any registered lienholder of the vehicle of the recovery.

(2) If notification has not been made within the 7-day period by the initiating agency, then notification shall be made immediately by certified letter, return receipt requested, by the law enforcement agency which initiated the stolen vehicle report.

812.13. Robbery.

(1) "Robbery" means the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.

(2) (a) If in the course of committing the robbery the offender carried a firearm or other deadly weapon, then the robbery is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in § 775.082, § 775.083, or § 775.084.

(b) If in the course of committing the robbery the offender carried a weapon, then the robbery is a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) If in the course of committing the robbery the offender carried no firearm, deadly weapon, or other weapon, then the robbery is a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) (a) An act shall be deemed "in the course of committing the robbery" if it occurs in an attempt to commit robbery or in flight after the attempt or commission.

(b) An act shall be deemed "in the course of the taking" if it occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events.

812.131. Robbery by sudden snatching.

(1) "Robbery by sudden snatching" means the taking of money or other property from the victim's person, with intent to permanently or temporarily deprive the victim or the owner of the money or other property, when, in the course of the taking, the victim was or became aware of the taking. In order to satisfy this definition, it is not necessary to show that:

(a) The offender used any amount of force beyond that effort necessary to obtain possession of the money or other property; or

(b) There was any resistance offered by the victim to the offender or that there was injury to the victim's person.

(2) (a) If, in the course of committing a robbery by sudden snatching, the offender

carried a firearm or other deadly weapon, the robbery by sudden snatching is a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) If, in the course of committing a robbery by sudden snatching, the offender carried no firearm or other deadly weapon, the robbery by sudden snatching is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) (a) An act shall be deemed "in the course of committing a robbery by sudden snatching" if the act occurs in an attempt to commit robbery by sudden snatching or in fleeing after the attempt or commission.

(b) An act shall be deemed "in the course of the taking" if the act occurs prior to, contemporaneous with, or subsequent to the taking of the property and if such act and the act of taking constitute a continuous series of acts or events.

812.133. Carjacking.

(1) "Carjacking" means the taking of a motor vehicle which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the motor vehicle, when in the course of the taking there is the use of force, violence, assault, or putting in fear.

(2) (a) If in the course of committing the carjacking the offender carried a firearm or other deadly weapon, then the carjacking is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in § 775.082, § 775.083, or § 775.084.

(b) If in the course of committing the carjacking the offender carried no firearm, deadly weapon, or other weapon, then the carjacking is a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) (a) An act shall be deemed "in the course of committing the carjacking" if it occurs in an attempt to commit carjacking or in flight after the attempt or commission.

(b) An act shall be deemed "in the course of the taking" if it occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events.

812.135. Home-invasion robbery.

(1) "Home-invasion robbery" means any robbery that occurs when the offender enters a dwelling with the intent to commit a robbery, and does commit a robbery of the occupants therein.

(2) (a) If in the course of committing the home-invasion robbery the person carries a firearm or other deadly weapon, the person commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment as provided in § 775.082, § 775.083, or § 775.084.

(b) If in the course of committing the home-invasion robbery the person carries a weapon, the person commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) If in the course of committing the home-invasion robbery the person carries no firearm, deadly weapon, or other weapon, the person commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

812.14. Trespass and larceny with relation to utility fixtures; theft of utility services.

(1) As used in this section, "utility" includes any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

(2) It is unlawful to:

(a) Willfully alter, tamper with, injure, or knowingly suffer to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage or to prevent any meter installed for registering electricity, gas, or water from registering the quantity which otherwise would pass through the same; to alter the index or break the seal of any such meter; in any way to hinder or interfere with the proper action or just registration of any such meter or device; or knowingly to use, waste, or suffer the waste, by any means, of electricity or gas or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after such meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered.

(b) Make or cause to be made any connection with any wire, main, service pipe or other pipes, appliance, or appurtenance in such manner as to use, without the consent of the utility, any service or any electricity, gas, or

water, or to cause to be supplied any service or electricity, gas, or water from a utility to any person, firm, or corporation or any lamp, burner, orifice, faucet, or other outlet whatsoever, without such service being reported for payment or such electricity, gas, or water passing through a meter provided by the utility and used for measuring and registering the quantity of electricity, gas, or water passing through the same.

(c) Use or receive the direct benefit from the use of a utility knowing, or under such circumstances as would induce a reasonable person to believe, that such direct benefits have resulted from any tampering with, altering of, or injury to any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by such utility, for the purpose of avoiding payment.

(3) The presence on property in the actual possession of a person of any device or alteration that affects the diversion or use of the services of a utility so as to avoid the registration of such use by or on a meter installed by the utility or so as to otherwise avoid the reporting of use of such service for payment is prima facie evidence of the violation of this section by such person; however, this presumption does not apply unless:

(a) The presence of such a device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility services;

(b) The person charged has received the direct benefit of the reduction of the cost of such utility services; and

(c) The customer or recipient of the utility services has received the direct benefit of such utility service for at least one full billing cycle.

(4) A person who willfully violates paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) commits theft, punishable as provided in § 812.014.

(5) It is unlawful for a person or entity that owns, leases, or subleases a property to permit a tenant or occupant to use utility services knowing, or under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation of paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c).

(6) It is prima facie evidence of a person's intent to violate subsection (5) if:

(a) A controlled substance and materials for manufacturing the controlled substance intended for sale or distribution to another were found in a dwelling or structure;

(b) The dwelling or structure has been visibly modified to accommodate the use of equipment to grow marijuana indoors, including, but not limited to, the installation of equipment to provide additional air conditioning, equipment to provide high-wattage lighting, or equipment for hydroponic cultivation; and

(c) The person or entity that owned, leased, or subleased the dwelling or structure knew of, or did so under such circumstances as would induce a reasonable person to believe in, the presence of a controlled substance and materials for manufacturing a controlled substance in the dwelling or structure, regardless of whether the person or entity was involved in the manufacture or sale of a controlled substance or was in actual possession of the dwelling or structure.

(7) A person who willfully violates subsection (5) commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Prosecution for a violation of subsection (5) does not preclude prosecution for theft pursuant to subsection (8) or § 812.014.

(8) Theft of utility services for the purpose of facilitating the manufacture of a controlled substance is theft, punishable as provided in § 812.014.

(9) It is prima facie evidence of a person's intent to violate subsection (8) if:

(a) The person committed theft of utility services resulting in a dwelling, as defined in § 810.011, or a structure, as defined in § 810.011, receiving unauthorized access to utility services;

(b) A controlled substance and materials for manufacturing the controlled substance were found in the dwelling or structure; and

(c) The person knew of the presence of the controlled substance and materials for manufacturing the controlled substance in the dwelling or structure, regardless of whether the person was involved in the manufacture of the controlled substance.

(10) Whoever is found in a civil action to have violated this section is liable to the utility involved in an amount equal to 3 times the amount of services unlawfully obtained or $3,000, whichever is greater.

(11) This section does not apply to licensed and certified electrical contractors while performing usual and ordinary service in accordance with recognized standards.

812.145. Theft of copper or other nonferrous metals.

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

(a) "Communications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.

(b) "Communications services provider" includes any person, firm, corporation, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of communications services.

(c) "Copper or other nonferrous metals" means metals not containing significant quantities of iron or steel, including, without limitation, copper, copper alloy, copper utility or communications service wire, brass, aluminum, bronze, lead, zinc, nickel, and alloys thereof.

(d) "Electrical substation" means a facility that takes electricity from the transmission grid and converts it to a lower voltage so it can be distributed to customers in the local area on the local distribution grid through one or more distribution lines less than 69 kilovolts in size.

(e) "Utility" means a public utility or electric utility as defined in § 366.02, or a person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, or telephone, telegraph, radio, telecommunications, or communications service. The term includes any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas or electricity services.

(f) "Utility service" means electricity for light, heat, or power and natural or manufactured gas for light, heat, or power, including the transportation, delivery, transmission, and distribution of electricity or natural or manufactured gas.

(2) A person who knowingly and intentionally takes copper or other nonferrous metals from a utility or communications services provider, thereby causing damage to the facilities of a utility or communications services provider, interrupting or interfering with utility service or communications services, or interfering with the ability of a utility or communications services provider to provide service, commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) A person who is found in a civil action to have illegally taken copper or other nonferrous metals from a utility or communications services provider based on a conviction for a violation of subsection (2) is liable to the utility or communications services provider for damages in an amount equal to three times the actual damages sustained by the utility or communications services provider due to any personal injury, wrongful death, or property damage caused by the illegal taking of the nonferrous metals or an amount equal to three times any claim made against the utility or communications services provider for any personal injury, wrongful death, or property damage caused by the malfunction of the facilities of the utility or communications services provider resulting from the violation of subsection (2), whichever is greater.

(4) A person who knowingly and intentionally removes copper or other nonferrous metals from an electrical substation without authorization of the utility commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

812.15. Unauthorized reception of communications services; penalties.

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

(a) "Cable operator" means a communications service provider who provides some or all of its communications services pursuant to a "cable television franchise" issued by a "franchising authority," as those terms are defined in 47 U.S.C. § 522(9) and (10) (1992).

(b) "Cable system" means any communications service network, system, or facility owned or operated by a cable operator.

(c) "Communications device" means any type of electronic mechanism, transmission line or connections and appurtenances thereto, instrument, device, machine, equipment, or software that is capable of intercepting, transmitting, acquiring, decrypting, or receiving any communications service, or any part, accessory, or component thereof, includ-

ing any computer circuit, splitter, connector, switches, transmission hardware, security module, smart card, software, computer chip, electronic mechanism, or other component, accessory, or part of any communications device which is capable of facilitating the interception, transmission, retransmission, acquisition, decryption, or reception of any communications service.

(d) "Communications service" means any service lawfully provided for a charge or compensation by any cable system or by any radio, fiber optic, photooptical, electromagnetic, photoelectronic, satellite, microwave, data transmission, Internet-based, or wireless distribution network, system, or facility, including, but not limited to, any electronic, data, video, audio, Internet access, microwave, and radio communications, transmissions, signals, and services, and any such communications, transmissions, signals, and services lawfully provided for a charge or compensation, directly or indirectly by or through any of those networks, systems, or facilities.

(e) "Communications service provider" means:

1. Any person or entity owning or operating any cable system or any fiber optic, photooptical, electromagnetic, photoelectronic, satellite, wireless, microwave, radio, data transmission, or Internet-based distribution network, system, or facility.

2. Any person or entity providing any lawful communications service, whether directly or indirectly, as a reseller or licensee, by or through any such distribution network, system, or facility.

(f) "Manufacture, development, or assembly of a communications device" means to make, produce, develop, or assemble a communications device or any part, accessory, or component thereof, or to modify, alter, program, or reprogram any communications device so that it is capable of facilitating the commission of a violation of this section.

(g) "Multipurpose device" means any communications device that is capable of more than one function and includes any component thereof.

(2) (a) A person may not knowingly intercept, receive, decrypt, disrupt, transmit, retransmit, or acquire access to any communications service without the express authorization of the cable operator or other communications service provider, as stated in a contract or otherwise, with the intent to defraud the cable operator or communications service provider, or to knowingly assist others in doing those acts with the intent to defraud the cable operator or other communications provider. For the purpose of this section, the term "assist others" includes:

1. The sale, transfer, license, distribution, deployment, lease, manufacture, development, or assembly of a communications device for the purpose of facilitating the unauthorized receipt, acquisition, interception, disruption, decryption, transmission, retransmission, or access to any communications service offered by a cable operator or any other communications service provider; or

2. The sale, transfer, license, distribution, deployment, lease, manufacture, development, or assembly of a communications device for the purpose of defeating or circumventing any effective technology, device, or software, or any component or part thereof, used by a cable operator or other communications service provider to protect any communications service from unauthorized receipt, acquisition, interception, disruption, access, decryption, transmission, or retransmission.

(b) Any person who willfully violates this subsection commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) (a) Any person who willfully violates paragraph (2)(a), paragraph (4)(a), or subsection (5) and who has been previously convicted of any such provision commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Any person who willfully and for purposes of direct or indirect commercial advantage or private financial gain violates paragraph (2)(a), paragraph (4)(a), or subsection (5) commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) (a) Any person who intentionally possesses a communications device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of committing, or assisting others in committing, a violation of paragraph (2)(a) commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(b) Any person who intentionally possesses five or more communications devices and knows or has reason to know that the design of such devices renders them primarily useful for committing, or assisting others in committing, a violation of paragraph (2)(a) commits a felony of the third degree, punish-

able as provided in § 775.082, § 775.083, or § 775.084.

(c) Any person who intentionally possesses fifty or more communications devices and knows or has reason to know that the design of such devices renders them primarily useful for committing, or assisting others in committing, a violation of paragraph (2)(a) commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication, including any electronic medium, any advertisement that, in whole or in part, promotes the sale of a communications device if the person placing the advertisement knows or has reason to know that the device is designed to be primarily useful for committing, or assisting others in committing, a violation of paragraph (2)(a). Any person who violates this subsection shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(6) All fines shall be imposed as provided in § 775.083 for each communications device involved in the prohibited activity or for each day a defendant is in violation of this section.

(7) The court shall, in addition to any other sentence authorized by law, sentence a person convicted of violating this section to make restitution as authorized by law.

(8) Upon conviction of a defendant for violating this section, the court may, in addition to any other sentence authorized by law, direct that the defendant forfeit any communications device in the defendant's possession or control which was involved in the violation for which the defendant was convicted.

(9) A violation of paragraph (2)(a) may be deemed to have been committed at any place where the defendant manufactures, develops, or assembles any communications devices involved in the violation, or assists others in these acts, or any place where the communications device is sold or delivered to a purchaser or recipient. It is not a defense to a violation of paragraph (2)(a) that some of the acts constituting the violation occurred outside the state.

(10) (a) Any person aggrieved by any violation of this section may bring a civil action in a circuit court or in any other court of competent jurisdiction.

(b) The court may:

1. Grant temporary and final injunctions on terms it finds reasonable to prevent or restrain violations of this section in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that a showing of special or irreparable damages to the person need not be made.

2. At any time while the action is pending, order the impounding, on reasonable terms, of any communications device that is in the custody or control of the violator and that the court has reasonable cause to believe was involved in the alleged violation of this section, and may grant other equitable relief, including the imposition of a constructive trust, as the court considers reasonable and necessary.

3. Award damages pursuant to paragraphs (c), (d), and (e).

4. Direct the recovery of full costs, including awarding reasonable attorney's fees, to an aggrieved party who prevails.

5. As part of a final judgment or decree finding a violation of this section, order the remedial modification or destruction of any communications device, or any other device or equipment, involved in the violation which is in the custody or control of the violator or has been impounded under subparagraph 2.

(c) Damages awarded by any court under this section shall be computed in accordance with subparagraph 1. or subparagraph 2.:

1. The party aggrieved may recover the actual damages suffered by him or her as a result of the violation and any profits of the violator that are attributable to the violation which are not taken into account in computing the actual damages.

a. Actual damages include the retail value of all communications services to which the violator had unauthorized access as a result of the violation and the retail value of any communications service illegally available to each person to whom the violator directly or indirectly provided or distributed a communications device. In proving actual damages, the party aggrieved must prove only that the violator manufactured, distributed, or sold a communications device and is not required to prove that any such device was actually used in violation of this section.

b. In determining the violator's profits, the party aggrieved must prove only the violator's gross revenue, and the violator must prove his or her deductible expenses and the elements of profit attributable to factors other than the violation.

2. Upon election of such damages at any time before final judgment is entered, the party aggrieved may recover an award of statutory damages for each communications

device involved in the action, in a sum of not less than $250 or more than $10,000 for each such device, as the court considers just.

(d) In any case in which the court finds that the violation was committed willfully and for purposes of commercial advantage or financial gain, the court in its discretion may increase the award of damages, whether actual or statutory under this section, by an amount of not more than $50,000 for each communications device involved in the action and for each day the defendant is in violation of this section.

(e) In any case in which the court finds that the violator was not aware and had no reason to believe that his or her acts constituted a violation of this section, the court in its discretion may reduce the award of damages to a sum of not less than $100.

(11) This section shall not be construed to impose any criminal or civil liability upon any state or local law enforcement agency; any state or local government agency, municipality, or authority; or any communications service provider unless such entity is acting knowingly and with intent to defraud a communications service provider as defined in this section.

(12) A person that manufactures, produces, assembles, designs, sells, distributes, licenses, or develops a multipurpose device shall not be in violation of this section unless that person acts knowingly and with an intent to defraud a communications services provider and the multipurpose device:

(a) Is manufactured, developed, assembled, produced, designed, distributed, sold, or licensed for the primary purpose of committing a violation of this section;

(b) Has only a limited commercially significant purpose or use other than for the commission of any violation of this section; or

(c) Is marketed by that person or another acting in concert with that person with that person's knowledge for the purpose of committing any violation of this section.

(13) Nothing in this section shall require that the design of, or design and selection of parts, software code, or components for, a communications device provide for a response to any particular technology, device, or software, or any component or part thereof, used by the provider, owner, or licensee of any communications service or of any data, audio or video programs, or transmissions, to protect any such communications, data, audio or video service, programs, or transmissions from unauthorized receipt, acquisition, interception, access, decryption, disclosure, communication, transmission, or retransmission.

812.155. Hiring, leasing, or obtaining personal property or equipment with the intent to defraud; failing to return hired or leased personal property or equipment; rules of evidence.

(1) OBTAINING BY TRICK, FALSE REPRESENTATION, ETC.—Whoever, with the intent to defraud the owner or any person lawfully possessing any personal property or equipment, obtains the custody of the personal property or equipment by trick, deceit, or fraudulent or willful false representation commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, unless the value of the personal property or equipment is of a value of $300 or more; in that case the person commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) HIRING OR LEASING WITH THE INTENT TO DEFRAUD.—Whoever, with intent to defraud the owner or any person lawfully possessing personal property or equipment of the rental thereof, hires or leases the personal property or equipment from the owner or the owner's agents or any person in lawful possession thereof commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, unless the value of the personal property or equipment is of a value of $300 or more; in that case the person commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) FAILURE TO RETURN HIRED OR LEASED PERSONAL PROPERTY.—Whoever, after hiring or leasing personal property or equipment under an agreement to return the personal property to the person letting the personal property or equipment or his or her agent at the termination of the period for which it was let, shall, without the consent of the person or persons knowingly abandon or refuse to return the personal property or equipment as agreed, commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, unless the value of the personal property or equipment is of a value of $300 or more; in that case the person commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) EVIDENCE.—

(a) In a prosecution under this section, obtaining the property or equipment under false pretenses; absconding without payment; or removing or attempting to remove

the property or equipment from the county without the express written consent of the lessor, is evidence of fraudulent intent.

(b) In a prosecution under subsection (3), failure to redeliver the property or equipment within 5 days after receiving the demand for return from a courier service with tracking capability or by certified mail, return receipt requested, or within 5 days after delivery by the courier service or return receipt from the certified mailing of the demand for return, is prima facie evidence of abandonment or refusal to redeliver the property or equipment. Notice mailed by certified mail, return receipt requested, or delivery by courier with tracking capability to the address given by the renter at the time of rental is sufficient and equivalent to notice having been received by the renter, should the notice be returned undelivered.

(c) In a prosecution under subsection (3), failure to pay any amount due which is incurred as the result of the failure to redeliver property or equipment after the rental period expires, and after the demand for return is made, is prima facie evidence of abandonment or refusal to redeliver the property or equipment. Amounts due include unpaid rental for the time period during which the property or equipment was not returned and include the lesser of the cost of repairing or replacing the property or equipment if it has been damaged.

(5) DEMAND FOR RETURN.—Demand for return of overdue property or equipment and for payment of amounts due may be made in person, by hand delivery, by certified mail, return receipt requested, or by courier service with tracking capability, addressed to the lessee's address shown in the rental contract.

(6) NOTICE REQUIRED.—As a prerequisite to prosecution under this section, the following statement must be contained in the agreement under which the owner or person lawfully possessing the property or equipment has relinquished its custody, or in an addendum to that agreement, and the statement must be initialed by the person hiring or leasing the rental property or equipment:

Failure to return rental property or equipment upon expiration of the rental period and failure to pay all amounts due (including costs for damage to the property or equipment) are evidence of abandonment or refusal to redeliver the property, punishable in accordance with section 812.155, Florida Statutes.

(7) THIRD-PARTY POSSESSION.—Possession of personal property or equipment by a third party does not alleviate the lessee of his or her obligation to return the personal property or equipment according to the terms stated in the contract by which the property or equipment was leased or rented to the lessee, and is not a defense against failure to return unless the lessee provides the court or property owner with documentation that demonstrates that the personal property or equipment was obtained without the lessee's consent.

(8) REPORTING VEHICLE AS STOLEN.—A lessor of a vehicle that is not returned at the conclusion of the lease who satisfies the requirements of this section regarding the vehicle is entitled to report the vehicle as stolen to a law enforcement agency and have the vehicle listed as stolen on any local or national registry of such vehicles.

812.16. Operating chop shops; definitions; penalties; restitution; forfeiture.

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

(a) "Chop shop" means any area, building, storage lot, field, or other premises or place where one or more persons are engaged or have engaged in altering, dismantling, reassembling, or in any way concealing or disguising the identity of a stolen motor vehicle or of any major component part of a stolen motor vehicle; where there are two or more stolen motor vehicles present; or where there are major component parts from two or more stolen motor vehicles present.

(b) "Major component part" means one of the following subassemblies of a motor vehicle, regardless of its actual market value: front-end assembly, including fenders, grills, hood, bumper, and related parts; frame and frame assembly; engine; transmission; T-tops; rear clip assembly, including quarter panels and floor panel assembly; doors; and tires, tire wheels, and continuous treads and other devices.

(c) "Motor vehicle" includes every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, which device is self-propelled or may be connected to and towed by a self-propelled device, and also includes any and all other land-based devices which are self-propelled but which are not designed for use upon a highway, including but not limited to farm machinery and steam shovels.

(2) Any person who knowingly owns, operates, or conducts a chop shop or who knowingly aids and abets another person in owning, operating, or conducting a chop shop is

guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) A person who violates this section, upon conviction, in addition to any other punishment, may be ordered to make restitution to the rightful owner of a stolen motor vehicle or of a stolen major component part, or to the owner's insurer if the owner has already been compensated for the loss by the insurer, for any financial loss sustained as a result of the theft of the motor vehicle or a major component part. Restitution may be imposed in addition to any imprisonment or fine imposed, but not in lieu thereof.

(4) The following may be seized and are subject to forfeiture pursuant to §§ 932.701-932.704:

(a) Any stolen motor vehicle or major component part found at the site of a chop shop or any motor vehicle or major component part for which there is probable cause to believe that it is stolen but for which the true owner cannot be identified.

(b) Any engine, tool, machine, implement, device, chemical, or substance used or designed for altering, dismantling, reassembling, or in any other way concealing or disguising the identity of a stolen motor vehicle or any major component part.

(c) A wrecker, car hauler, or other motor vehicle that is knowingly used or has been used to convey or transport a stolen motor vehicle or major component part.

CHAPTER 815
COMPUTER-RELATED CRIMES

815.03. Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

(1) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

(2) "Computer" means an internally programmed, automatic device that performs data processing.

(3) "Computer contaminant" means any set of computer instructions designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. The term includes, but is not limited to, a group of computer instructions commonly called viruses or worms which are self-replicating or self-propagating and which are designed to contaminate other computer programs or computer data; consume computer resources; modify, destroy, record, or transmit data; or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(4) "Computer network" means any system that provides communications between one or more computer systems and its input or output devices, including, but not limited to, display terminals and printers that are connected by telecommunication facilities.

(5) "Computer program or computer software" means a set of instructions or statements and related data which, when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(6) "Computer services" include, but are not limited to, computer time; data processing or storage functions; or other uses of a computer, computer system, or computer network.

(7) "Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files.

(8) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions. Data may be in any form, in storage media or stored in the memory of the computer, or in transit or presented on a display device.

(9) "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, or marketable security.

(10) "Intellectual property" means data, including programs.

(11) "Property" means anything of value as defined in § 812.012 and includes, but is not limited to, financial instruments, information, including electronically produced data and computer software and programs in either machine-readable or human-readable form, and any other tangible or intangible item of value.

815.04. Offenses against intellectual property; public records exemption.

(1) Whoever willfully, knowingly, and without authorization modifies data, pro-

grams, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network commits an offense against intellectual property.

(2) Whoever willfully, knowingly, and without authorization destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network commits an offense against intellectual property.

(3) (a) Data, programs, or supporting documentation which is a trade secret as defined in § 812.081 which resides or exists internal or external to a computer, computer system, or computer network which is held by an agency as defined in chapter 119 is confidential and exempt from the provisions of § 119.07(1) and § 24(a), Art. I of the State Constitution.

(b) Whoever willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation which is a trade secret as defined in § 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, or computer network commits an offense against intellectual property.

(4) (a) Except as otherwise provided in this subsection, an offense against intellectual property is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, then the offender is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

815.06. Offenses against computer users.

(1) Whoever willfully, knowingly, and without authorization:

(a) Accesses or causes to be accessed any computer, computer system, or computer network;

(b) Disrupts or denies or causes the denial of computer system services to an authorized user of such computer system services, which, in whole or part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;

(c) Destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, or computer network;

(d) Destroys, injures, or damages any computer, computer system, or computer network; or

(e) Introduces any computer contaminant into any computer, computer system, or computer network,

commits an offense against computer users.

(2) (a) Except as provided in paragraphs (b) and (c), whoever violates subsection (1) commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Whoever violates subsection (1) and:

1. Damages a computer, computer equipment, computer supplies, a computer system, or a computer network, and the monetary damage or loss incurred as a result of the violation is $5,000 or greater;

2. Commits the offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property; or

3. Interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or other public service,

commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) Whoever violates subsection (1) and the violation endangers human life commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Whoever willfully, knowingly, and without authorization modifies equipment or supplies used or intended to be used in a computer, computer system, or computer network commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(4) (a) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, computer equipment, computer supplies, or computer data may bring a civil action against any person convicted under this section for compensatory damages.

(b) In any action brought under this subsection, the court may award reasonable attorney's fees to the prevailing party.

(5) Any computer, computer system, computer network, computer software, or computer data owned by a defendant which is used during the commission of any violation of this section or any computer owned by the defendant which is used as a repository for the storage of software or data obtained in violation of this section is subject to forfeiture as provided under §§ 932.701-932.704.

(6) This section does not apply to any person who accesses his or her employer's com-

puter system, computer network, computer program, or computer data when acting within the scope of his or her lawful employment.

(7) For purposes of bringing a civil or criminal action under this section, a person who causes, by any means, the access to a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in both jurisdictions.

815.07. This chapter not exclusive.

The provisions of this chapter shall not be construed to preclude the applicability of any other provision of the criminal law of this state which presently applies or may in the future apply to any transaction which violates this chapter, unless such provision is inconsistent with the terms of this chapter.

CHAPTER 817
FRAUDULENT PRACTICES

817.02. Obtaining property by false personation.

Whoever falsely personates or represents another, and in such assumed character receives any property intended to be delivered to the party so personated, with intent to convert the same to his or her own use, shall be punished as if he or she had been convicted of larceny.

817.025. Home or private business invasion by false personation; penalties.

A person who obtains access to a home or private business by false personation or representation, with the intent to commit a felony, commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. If such act results in serious injury or death, it is a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

817.034. Florida Communications Fraud Act.

(1) LEGISLATIVE INTENT.—

(a) The Legislature recognizes that schemes to defraud have proliferated in the United States in recent years and that many operators of schemes to defraud use communications technology to solicit victims and thereby conceal their identities and overcome a victim's normal resistance to sales pressure by delivering a personalized sales message.

(b) It is the intent of the Legislature to prevent the use of communications technology in furtherance of schemes to defraud by consolidating former statutes concerning schemes to defraud and organized fraud to permit prosecution of these crimes utilizing the legal precedent available under federal mail and wire fraud statutes.

(2) SHORT TITLE.—This section may be cited as the "Florida Communications Fraud Act."

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

(a) "Communicate" means to transmit or transfer or to cause another to transmit or transfer signs, signals, writing, images, sounds, data, or intelligences of any nature in whole or in part by mail, or by wire, radio, electromagnetic, photoelectronic, or photooptical system.

(b) "Obtain" means temporarily or permanently to deprive any person of the right to property or a benefit therefrom, or to appropriate the property to one's own use or to the use of any other person not entitled thereto.

(c) "Property" means anything of value, and includes:

1. Real property, including things growing on, affixed to, or found in land;

2. Tangible or intangible personal property, including rights, privileges, interests, and claims; and

3. Services.

(d) "Scheme to defraud" means a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act.

(e) "Value" means value determined according to any of the following:

1. a. The market value of the property at the time and place of the offense, or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

b. The value of a written instrument that does not have a readily ascertainable market value, in the case of an instrument such as a check, draft, or promissory note, is the amount due or collectible or is, in the case of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation, the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

c. The value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the damage to the owner, suffered by reason of losing an advantage over those who do not know of or use the trade secret.

2. If the value of property cannot be ascertained, the trier of fact may find the value to be not less than a certain amount; if no such minimum value can be ascertained, the value is an amount less than $300.

3. Amounts of value of separate properties obtained in one scheme to defraud, whether from the same person or from several persons, shall be aggregated in determining the grade of the offense under paragraph (4)(a).

(4) OFFENSES.—

(a) Any person who engages in a scheme to defraud and obtains property thereby is guilty of organized fraud, punishable as follows:

1. If the amount of property obtained has an aggregate value of $50,000 or more, the violator is guilty of a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

2. If the amount of property obtained has an aggregate value of $20,000 or more, but less than $50,000, the violator is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

3. If the amount of property obtained has an aggregate value of less than $20,000, the violator is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Any person who engages in a scheme to defraud and, in furtherance of that scheme, communicates with any person with intent to obtain property from that person is guilty, for each such act of communication, of communications fraud, punishable as follows:

1. If the value of property obtained or endeavored to be obtained by the communication is valued at $300 or more, the violator is guilty of a third degree felony, punishable as set forth in § 775.082, § 775.083, or § 775.084.

2. If the value of the property obtained or endeavored to be obtained by the communication is valued at less than $300, the violator is guilty of a misdemeanor of the first degree, punishable as set forth in § 775.082 or § 775.083.

(c) Notwithstanding any contrary provisions of law, separate judgments and sentences for organized fraud under paragraph (a) and for each offense of communications fraud under paragraph (b) may be imposed when all such offenses involve the same scheme to defraud.

(d) Notwithstanding any other provision of law, a criminal action or civil action or proceeding under this section may be commenced at any time within 5 years after the cause of action accrues; however, in a criminal proceeding under this section, the period of limitation does not run during any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state, but in no case shall this extend the period of limitation otherwise applicable by more than 1 year.

817.037. Fraudulent refunds.

(1) Any person who engages in a systematic, ongoing course of conduct to obtain a refund for merchandise from a business establishment by knowingly giving a false or fictitious name or address as his or her own or the name or address of any other person without that person's knowledge and approval is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) In order for a person to be convicted under this section, a conspicuous notice must have been posted in the business establishment in the area where refunds are made, advising patrons of the provisions of this section and the penalties provided.

817.233. Burning to defraud the insurer.

Any person who willfully and with intent to injure or defraud the insurer sets fire to or burns or attempts so to do or who causes to be burned or who aids, counsels or procures the burning of any building, structure or personal property, of whatsoever class or character, whether the property of himself or herself or of another, which shall at the time be insured by any person against loss or damage by fire, shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

817.234. False and fraudulent insurance claims.

(1) (a) A person commits insurance fraud punishable as provided in subsection (11) if that person, with the intent to injure, defraud, or deceive any insurer:

1. Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or a health

maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim;

2. Prepares or makes any written or oral statement that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim;

3. a. Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer, purported insurer, servicing corporation, insurance broker, or insurance agent, or any employee or agent thereof, any false, incomplete, or misleading information or written or oral statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a health maintenance organization subscriber or provider contract; or

b. Knowingly conceals information concerning any fact material to such application; or

4. Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer a claim for payment or other benefit under a personal injury protection insurance policy if the person knows that the payee knowingly submitted a false, misleading, or fraudulent application or other document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of chapter 400.

(b) All claims and application forms must contain a statement that is approved by the Office of Insurance Regulation of the Financial Services Commission which clearly states in substance the following: "Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree." This paragraph does not apply to reinsurance contracts, reinsurance agreements, or reinsurance claims transactions.

(2) (a) Any physician licensed under chapter 458, osteopathic physician licensed under chapter 459, chiropractic physician licensed under chapter 460, or other practitioner licensed under the laws of this state who knowingly and willfully assists, conspires with, or urges any insured party to fraudulently violate any of the provisions of this section or part XI of chapter 627, or any person who, due to such assistance, conspiracy, or urging by said physician, osteopathic physician, chiropractic physician, or practitioner, knowingly and willfully benefits from the proceeds derived from the use of such fraud, commits insurance fraud, punishable as provided in subsection (11). In the event that a physician, osteopathic physician, chiropractic physician, or practitioner is adjudicated guilty of a violation of this section, the Board of Medicine as set forth in chapter 458, the Board of Osteopathic Medicine as set forth in chapter 459, the Board of Chiropractic Medicine as set forth in chapter 460, or other appropriate licensing authority shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against said physician, osteopathic physician, chiropractic physician, or practitioner.

(b) In addition to any other provision of law, systematic upcoding by a provider, as defined in § 641.19(14), with the intent to obtain reimbursement otherwise not due from an insurer is punishable as provided in § 641.52(5).

(3) Any attorney who knowingly and willfully assists, conspires with, or urges any claimant to fraudulently violate any of the provisions of this section or part XI of chapter 627, or any person who, due to such assistance, conspiracy, or urging on such attorney's part, knowingly and willfully benefits from the proceeds derived from the use of such fraud, commits insurance fraud, punishable as provided in subsection (11).

(4) Any person or governmental unit licensed under chapter 395 to maintain or operate a hospital, and any administrator or employee of any such hospital, who knowingly and willfully allows the use of the facilities of said hospital by an insured party in a scheme or conspiracy to fraudulently violate any of the provisions of this section or part XI of chapter 627 commits insurance fraud, punishable as provided in subsection (11). Any adjudication of guilt for a violation of this subsection, or the use of business practices demonstrating a pattern indicating that the spirit of the law set forth in this section or part XI of chapter 627 is not being followed, shall be grounds for suspension or revocation of the license to operate the hospital or the imposition of an administrative penalty of up

to $5,000 by the licensing agency, as set forth in chapter 395.

(5) Any insurer damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.

(6) For the purposes of this section, "statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, X ray, test result, or other evidence of loss, injury, or expense.

(7) (a) It shall constitute a material omission and insurance fraud, punishable as provided in subsection (11), for any service provider, other than a hospital, to engage in a general business practice of billing amounts as its usual and customary charge, if such provider has agreed with the insured or intends to waive deductibles or copayments, or does not for any other reason intend to collect the total amount of such charge. With respect to a determination as to whether a service provider has engaged in such general business practice, consideration shall be given to evidence of whether the physician or other provider made a good faith attempt to collect such deductible or copayment. This paragraph does not apply to physicians or other providers who waive deductibles or copayments or reduce their bills as part of a bodily injury settlement or verdict.

(b) The provisions of this section shall also apply as to any insurer or adjusting firm or its agents or representatives who, with intent, injure, defraud, or deceive any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in this section.

(c) An insurer, or any person acting at the direction of or on behalf of an insurer, may not change an opinion in a mental or physical report prepared under § 627.736(7) or direct the physician preparing the report to change such opinion; however, this provision does not preclude the insurer from calling to the attention of the physician errors of fact in the report based upon information in the claim file. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(8) (a) It is unlawful for any person intending to defraud any other person to solicit or cause to be solicited any business from a person involved in a motor vehicle accident for the purpose of making, adjusting, or settling motor vehicle tort claims or claims for personal injury protection benefits required by § 627.736. Any person who violates the provisions of this paragraph commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. A person who is convicted of a violation of this subsection shall be sentenced to a minimum term of imprisonment of 2 years.

(b) A person may not solicit or cause to be solicited any business from a person involved in a motor vehicle accident by any means of communication other than advertising directed to the public for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits required by § 627.736, within 60 days after the occurrence of the motor vehicle accident. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) A lawyer, health care practitioner as defined in § 456.001, or owner or medical director of a clinic required to be licensed pursuant to § 400.9905 may not, at any time after 60 days have elapsed from the occurrence of a motor vehicle accident, solicit or cause to be solicited any business from a person involved in a motor vehicle accident by means of in person or telephone contact at the person's residence, for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits required by § 627.736. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(d) Charges for any services rendered by any person who violates this subsection in regard to the person for whom such services were rendered are noncompensable and unenforceable as a matter of law.

(9) A person may not organize, plan, or knowingly participate in an intentional motor vehicle crash or a scheme to create documentation of a motor vehicle crash that did not occur for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits as required by § 627.736. Any person who violates this subsection commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. A person who is convicted of a violation of this subsection shall be sentenced to a minimum term of imprisonment of 2 years.

(10) A licensed health care practitioner who is found guilty of insurance fraud under this section for an act relating to a personal injury protection insurance policy loses his or her license to practice for 5 years and may not receive reimbursement for personal injury protection benefits for 10 years.

(11) If the value of any property involved in a violation of this section:

(a) Is less than $20,000, the offender commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Is $20,000 or more, but less than $100,000, the offender commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) Is $100,000 or more, the offender commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(12) In addition to any criminal liability, a person convicted of violating any provision of this section for the purpose of receiving insurance proceeds from a motor vehicle insurance contract is subject to a civil penalty.

(a) Except for a violation of subsection (9), the civil penalty shall be:

1. A fine up to $5,000 for a first offense.

2. A fine greater than $5,000, but not to exceed $10,000, for a second offense.

3. A fine greater than $10,000, but not to exceed $15,000, for a third or subsequent offense.

(b) The civil penalty for a violation of subsection (9) must be at least $15,000 but may not exceed $50,000.

(c) The civil penalty shall be paid to the Insurance Regulatory Trust Fund within the Department of Financial Services and used by the department for the investigation and prosecution of insurance fraud.

(d) This subsection does not prohibit a state attorney from entering into a written agreement in which the person charged with the violation does not admit to or deny the charges but consents to payment of the civil penalty.

(13) As used in this section, the term:

(a) "Insurer" means any insurer, health maintenance organization, self-insurer, self-insurance fund, or similar entity or person regulated under chapter 440 or chapter 641 or by the Office of Insurance Regulation under the Florida Insurance Code.

(b) "Property" means property as defined in § 812.012.

(c) "Value" means value as defined in § 812.012.

817.2341. False or misleading statements or supporting documents; penalty.

(1) Any person who willfully files with the department or office, or who willfully signs for filing with the department or office, a materially false or materially misleading financial statement or document in support of such statement required by law or rule, with intent to deceive and with knowledge that the statement or document is materially false or materially misleading, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) (a) Any person who makes a false entry of a material fact in any book, report, or statement relating to a transaction of an insurer or entity organized pursuant to chapter 624 or chapter 641, intending to deceive any person about the financial condition or solvency of the insurer or entity, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) If the false entry of a material fact is made with the intent to deceive any person as to the impairment of capital, as defined in § 631.011(12), of the insurer or entity or is the significant cause of the insurer or entity being placed in conservation, rehabilitation, or liquidation by a court, the person commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) (a) Any person who knowingly makes a material false statement or report to the department or office or any agent of the department or office, or knowingly and materially overvalues any property in any document or report prepared to be presented to the department or office or any agent of the department or office, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) If the material false statement or report or the material overvaluation is made with the intent to deceive any person as to the impairment of capital, as defined in § 631.011(12), of an insurer or entity organized pursuant to chapter 624 or chapter 641, or is the significant cause of the insurer or entity being placed in receivership by a court, the person commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) As used in this section, the term:

(a) "Department" means the Department of Financial Services.

(b) "Office" means the Office of Insurance Regulation of the Financial Services Commission.

817.235. Personal property; removing or altering identification marks.

(1) Except as otherwise provided by law, any person who, with intent to prevent identification by the true owner, removes, erases, defaces, or otherwise alters any serial number or other mark of identification placed on any item of personal property by the manufacturer or owner thereof is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) Any person who possesses any item of personal property with the knowledge that the serial number or other mark of identification placed thereon by the manufacturer or owner thereof has been removed, erased, defaced, or otherwise altered with intent to prevent identification by the true owner is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

817.236. False and fraudulent motor vehicle insurance application.

Any person who, with intent to injure, defraud, or deceive any motor vehicle insurer, including any statutorily created underwriting association or pool of motor vehicle insurers, presents or causes to be presented any written application, or written statement in support thereof, for motor vehicle insurance knowing that the application or statement contains any false, incomplete, or misleading information concerning any fact or matter material to the application commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

817.2361. False or fraudulent proof of motor vehicle insurance.

Any person who, with intent to deceive any other person, creates, markets, or presents a false or fraudulent proof of motor vehicle insurance commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

817.28. Fraudulent obtaining of property by gaming.

Whoever, by the game of three-card monte, so-called, or any other game, device, sleight-of-hand, pretensions to fortunetelling, or other means whatever by the use of cards or other implement or implements, fraudulently obtains from another person property of any description, shall be punished as if he or she had been convicted of larceny.

817.32. Fraudulent operation of coin-operated devices.

Any person who shall operate or cause to be operated, or who shall attempt to operate, or attempt to cause to be operated, any automatic vending machine, slot machine, coinbox telephone, or other receptacle designed to receive lawful coin of the United States in connection with the sale, use or enjoyment of property or service, by means of a slug or any false, counterfeited, mutilated, sweated, or foreign coin, or by any means, method, trick, or device whatsoever not lawfully authorized by the owner, lessee, or licensee of such machine, coinbox telephone or receptacle, or who shall take, obtain or receive from or in connection with any automatic vending machine, slot machine, coinbox telephone or other receptacle designed to receive lawful coin of the United States in connection with the sale, use, or enjoyment of property or service, any goods, wares, merchandise, gas, electric current, article of value, or the use or enjoyment of any telephone or telegraph facilities or service, or of any musical instrument, phonograph, or other property, without depositing in and surrendering to such machine, coinbox telephone or receptacle lawful coin of the United States to the amount required therefor by the owner, lessee, or licensee of such machine, coinbox telephone or receptacle, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

817.33. Manufacture, etc., of slugs to be used in coin-operated devices prohibited.

Any person who, with intent to cheat or defraud the owner, lessee, licensee, or other person entitled to the contents of any automatic vending machine, slot machine, coinbox telephone or other receptacle, depository, or contrivance designed to receive lawful coin of the United States in connection with the sale, use, or enjoyment of property or service, or who, knowing that the same is intended for unlawful use, shall manufacture for sale, or sell or give away any slug, device or substance whatsoever intended or calculated to be placed or deposited in any such automatic vending machine, slot machine, coinbox telephone or other such receptacle, depository or contrivance, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

817.355. Fraudulent creation or possession of admission ticket.

Any person who counterfeits, forges, alters, or possesses any ticket, token, or paper designed for admission to or the rendering of services by any sports, amusement, concert, or other facility offering services to the gen-

eral public, with the intent to defraud such facility, is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

817.361. Resale of multiday or multi-event ticket.

Whoever offers for sale, sells, or transfers in connection with a commercial transaction, with or without consideration, any nontransferable ticket or other nontransferable medium designed for admission to more than one amusement location or other facility offering entertainment to the general public, or for admission for more than 1 day thereto, after said ticket or other medium has been used at least once for admission, is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. A nontransferable ticket or other nontransferable medium is one on which is clearly printed the phrase: "Nontransferable; must be used by the same person on all days" or words of similar import. Upon conviction for a second or subsequent violation of this subsection, such person is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

817.412. Sale of used goods as new; penalty.

(1) It is unlawful for a seller in a transaction where the purchase price of goods exceeds $100 to misrepresent orally, in writing, or by failure to speak that the goods are new or original when they are used or repossessed or where they have been used for sales demonstration.

(2) A person who violates the provisions of this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

817.413. Sale of used motor vehicle goods as new; penalty.

(1) With respect to a transaction for which any charges will be paid from the proceeds of a motor vehicle insurance policy, and in which the purchase price of motor vehicle goods exceeds $100, it is unlawful for the seller to knowingly misrepresent orally, in writing, or by failure to speak, that the goods are new or original when they are used or repossessed or have been used for sales demonstration.

(2) A person who violates the provisions of this section commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

817.481. Credit cards; obtaining goods by use of false, expired, etc.; penalty.

(1) It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious, counterfeit, or expired credit card, telephone number, credit number, or other credit device, or by the use of any credit card, telephone number, credit number, or other credit device of another without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, telephone number, credit number, or other credit device in any case where such card, number or device has been revoked and notice of revocation has been given to the person to whom issued.

(2) It shall be unlawful for any person to avoid or attempt to avoid or to cause another to avoid payment of the lawful charges, in whole or in part, for any telephone or telegraph service or for the transmission of a message, signal or other communication by telephone or telegraph or over telephone or telegraph facilities by the use of any fraudulent scheme, means or method, or any mechanical, electric, or electronic device.

(3) (a) If the value of the property, goods, or services obtained or which are sought to be obtained in violation of this section is $300 or more, the offender shall be guilty of grand larceny.

(b) If the value of the property, goods, or services obtained or which are sought to be obtained in violation of this section is less than $300 the offender shall be guilty of petit larceny.

817.482. Possessing or transferring device for theft of telecommunications service; concealment of destination of telecommunications service.

(1) It shall be unlawful for any person knowingly to:

(a) Make or possess any instrument, apparatus, equipment or device designed or adapted for use for the purpose of avoiding or attempting to avoid payment of telecommunications service in violation of § 817.481; or

(b) Sell, give, transport, or otherwise transfer to another, or offer or advertise to sell, give, or otherwise transfer, any instrument, apparatus, equipment, or device described in paragraph (a), or plans or instructions for making or assembling the same; under circumstances evincing an intent to use or employ such instrument, apparatus, equipment, or device, or to allow the same to

be used or employed, for a purpose described in paragraph (a), or knowing or having reason to believe that the same is intended to be so used, or that the aforesaid plans or instructions are intended to be used for making or assembling such instrument, apparatus, equipment, or device.

Any person violating the provisions of paragraphs (a) and (b) is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) Any person who shall make or possess, for purposes of avoiding or attempting to avoid payment for long-distance telecommunication services, any electronic device capable of duplicating tones or sounds utilized in long-distance telecommunications shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Any such instrument, apparatus, equipment, or device, or plans or instructions therefor, referred to in subsections (1) and (2), may be seized by court order or under a search warrant of a judge or incident to a lawful arrest; and upon the conviction of any person for a violation of any provision of this act, or § 817.481, such instrument, apparatus, equipment, device, plans, or instructions either shall be destroyed as contraband by the sheriff of the county in which such person was convicted or turned over to the telephone company in whose territory such instrument, apparatus, equipment, device, plans, or instructions were seized.

817.4821. Cellular telephone counterfeiting offenses.

(1) As used in this act, the term:

(a) "Possess" means to have physical possession or otherwise to exercise dominion or control over tangible property.

(b) "Intercept" means to electronically capture, record, reveal, or otherwise access, the signals emitted or received during the operation of a cellular telephone without the consent of the sender or receiver thereof, by means of any instrument, device, or equipment.

(c) "Electronic serial number" means the unique numerical algorithm that is programmed into the microchip of each cellular telephone by the manufacturer and is vital to the successful operation and billing of the telephone.

(d) "Mobile identification number" means the cellular telephone number assigned to the cellular telephone by the cellular telephone carrier.

(e) "Cellular telephone" means a communication device containing a unique electronic serial number that is programmed into its computer chip by its manufacturer and whose operation is dependent on the transmission of that electronic serial number along with a mobile identification number, which is assigned by the cellular telephone carrier, in the form of radio signals through cell sites and mobile switching stations.

(f) "Cloned cellular telephone" or "counterfeit cellular telephone" means a cellular telephone whose electronic serial number has been altered from the electronic serial number that was programmed in the phone by the manufacturer.

(g) "Cloning paraphernalia" means materials that, when possessed in combination, are necessary and capable of the creation of a cloned cellular telephone. These materials include scanners to intercept the electronic serial number and mobile identification number, cellular telephones, cables, EPROM chips, EPROM burners, software for programming the microchip of the cloned cellular telephone with a false electronic serial number and mobile identification number combination, a computer containing such software, and lists of electronic serial number and mobile identification number combinations.

(2) A person who knowingly possesses a cloned cellular telephone commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) A person who knowingly possesses an instrument capable of intercepting electronic serial number and mobile identification number combinations under circumstances evidencing an intent to clone a cellular telephone commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) A person who knowingly sells a cloned cellular telephone commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) A person who knowingly possesses cloning paraphernalia with intent to use it to create cloned cellular telephones commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(6) (a) Nothing herein shall make unlawful the possession or use of cloning paraphernalia, a cloned cellular telephone, or any intercept by a law enforcement officer or persons acting under the direction of a law

enforcement officer in the course of a criminal investigation.

(b) Nothing in this section shall make unlawful the possession or use of cloning paraphernalia or a cloned cellular telephone by a cellular telephone carrier.

817.483. Transmission or publication of information regarding schemes, devices, means, or methods for theft of communication services.

Any person who transmits or publishes the number or code of an existing, canceled, revoked, or nonexistent telephone number or credit number or other credit device, or method of numbering or coding which is employed in the issuance of telephone numbers or credit numbers or other credit devices, with the intent to avoid or to cause another to avoid lawful charges is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

817.487. Telephone caller identification systems.

(1) As used in this section:

(a) "Call" means any type of telephone call made using a public switched telephone network, wireless cellular telephone service, or voice-over-Internet protocol (VoIP) service that has the capability of accessing users on the public switched telephone network or a successor network.

(b) "Caller" means a person who places a call, whether by telephone, over a telephone line, or on a computer.

(c) "Enter" means to input data by whatever means into a computer or telephone system.

(d) "False information" means data that misrepresents the identity of the caller to the recipient of a call or to the network itself; however, when a person making an authorized call on behalf of another person inserts the name, telephone number, or name and telephone number of the person on whose behalf the call is being made, such information shall not be deemed false information.

(e) "Telephone caller identification system" means a listing of a caller's name, telephone number, or name and telephone number that is shown to a recipient of a call when it is received.

(2) A person may not enter or cause to be entered false information into a telephone caller identification system with the intent to deceive, defraud, or mislead the recipient of a call.

(3) A person may not place a call knowing that false information was entered into the telephone caller identification system with the intent to deceive, defraud, or mislead the recipient of the call.

(4) This section shall not apply to:

(a) The blocking of caller identification information.

(b) Any law enforcement agency of the federal, state, county, or municipal government.

(c) Any intelligence or security agency of the Federal Government.

(d) A telecommunications, broadband, or voice-over-Internet service provider that is acting solely as an intermediary for the transmission of telephone service between the caller and the recipient.

(5) (a) Any person who violates subsection (2) or subsection (3) commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(b) Any violation of subsection (2) or subsection (3) constitutes an unlawful trade practice under part II of chapter 501 and, in addition to any remedies or penalties set forth in this section, is subject to any remedies or penalties available for a violation of that part.

(6) (a) The felony or misdemeanor degree of any criminal offense shall be reclassified by the court to the next higher degree as provided in this subsection if the offender violated subsection (2) or subsection (3) during the commission of the criminal offense or if a violation by the offender of subsection (2) or subsection (3) facilitated or furthered the criminal offense. The reclassification shall be as follows:

1. In the case of a misdemeanor of the second degree, the offense is reclassified as a misdemeanor of the first degree.

2. In the case of a misdemeanor of the first degree, the offense is reclassified as a felony of the third degree.

3. In the case of a felony of the third degree, the offense is reclassified as a felony of the second degree.

4. In the case of a felony of the second degree, the offense is reclassified as a felony of the first degree.

5. In the case of a felony of the first degree or a felony of the first degree punishable by a term of imprisonment not exceeding life, the offense is reclassified as a life felony.

(b) For purposes of sentencing under chapter 921, the following offense severity ranking levels apply:

1. An offense that is a misdemeanor of the first degree and that is reclassified under this subsection as a felony of the third degree

is ranked in level 2 of the offense severity ranking chart.

2. A felony offense that is reclassified under this subsection is ranked one level above the ranking specified in § 921.0022 or § 921.0023 for the offense committed.

817.49. False reports of commission of crimes; penalty.

Whoever willfully imparts, conveys or causes to be imparted or conveyed to any law enforcement officer false information or reports concerning the alleged commission of any crime under the laws of this state, knowing such information or report to be false, in that no such crime had actually been committed, shall upon conviction thereof be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

817.50. Fraudulently obtaining goods, services, etc., from a health care provider.

(1) Whoever shall, willfully and with intent to defraud, obtain or attempt to obtain goods, products, merchandise, or services from any health care provider in this state, as defined in § 641.19(14), commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) If any person gives to any health care provider in this state a false or fictitious name or a false or fictitious address or assigns to any health care provider the proceeds of any health maintenance contract or insurance contract, then knowing that such contract is no longer in force, is invalid, or is void for any reason, such action shall be prima facie evidence of the intent of such person to defraud the health care provider. However, this subsection does not apply to investigative actions taken by law enforcement officers for law enforcement purposes in the course of their official duties.

817.52. Obtaining vehicles with intent to defraud, failing to return hired vehicle, or tampering with mileage device of hired vehicle.

(1) OBTAINING BY TRICK, FALSE REPRESENTATION, ETC.—Whoever, with intent to defraud the owner or any person lawfully possessing any motor vehicle, obtains the custody of such motor vehicle by trick, deceit, or fraudulent or willful false representation shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) HIRING WITH INTENT TO DEFRAUD.—Whoever, with intent to defraud the owner or any person lawfully possessing any motor vehicle of the rental thereof, hires a vehicle from such owner or such owner's agents or any person in lawful possession thereof shall, upon conviction, be deemed guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. The absconding without paying or offering to pay such hire shall be prima facie evidence of such fraudulent intent.

(3) FAILURE TO REDELIVER HIRED VEHICLE.—Whoever, after hiring a motor vehicle under an agreement to redeliver the same to the person letting such motor vehicle or his or her agent, at the termination of the period for which it was let, shall, without the consent of such person or persons and with intent to defraud, abandon or willfully refuse to redeliver such vehicle as agreed shall, upon conviction, be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) TAMPERING WITH MILEAGE DEVICE.—Whoever, after hiring a motor vehicle from any person or persons under an agreement to pay for the use of such motor vehicle a sum of money determinable either in whole or in part upon the distance such motor vehicle travels during the period for which hired, removes, attempts to remove, tampers with, or attempts to tamper with or otherwise interfere with any odometer or other mechanical device attached to said hired motor vehicle for the purpose of registering the distance such vehicle travels, with the intent to deceive the person or persons letting such vehicle or their lawful agent as to the actual distance traveled thereby, shall upon conviction be deemed guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Any person who shall knowingly aid, abet or assist another in violating the provisions of this subsection shall, as a principal in the first degree, be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Any person violating this section may be informed against or indicted in the county where such odometer or such other mechanical device is removed, or attempted to be removed, or tampered with, or attempted to be tampered with, or otherwise interfered with, or in the county where such persons knowingly aid, abet, or assist another in violating the provisions of this section, or in the county where any part of such motor vehicle upon which is attached

such odometer, or such other mechanical device, is removed or attempted to be removed.

817.535. Unlawful filing of false documents or records against real or personal property.

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

(a) "File" means to present an instrument for recording in an official record or to cause an instrument to be presented for recording in an official record.

(b) "Filer" means the person who presents an instrument for recording in an official record or causes an instrument to be presented for recording in an official record.

(c) "Instrument" means any judgment, mortgage, assignment, pledge, lien, financing statement, encumbrance, deed, lease, bill of sale, agreement, mortgage, notice of claim of lien, notice of levy, promissory note, mortgage note, release, partial release or satisfaction of any of the foregoing, or any other document that relates to or attempts to restrict the ownership, transfer, or encumbrance of or claim against real or personal property, or any interest in real or personal property.

(d) "Official record" means the series of instruments, regardless of how they are maintained, which a clerk of the circuit court, or any person or entity designated by general law, special law, or county charter, is required or authorized by law to record. The term also includes a series of instruments pertaining to the Uniform Commercial Code filed with the Secretary of State or with any entity under contract with the Secretary of State to maintain Uniform Commercial Code records and a database of judgment liens maintained by the Secretary of State.

(e) "Public officer or employee" means, but is not limited to:

1. A person elected or appointed to a local, state, or federal office, including any person serving on an advisory body, board, commission, committee, council, or authority.

2. An employee of a state, county, municipal, political subdivision, school district, educational institution, or special district agency or entity, including judges, attorneys, law enforcement officers, deputy clerks of court, and marshals.

3. A state or federal executive, legislative, or judicial officer, employee, or volunteer authorized to perform actions or services for any state or federal executive, legislative, or judicial office, or agency.

4. A person who acts as a general or special magistrate, auditor, arbitrator, umpire, referee, hearing officer, or consultant to any state or local governmental entity.

5. A person who is a candidate for public office or judicial position.

(2) (a) A person who files or directs a filer to file, with the intent to defraud or harass another, any instrument containing a materially false, fictitious, or fraudulent statement or representation that purports to affect an owner's interest in the property described in the instrument commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) A person who violates paragraph (a) a second or subsequent time commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) If a person is convicted of violating subsection (2) and the owner of the property subject to the false instrument is a public officer or employee, the offense shall be reclassified as follows:

(a) In the case of a felony of the third degree, to a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) In the case of a felony of the second degree, to a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) (a) If a person is convicted of violating subsection (2) and the person committed the offense while incarcerated in a jail or correctional institution or while participating in a pretrial diversion program under any form of pretrial release or bond, on probation or parole, or under any postrelease supervision, the offense shall be reclassified as follows:

1. In the case of a felony of the third degree, to a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

2. In the case of a felony of the second degree, to a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) If a person's offense has been reclassified pursuant to this subsection, the sentencing court shall issue a written finding that the offense occurred while incarcerated in a jail or correctional institution and direct that a copy of the written finding and judgment of conviction be forwarded to the appropriate state institution or county facility for consideration of disciplinary action and forfeiture of all gain-time or any early release credits accumulated up to the date of the violation.

(5) If the person is convicted of violating subsection (2) and the owner of the property covered by the false instrument incurs financial loss as a result of the instrument being

recorded in the official record, including costs and attorney fees incurred in correcting, sealing, or removing the false instrument from the official record as described herein, the offense shall be reclassified as follows:

(a) In the case of a felony of the third degree, to a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) In the case of a felony of the second degree, to a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(6) A person who fraudulently records a claim of lien in the official records pursuant to part I of chapter 713 is subject to the fraud provisions of § 713.31 and not this section.

(7) If a person is convicted of violating this section, the sentencing court shall issue an order declaring the instrument forming the basis of the conviction null and void and may enjoin the person from filing any instrument in an official record absent prior review and approval for filing by a circuit or county court judge. The sentencing court may also order the instrument forming the basis of the conviction sealed from the official record and removed from any applicable electronic database used for recording instruments in the official record.

(8) (a) Any person adversely affected by an instrument filed in the official record which contains a materially false, fictitious, or fraudulent statement or representation has a civil cause of action under this section without regard to whether criminal charges are pursued under subsection (2). A notice of lis pendens in accord with § 48.23 shall be filed which specifically describes the instrument under challenge and the real or personal property affected by the instrument.

(b) Upon a finding that the instrument contains a materially false, fictitious, or fraudulent statement or representation such that the instrument does not establish a legitimate property or lien interest in favor of another person:

1. The court shall determine whether the entire instrument or certain parts thereof are null and void ab initio. If the court finds the instrument void in its entirety, it may order the instrument sealed from the official record and removed from any electronic database used for indexing or locating instruments in the official record. The court may also, permanently or for a period of time, enjoin the defendant who filed the instrument or who directed the filer to file the instrument from filing or directing a person to file an instrument in the official records without prior review and approval for filing by a circuit or county court judge, provided that as to third parties who may have given value for an interest described or granted by any instrument filed in violation of the injunction, the instrument shall be deemed validly filed and provides constructive notice, notwithstanding any failure to comply with the terms of the injunction.

2. Upon a finding of intent to defraud or harass, the court or jury shall award actual damages and punitive damages, subject to the criteria in § 768.72, to the person adversely affected by the instrument. The court may also levy a civil penalty of $2,500 for each instrument determined to be in violation of subsection (2).

3. The court may grant such other relief or remedy that the court determines is just and proper within its sound judicial discretion.

(c) The prevailing party in such a suit is entitled to recover costs and reasonable attorney fees.

(d) The custodian of any official record shall, upon payment of appropriate fees, provide a certified copy of the sealed instrument to the party seeking relief under this section for use in subsequent court proceedings; in addressing or correcting adverse effects upon the person's credit or property rights, or reporting the matter for investigation and prosecution; or in response to a subpoena seeking the instrument for criminal investigative or prosecution purposes.

(e) Upon request, the custodian of any official record shall, upon payment of appropriate fees, provide a certified copy of the sealed instrument to any federal, state, or local law enforcement agency.

(f) If feasible, the custodian of the official record where the instrument is recorded shall record any court order finding that the instrument is null and void in its entirety or in certain parts thereof.

(g) An instrument removed from an electronic database used for recording instruments in the public record pursuant to this section shall be maintained in a manner in which the instrument can be reduced to paper form.

(9) A government agency may provide legal representation to a public officer or employee if the instrument at issue appears to have been filed to defraud or harass the public officer or employee in his or her official capacity. If the public officer or employee is the prevailing party, the award of reasonable

attorney fees shall be paid to the government agency that provided the legal representation.

(10) This section does not apply to the procedures for sealing or expunging criminal history records as provided in chapter 943.

817.53. False charges for radio and television repairs and parts; penalty.

(1) It is unlawful for a person to knowingly charge for any services which are not actually performed in repairing a radio or television set, or to knowingly charge for any parts which are not actually furnished, or to knowingly misinform a customer concerning what is wrong with his or her radio or television set, or to knowingly and fraudulently substitute parts when such substitution has no relation to the repairing or servicing of the radio or television set.

(2) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

817.545. Mortgage fraud.

(1) For the purposes of the section, the term "mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan, including, but not limited to, the solicitation, application or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage lending process include, but are not limited to, mortgages, deeds, surveys, inspection reports, uniform residential loan applications, or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, credit reports, bank statements, tax returns, and payroll stubs; and any required disclosures.

(2) A person commits the offense of mortgage fraud if, with the intent to defraud, the person knowingly:

(a) Makes any material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that the misstatement, misrepresentation, or omission will be relied on by a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process; however, omissions on a loan application regarding employment, income, or assets for a loan which does not require this information are not considered a material omission for purposes of this subsection.

(b) Uses or facilitates the use of any material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that the material misstatement, misrepresentation, or omission will be relied on by a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process; however, omissions on a loan application regarding employment, income, or assets for a loan which does not require this information are not considered a material omission for purposes of this subsection.

(c) Receives any proceeds or any other funds in connection with the mortgage lending process that the person knew resulted from a violation of paragraph (a) or paragraph (b).

(d) Files or causes to be filed with the clerk of the circuit court for any county of this state a document involved in the mortgage lending process which contains a material misstatement, misrepresentation, or omission.

(3) An offense of mortgage fraud may not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, or interpretations related to the mortgage lending process.

(4) For the purpose of venue under this section, any violation of this section is considered to have been committed:

(a) In the county in which the real property is located; or

(b) In any county in which a material act was performed in furtherance of the violation.

(5) (a) Any person who violates subsection (2) commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Any person who violates subsection (2), and the loan value stated on documents used in the mortgage lending process exceeds $100,000, commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

817.562. Fraud involving a security interest.

(1) As used in this section, the terms "proceeds," "security agreement," "security interest," and "secured party" shall be given the meanings prescribed for them in chapter 679.

(2) A person is guilty of fraud involving a security interest when, having executed a security agreement creating a security interest in personal property, including accounts receivable, which security interest secures a monetary obligation owed to a secured party, and:

(a) Having under the security agreement both the right of sale or other disposition of the property and the duty to account to the secured party for the proceeds of disposition, he or she sells or otherwise disposes of the property and wrongfully and willfully fails to account to the secured party for the proceeds of disposition; or

(b) Having under the security agreement no right of sale or other disposition of the property, he or she knowingly secretes, withholds, or disposes of such property in violation of the security agreement.

(3) Any person who knowingly violates this section shall be punished as follows:

(a) If the value of the property sold, secreted, withheld, or disposed of or the proceeds from the sale or disposition of the property is $300 or more, such person is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) If the value of the property sold, secreted, withheld, or disposed of or the proceeds obtained from the sale or disposition of the property is less than $300, such person is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

817.5621. Unlawful subleasing of a motor vehicle.

(1) It is unlawful for any person who is not a party to a lease contract, conditional sale contract, or security agreement which transfers any right or interest in a motor vehicle to:

(a) Obtain or exercise control over the motor vehicle and then sell, transfer, assign, or lease the motor vehicle to another person without first obtaining written authorization from the secured creditor, lessor, or lienholder for the sale, transfer, assignment, or lease if he or she receives compensation or other consideration for the sale, transfer, assignment, or lease of the motor vehicle; or

(b) Assist, cause, or arrange the actual or purported sale, transfer, assignment, or lease of the motor vehicle to another person without first obtaining written authorization from the secured creditor, lessor, or lienholder for the sale, transfer, assignment, or lease if he or she receives compensation or other consideration for assisting, causing, or arranging the sale, transfer, assignment, or lease of the motor vehicle.

(2) Any person who violates the provisions of this section is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Notwithstanding any other remedy or relief to which a person is entitled, anyone suffering damage as a result of a violation of this section may bring an action to recover or obtain actual damages, equitable relief, including, but not limited to, an injunction or restitution of money and property, punitive damages, reasonable attorney's fees and costs, and any other relief the court deems proper.

817.563. Controlled substance named or described in § 893.03; sale of substance in lieu thereof.

It is unlawful for any person to agree, consent, or in any manner offer to unlawfully sell to any person a controlled substance named or described in § 893.03 and then sell to such person any other substance in lieu of such controlled substance. Any person who violates this section with respect to:

(1) A controlled substance named or described in § 893.03(1), (2), (3), or (4) is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) A controlled substance named or described in § 893.03(5) is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

817.564. Imitation controlled substances defined; possession and distribution prohibited.

(1) For the purposes of this section, the term "imitation controlled substance" means a pill, capsule, tablet, or substance in any form whatsoever which is not a controlled substance enumerated in chapter 893, which is subject to abuse, and which:

(a) By overall dosage unit appearance, including color, shape, size, markings, and packaging, or by representations made, would cause the likelihood that such a pill, capsule, tablet, or substance will be mistaken for a controlled substance unless such substance was introduced into commerce prior to the initial introduction into commerce of the controlled substance which it is alleged to imitate; or

(b) By express or implied representations, purports to act like a controlled substance as a stimulant or depressant of the central nervous system and which is not commonly used or recognized for use in that particular formulation for any purpose other than for such stimulant or depressant effect, unless marketed, promoted, or sold as permitted by the United States Food and Drug Administration.

(2) In those instances where the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an imitation controlled substance, the court or authority concerned may consider, in addition to all other logically relevant factors, the following factors as related to "representations made" in determining whether the substance is an imitation controlled substance:

(a) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance or its use or effect.

(b) Statements made to the recipient that the substance may be resold for inordinate profit.

(c) Whether the substance is packaged in a manner normally used for illicit controlled substances.

(d) Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities.

(e) Prior convictions, if any, of an owner, or anyone in control of the object, under state or federal law related to controlled substances or fraud.

(f) The proximity of the substances to controlled substances.

(3) It is unlawful for any person to manufacture, distribute, sell, give, or possess with the intent to manufacture, distribute, sell, or give an imitation controlled substance. Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) It is unlawful for any person 18 years of age or over to knowingly sell or distribute an imitation controlled substance to a person under the age of 18 years. Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication or to post or distribute in any public place any advertisement or solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution of imitation controlled substances. Any person who violates this subsection is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(6) Civil or criminal liability may not be imposed by virtue of this section against:

(a) Any person operating in accordance with the Florida Comprehensive Drug Abuse Prevention and Control Act who manufactures, dispenses, sells, gives, or distributes an imitation controlled substance for use as a placebo by a licensed practitioner in the course of professional practice or research; or

(b) A law enforcement officer acting in the officer's official capacity during the course of an active criminal investigation relating to controlled substances which is approved or authorized by the officer's agency or to an informer or third party acting under the direction or control of such an officer as part of an authorized, active criminal investigation relating to controlled substances.

817.565. Urine testing, fraudulent practices; penalties.

(1) It is unlawful for any person:

(a) Willfully to defraud or attempt to defraud any lawfully administered urine test designed to detect the presence of chemical substances or controlled substances.

(b) Willfully to manufacture, advertise, sell, or distribute any substance or device which is intended to defraud or attempt to defraud any lawfully administered urine test designed to detect the presence of chemical substances or controlled substances.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

817.568. Criminal use of personal identification information.

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

(a) "Access device" means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument.

(b) "Authorization" means empowerment, permission, or competence to act.

(c) "Harass" means to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose. "Harass" does not mean to use personal identification information for accepted commercial purposes. The term does not include constitutionally protected conduct such as organized protests or the use of personal

identification information for accepted commercial purposes.

(d) "Individual" means a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity.

(e) "Person" means a "person" as defined in § 1.01(3).

(f) "Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;

2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

3. Unique electronic identification number, address, or routing code;

4. Medical records;

5. Telecommunication identifying information or access device; or

6. Other number or information that can be used to access a person's financial resources.

(g) "Counterfeit or fictitious personal identification information" means any counterfeit, fictitious, or fabricated information in the similitude of the data outlined in paragraph (f) that, although not truthful or accurate, would in context lead a reasonably prudent person to credit its truthfulness and accuracy.

(2) (a) Any person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent, commits the offense of fraudulent use of personal identification information, which is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Any person who willfully and without authorization fraudulently uses personal identification information concerning an individual without first obtaining that individual's consent commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $5,000 or more or if the person fraudulently uses the personal identification information of 10 or more individuals, but fewer than 20 individuals, without their consent. Notwithstanding any other provision of law, the court shall sentence any person convicted of committing the offense described in this paragraph to a mandatory minimum sentence of 3 years' imprisonment.

(c) Any person who willfully and without authorization fraudulently uses personal identification information concerning an individual without first obtaining that individual's consent commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $50,000 or more or if the person fraudulently uses the personal identification information of 20 or more individuals, but fewer than 30 individuals, without their consent. Notwithstanding any other provision of law, the court shall sentence any person convicted of committing the offense described in this paragraph to a mandatory minimum sentence of 5 years' imprisonment. If the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $100,000 or more, or if the person fraudulently uses the personal identification information of 30 or more individuals without their consent, notwithstanding any other provision of law, the court shall sentence any person convicted of committing the offense described in this paragraph to a mandatory minimum sentence of 10 years' imprisonment.

(3) Neither paragraph (2)(b) nor paragraph (2)(c) prevents a court from imposing a greater sentence of incarceration as authorized by law. If the minimum mandatory terms of imprisonment imposed under paragraph (2)(b) or paragraph (2)(c) exceed the maximum sentences authorized under § 775.082, § 775.084, or the Criminal Punishment Code under chapter 921, the mandatory minimum sentence must be imposed. If the mandatory minimum terms of imprisonment under paragraph (2)(b) or paragraph (2)(c) are less than the sentence that could be

imposed under § 775.082, § 775.084, or the Criminal Punishment Code under chapter 921, the sentence imposed by the court must include the mandatory minimum term of imprisonment as required by paragraph (2)(b) or paragraph (2)(c).

(4) Any person who willfully and without authorization possesses, uses, or attempts to use personal identification information concerning an individual without first obtaining that individual's consent, and who does so for the purpose of harassing that individual, commits the offense of harassment by use of personal identification information, which is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(5) If an offense prohibited under this section was facilitated or furthered by the use of a public record, as defined in § 119.011, the offense is reclassified to the next higher degree as follows:

(a) A misdemeanor of the first degree is reclassified as a felony of the third degree.

(b) A felony of the third degree is reclassified as a felony of the second degree.

(c) A felony of the second degree is reclassified as a felony of the first degree.

For purposes of sentencing under chapter 921 and incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this subsection is ranked one level above the ranking under § 921.0022 of the felony offense committed, and a misdemeanor offense that is reclassified under this subsection is ranked in level 2 of the offense severity ranking chart in § 921.0022.

(6) Any person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or of his or her legal guardian commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(7) Any person who is in the relationship of parent or legal guardian, or who otherwise exercises custodial authority over an individual who is less than 18 years of age, who willfully and fraudulently uses personal identification information of that individual commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(8) (a) Any person who willfully and fraudulently uses, or possesses with intent to fraudulently use, personal identification information concerning a deceased individual commits the offense of fraudulent use or possession with intent to use personal identification information of a deceased individual, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Any person who willfully and fraudulently uses personal identification information concerning a deceased individual commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of injury or fraud perpetrated is $5,000 or more, or if the person fraudulently uses the personal identification information of 10 or more but fewer than 20 deceased individuals. Notwithstanding any other provision of law, the court shall sentence any person convicted of committing the offense described in this paragraph to a mandatory minimum sentence of 3 years' imprisonment.

(c) Any person who willfully and fraudulently uses personal identification information concerning a deceased individual commits the offense of aggravated fraudulent use of the personal identification information of multiple deceased individuals, a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of injury or fraud perpetrated is $50,000 or more, or if the person fraudulently uses the personal identification information of 20 or more but fewer than 30 deceased individuals. Notwithstanding any other provision of law, the court shall sentence any person convicted of the offense described in this paragraph to a minimum mandatory sentence of 5 years' imprisonment. If the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $100,000 or more, or if the person fraudulently uses the personal identification information of 30 or more deceased individuals, notwithstanding any other provision of law, the court shall sentence any person convicted of an offense described in this paragraph to a mandatory minimum sentence of 10 years' imprisonment.

(9) Any person who willfully and fraudulently creates or uses, or possesses with intent to fraudulently use, counterfeit or fictitious personal identification information concerning a fictitious individual, or concerning a real individual without first obtaining that real individual's consent, with intent to use such counterfeit or fictitious personal identi-

fication information for the purpose of committing or facilitating the commission of a fraud on another person, commits the offense of fraudulent creation or use, or possession with intent to fraudulently use, counterfeit or fictitious personal identification information, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(10) Any person who commits an offense described in this section and for the purpose of obtaining or using personal identification information misrepresents himself or herself to be a law enforcement officer; an employee or representative of a bank, credit card company, credit counseling company, or credit reporting agency; or any person who wrongfully represents that he or she is seeking to assist the victim with a problem with the victim's credit history shall have the offense reclassified as follows:

(a) In the case of a misdemeanor, the offense is reclassified as a felony of the third degree.

(b) In the case of a felony of the third degree, the offense is reclassified as a felony of the second degree.

(c) In the case of a felony of the second degree, the offense is reclassified as a felony of the first degree.

(d) In the case of a felony of the first degree or a felony of the first degree punishable by a term of imprisonment not exceeding life, the offense is reclassified as a life felony.

For purposes of sentencing under chapter 921, a felony offense that is reclassified under this subsection is ranked one level above the ranking under § 921.0022 or § 921.0023 of the felony offense committed, and a misdemeanor offense that is reclassified under this subsection is ranked in level 2 of the offense severity ranking chart.

(11) The prosecutor may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in fraudulent possession or use of personal identification information. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if the judge finds that the defendant rendered such substantial assistance.

(12) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of this state or any of its political subdivisions, of any other state or its political subdivisions, or of the Federal Government or its political subdivisions.

(13)-(17) [Intentionally omitted.]

817.5685. Unlawful possession of the personal identification information of another person.

(1) As used in this section, the term "personal identification information" means a person's social security number, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, and medical records.

(2) It is unlawful for a person to intentionally or knowingly possess, without authorization, the personal identification information of another person in any form, including, but not limited to, mail, physical documents, identification cards, or information stored in digital form.

(3) (a) A person who violates subsection (2) and in doing so possesses the personal identification information of four or fewer persons commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(b) 1. Proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal identification information did so knowingly and intentionally without authorization.

2. A person who violates subsection (2) and in doing so possesses the personal identification information of five or more persons commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) Subsection (2) does not apply to:

(a) A person who is the parent or legal guardian of a child and who possesses the personal identification information of that child.

(b) A person who is the guardian of another person under chapter 744 and who is authorized to possess the personal identification information of that other person and

make decisions regarding access to that personal identification information.

(c) An employee of a governmental agency who possesses the personal identification information of another person in the ordinary course of business.

(d) A person who is engaged in a lawful business and possesses the personal identification information of another person in the ordinary course of business.

(e) A person who finds a card or document issued by a governmental agency that contains the personal identification information of another person and who takes reasonably prompt action to return that card or document to its owner, to the governmental agency that issued the card or document, or to a law enforcement agency.

(5) It is an affirmative defense to an alleged violation of subsection (2) if the person who possesses the personal identification information of another person:

(a) Did so under the reasonable belief that such possession was authorized by law or by the consent of the other person; or

(b) Obtained that personal identification information from a forum or resource that is open or available to the general public or from a public record.

(6) This section does not preclude prosecution for the unlawful possession of personal identification information pursuant to § 817.568 or any other law.

817.569. Criminal use of a public record or public records information; penalties.

A person who knowingly uses any public record, as defined in § 119.011, or who knowingly uses information obtainable only through such public record, to facilitate or further the commission of:

(1) A misdemeanor of the first degree, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) A felony, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

817.58. Definitions.

As used in §§ 817.57-817.685:

(1) "Acquirer" means a business organization, governmental entity, financial institution, or an agent of a business organization, governmental entity, or financial institution that authorizes a merchant to accept payment by credit card for money, goods, services, or anything else of value.

(2) "Cardholder" means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

(3) "Counterfeit credit card" means any credit card which is fictitious, altered, or forged; any facsimile or false representation, depiction, or component of a credit card; or any credit card which is stolen, obtained as part of a scheme to defraud, or otherwise unlawfully obtained, and which may or may not be embossed with account information or a company logo.

(4) "Credit card" means any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, electronic benefits transfer (EBT) card, or debit card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit or for use in an automated banking device to obtain any of the services offered through the device.

(5) "Expired credit card" means a credit card which is no longer valid because the term shown on it has elapsed.

(6) "Issuer" means the business organization, state or federal government, or financial institution, or its duly authorized agent, which issues a credit card.

(7) "Receives" or "receiving" means acquiring possession or control or accepting as security for a loan a credit card.

(8) "Revoked credit card" means a credit card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

(9) "Credit-card-making equipment" means any equipment, machine, plate, mechanism, impression, or any other device designed, used, or capable of being used to produce a credit card, a counterfeit credit card, or any aspect or component of a credit card.

(10) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of a property or to buy, receive, possess, obtain control of, or use property with the intent to sell, transfer, distribute, dispense, or otherwise dispose of such property.

817.59. False statement as to financial condition or identity.

A person who makes or causes to be made, either directly or indirectly, any false statement as to a material fact in writing, knowing it to be false and with intent that it be relied on respecting his or her identity or that of any other person, firm, or corporation or his or her financial condition or that of any other person, firm, or corporation, for the purpose of procuring the issuance of a credit

card, violates this section and is subject to the penalties set forth in § 817.67(1).

817.60. Theft; obtaining credit card through fraudulent means.

(1) THEFT BY TAKING OR RETAINING POSSESSION OF CARD TAKEN.—A person who takes a credit card from the person, possession, custody, or control of another without the cardholder's consent or who, with knowledge that it has been so taken, receives the credit card with intent to use it, to sell it, or to transfer it to a person other than the issuer or the cardholder is guilty of credit card theft and is subject to the penalties set forth in § 817.67(1). Taking a credit card without consent includes obtaining it by conduct defined or known as statutory larceny, common-law larceny by trespassory taking, common-law larceny by trick or embezzlement or obtaining property by false pretense, false promise or extortion.

(2) THEFT OF CREDIT CARD LOST, MISLAID, OR DELIVERED BY MISTAKE.—A person who receives a credit card that he or she knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder and who retains possession with intent to use it, to sell it, or to transfer it to a person other than the issuer or the cardholder is guilty of credit card theft and is subject to the penalties set forth in § 817.67(1).

(3) PURCHASE OR SALE OF CREDIT CARD OF ANOTHER.—A person other than the issuer who sells a credit card or a person who buys a credit card from a person other than the issuer violates this subsection and is subject to the penalties set forth in § 817.67(1).

(4) OBTAINING CONTROL OF CREDIT CARD AS SECURITY FOR DEBT.—A person who, with intent to defraud the issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, obtains control over a credit card as security for a debt violates this subsection and is subject to the penalties set forth in § 817.67(1).

(5) DEALING IN CREDIT CARDS OF ANOTHER.—A person other than the issuer who, during any 12-month period, receives two or more credit cards issued in the name or names of different cardholders, which cards he or she has reason to know were taken or retained under circumstances which constitute credit card theft or a violation of this part, violates this subsection and is subject to the penalties set forth in § 817.67(2).

(6) FORGERY OF CREDIT CARD.—

(a) A person who, with intent to defraud a purported issuer or a person or organization providing money, goods, services, or anything else of value or any other person, falsely makes, falsely embosses, or falsely alters in any manner a credit card or utters such a credit card or who, with intent to defraud, has a counterfeit credit card or any invoice, voucher, sales draft, or other representation or manifestation of a counterfeit credit card in his or her possession, custody, or control is guilty of credit card forgery and is subject to the penalties set forth in § 817.67(2).

(b) A person other than an authorized manufacturer or issuer who possesses two or more counterfeit credit cards is presumed to have violated this subsection.

(c) A person falsely makes a credit card when he or she makes or draws in whole or in part a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing or when he or she alters a credit card which was validly issued.

(d) A person falsely embosses a credit card when, without the authorization of the named issuer, he or she completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.

(7) SIGNING CREDIT CARD OF ANOTHER.—A person other than the cardholder or a person authorized by him or her who, with intent to defraud the issuer or a person or organization providing money, goods, services, or anything else of value or any other person, signs a credit card violates this subsection and is subject to the penalties set forth in § 817.67(1).

(8) UNLAWFUL POSSESSION OF A STOLEN CREDIT OR DEBIT CARD.—A person who knowingly possesses, receives, or retains custody of a credit or debit card that has been taken from the possession, custody, or control of another without the cardholder's consent and with the intent to impede the recovery of the credit or debit card by the cardholder commits unlawful possession of a stolen credit or debit card and is subject to the penalties set forth in § 817.67(2). It is not a violation of this subsection for a retailer or retail employee, in the ordinary course of business, to possess, receive, or return a credit card or debit card that the retailer or retail employee does not know was stolen or to possess, receive, or retain a credit card or

debit card that the retailer or retail employee knows is stolen for the purpose of an investigation into the circumstances regarding the theft of the card or its possible unlawful use.

817.61. Fraudulent use of credit cards.

A person who, with intent to defraud the issuer or a person or organization providing money, goods, services, or anything else of value or any other person, uses, for the purpose of obtaining money, goods, services, or anything else of value, a credit card obtained or retained in violation of this part or a credit card which he or she knows is forged, or who obtains money, goods, services, or anything else of value by representing, without the consent of the cardholder, that he or she is the holder of a specified card or by representing that he or she is the holder of a card and such card has not in fact been issued violates this section. A person who, in any 6-month period, uses a credit card in violation of this section two or fewer times, or obtains money, goods, services, or anything else in violation of this section the value of which is less than $100, is subject to the penalties set forth in § 817.67(1). A person who, in any 6-month period, uses a credit card in violation of this section more than two times, or obtains money, goods, services, or anything else in violation of this section the value of which is $100 or more, is subject to the penalties set forth in § 817.67(2).

817.611. Traffic in counterfeit credit cards.

Any person who traffics in or attempts to traffic in 10 or more counterfeit credit cards, invoices, vouchers, sales drafts, or other representations or manifestations of counterfeit credit cards, or credit card account numbers of another in any 6-month period is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

817.612. Expired or revoked credit cards.

A person who, with intent to defraud the issuer or a person or organization providing money, goods, services, or anything else of value, uses, for the purpose of obtaining money, goods, services, or anything else of value, a credit card which he or she knows is expired or revoked violates this section and is subject to the penalties set forth in § 817.67(1). Knowledge of revocation shall be presumed to have been received by a cardholder 7 days after such notice has been mailed to him or her by first-class mail at the last known address.

817.62. Fraud by person authorized to provide goods or services.

(1) ILLEGALLY OBTAINED OR ILLEGALLY POSSESSED CREDIT CARD; FORGED, REVOKED, OR EXPIRED CREDIT CARD.—A person who is authorized by an acquirer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employee of such person, who, with intent to defraud the issuer, the acquirer, or the cardholder, furnishes money, goods, services, or anything else of value upon presentation of a credit card obtained or retained in violation of this part or a credit card which he or she knows is forged, expired, or revoked violates this subsection and is subject to the penalties set forth in § 817.67(1), if the value of all money, goods, services, and other things of value furnished in violation of this subsection does not exceed $300 in any 6-month period. The violator is subject to the penalties set forth in § 817.67(2) if such value does exceed $300 in any 6-month period.

(2) MISREPRESENTATION TO ISSUER OR ACQUIRER.—A person who is authorized by an acquirer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employee of such person, who, with intent to defraud the issuer, the acquirer, or the cardholder, fails to furnish money, goods, services, or anything else of value which he or she represents in writing to the issuer or the acquirer that he or she has furnished violates this subsection and is subject to the penalties set forth in § 817.67(2).

(3) ILLEGALLY FACTORING CREDIT CARD TRANSACTIONS.—

(a) A person who is authorized by an acquirer to furnish money, goods, services, or anything else of value upon presentation of a credit card or a credit card account number by a cardholder, or any agent or employee of such person, who, with intent to defraud the issuer, the acquirer, or the cardholder, presents to the issuer or acquirer, for payment, a credit card transaction record of a sale, which sale was not made by such person or his or her agent or employee, violates this paragraph and is subject to the penalties set forth in § 817.67(2).

(b) A person who, without the acquirer's authorization, employs, solicits, or otherwise causes a person who is authorized by an acquirer to furnish money, goods, services, or

anything else of value upon presentation of a credit card or a credit card account number by a cardholder, or employs, solicits, or otherwise causes an agent or employee of such authorized person, to remit to the acquirer a credit card transaction record of a sale that was not made by such authorized person or his or her agent or employee violates this paragraph and is subject to the penalties set forth in § 817.67(2).

(c) Any violation of this subsection constitutes an unfair or deceptive act or practice within the meaning of § 501.204 and thus the basis for a civil or administrative action by an enforcing authority pursuant to part II of chapter 501.

817.625. Use of scanning device or reencoder to defraud; penalties.

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

(a) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

(b) "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card.

(c) "Payment card" means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.

(d) "Merchant" means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person.

(2) (a) It is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, for a person to use:

1. A scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

2. A reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

(b) Any person who violates subparagraph (a)1. or subparagraph (a)2. a second or subsequent time commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) Any person who violates subparagraph (a)1. or subparagraph (a)2. shall also be subject to the provisions of §§ 932.701-932.706.

817.631. Possession and transfer of credit-card-making equipment.

A person who receives, possesses, transfers, buys, sells, controls, or has custody of any credit-card-making equipment with intent that such equipment be used in the production of counterfeit credit cards violates this section and is subject to the penalties set forth in § 817.67(2).

817.64. Receipt of money, etc., obtained by fraudulent use of credit cards.

A person who receives money, goods, services, or anything else of value obtained in violation of § 817.61, knowing or believing that it was so obtained, violates this section and is subject to the penalties set forth in § 817.67(1). A person who obtains at a discount price a ticket issued by an airline, railroad, steamship, or other transportation company which was acquired in violation of § 817.61 without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that such ticket was acquired under circumstances constituting a violation of § 817.61.

817.645. Alteration of credit card invoice; penalties.

Whoever, with intent to defraud any person, falsely alters any invoice for money, goods, services, or anything else of value obtained by use of a credit card after it has been signed by the cardholder or a person authorized by him or her violates this section and is subject to the penalties set forth in § 817.67(1).

817.646. Credit card lists prohibited; penalty.

(1) It is unlawful for any person, business, corporation, partnership, or other agency to make available, lend, donate, or sell any list or portion of a list of any credit card subscribers and their addresses and account numbers to any third party without the express written permission of the issuer and the subscribers; except that a credit card issuer may make a list of its cardholders, including names, addresses, and account numbers, available, without the permission of the subscribers, to a third party pursuant to a contract, if such contract contains language requiring the third party to bind through contract each of its subcontractors by including language prohibiting the divulging of any part of the list for any purpose by the subcontractors except to fulfill and service orders pursuant to the contract between the credit card issuer and the authorized third party. However, notwithstanding any contrary provision of this section, a "consumer reporting agency," as that term is defined by the Fair Credit Reporting Act, Pub. L. No. 91-508, may provide lists of credit account names, addresses, and account numbers to third parties pursuant to the provisions of that act. Nothing herein shall make unlawful or otherwise prohibit the transmittal of any such information to or from a "consumer reporting agency," as that term is defined in the Fair Credit Reporting Act, or a "debt collector," as that term is defined in the Fair Debt Collection Practices Act, Pub. L. No. 95-109. Notwithstanding the provisions of this section:

(a) A corporation may make available, lend, donate, or sell any list or portion of a list of any credit card subscribers and their addresses and account numbers to a subsidiary or the parent corporation of such corporation or to another subsidiary of the common parent corporation; and

(b) Any business entity may lawfully obtain the names, addresses, and account numbers of its own customers. Such information may only be maintained to serve the needs of its customers for its own promotional or marketing purposes.

(2) A violator of this section is subject to the penalties set forth in § 817.67(1).

817.65. Defenses not available.

It shall not constitute a defense to a prosecution for any violation of this part that:

(1) A credit card that is not a counterfeit credit card is offered for use or sale as a counterfeit credit card.

(2) A person, other than the defendant, who violated this part has not been convicted, apprehended, or identified.

817.66. Presumptions.

When this part establishes a presumption with respect to any fact which is an element of a crime, it has the following consequences:

(1) When there is sufficient evidence of the facts which give rise to the presumption to go to the jury, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly negatives the presumed fact; and

(2) When the issue of the existence of the presumed fact is submitted to the jury, the court shall charge that while the presumed fact must, on all the evidence, be proved beyond a reasonable doubt, the law declares that the jury may regard the facts giving rise to the presumption as sufficient evidence of the presumed fact.

817.67. Penalties.

(1) A person who is subject to the penalties of this subsection shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) A person who is subject to the penalties of this subsection is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

817.68. Part II not exclusive.

This part shall not be construed to preclude the applicability of any other provision of the criminal law of this state which presently applies or may in the future apply to any transaction which violates this part, unless such provision is inconsistent with the terms of this part.

817.685. Credit card transaction records.

In any action brought under this part, the authentication or identification of the business records of a credit card issuer is evidence sufficient to support a finding that the record in question is what its proponent claims, if the records are supported by the testimony of a designated representative of the credit card issuer. Such designated representative who has received the business records from the custodian of such records shall be considered a qualified witness within the meaning of § 90.803(6)(a).

CHAPTER 823
PUBLIC NUISANCES

823.02. Building bonfires.

Whoever is concerned in causing or making a bonfire within 10 rods of any house or building shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

823.041. Disposal of bodies of dead animals; penalty.

(1) Any owner, custodian, or person in charge of domestic animals, upon the death of such animals due to disease, shall dispose of the carcasses of such animals by burning or burying at least 2 feet below the surface of the ground; provided, however, nothing in this section shall prohibit the disposal of such animal carcasses to rendering companies licensed to do business in this state.

(2) It is unlawful to dispose of the carcass of any domestic animal by dumping such carcass on any public road or right-of-way, or in any place where such carcass can be devoured by beast or bird.

(3) Any person violating any of the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(4) For the purposes of this act, the words "domestic animal" shall include any equine or bovine animal, goat, sheep, swine, dog, cat, poultry, or other domesticated beast or bird.

823.07. Iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or airtight units; abandonment, discard.

(1) The purpose of §§ 823.07-823.09 is to prevent deaths due to suffocation of children locked in abandoned or discarded iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or similar airtight units from which the doors have not been removed.

(2) It is unlawful for any person knowingly to abandon or discard or to permit to be abandoned or discarded on premises under his or her control any icebox, refrigerator, deep-freeze locker, clothes washer, clothes dryer, or similar airtight unit having an interior storage capacity of 11/2 cubic feet or more from which the door has not been removed.

(3) The provisions of this section shall not apply to an icebox, refrigerator, deep-freeze locker, clothes washer, clothes dryer, or similar airtight unit which is crated or is securely locked from the outside or is in the normal use on the premises of a home, or rental unit, or is held for sale or use in a place of business; provided, however, that "place of business" as used herein shall not be deemed to include a junkyard or other similar establishment dealing in secondhand merchandise for sale on open unprotected premises.

(4) It shall be unlawful for any junkyard dealer or secondhand furniture dealer with unenclosed premises used for display of secondhand iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or similar airtight units to fail to remove the doors on such secondhand units having an interior storage capacity of 11/2 cubic feet or more from which the door has not been removed. This section will not apply to any dealer who has fenced and locked his or her premises.

823.09. Violation of § 823.07; penalty.

Any person violating any provision of § 823.07, is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083; provided, however, that in the event death of a minor child or permanent physical or mental injury to a minor child results from willful and wanton misconduct amounting to culpable negligence on the part of the person committing such violation, then such person shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

823.12. Smoking in elevators unlawful; penalty.

It is unlawful for any person to possess any ignited tobacco product or other ignited substance while present in an elevator. Any person who violates this section is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

823.13. Places where obscene materials are illegally kept, sold, or used declared a public nuisance; drive-in theaters, films visible from public streets or public places.

(1) Any store, shop, warehouse, building, vehicle, ship, boat, vessel, aircraft, or any place whatever, which is visited by persons for the purpose of unlawfully purchasing or viewing any obscene material or performance as described in chapter 847, or which is used for the illegal keeping, selling, or delivering of the same, shall be deemed a public nuisance. No person shall keep or maintain such public nuisance or aid and abet another

in keeping or maintaining such public nuisance.

(2) It shall be unlawful and is hereby declared a public nuisance for any ticket seller, ticket taker, usher, motion picture projection machine operator, manager, owner, or any other person connected with or employed by any drive-in theater in the state to knowingly exhibit, or aid or assist in exhibiting, any motion picture, slide, or other exhibit which depicts nudity which is harmful to minors as described in § 847.013, if such motion picture, slide, or other exhibit is visible from any public street or public place, other than that place intended for the showing of such motion pictures, slides, or other exhibits.

CHAPTER 825
ABUSE, NEGLECT, AND EXPLOITATION OF ELDERLY PERSONS AND DISABLED ADULTS

825.101. Definitions.

As used in this chapter:

(1) "Business relationship" means a relationship between two or more individuals or entities where there exists an oral or written contract or agreement for goods or services.

(2) "Caregiver" means a person who has been entrusted with or has assumed responsibility for the care or the property of an elderly person or disabled adult. "Caregiver" includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health care providers, and employees and volunteers of facilities as defined in subsection (7).

(3) "Deception" means:

(a) Misrepresenting or concealing a material fact relating to:

1. Services rendered, disposition of property, or use of property, when such services or property are intended to benefit an elderly person or disabled adult;

2. Terms of a contract or agreement entered into with an elderly person or disabled adult; or

3. An existing or preexisting condition of any property involved in a contract or agreement entered into with an elderly person or disabled adult; or

(b) Using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit an elderly person or disabled adult to enter into a contract or agreement.

(4) "Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

(5) "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

(6) "Endeavor" means to attempt or try.

(7) "Facility" means any location providing day or residential care or treatment for elderly persons or disabled adults. The term "facility" may include, but is not limited to, any hospital, training center, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, group home, mental health treatment center, or continuing care community.

(8) "Intimidation" means the communication by word or act to an elderly person or disabled adult that the elderly person or disabled adult will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.

(9) "Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person's or disabled adult's person or property.

(10) "Obtains or uses" means any manner of:

(a) Taking or exercising control over property; or

(b) Making any use, disposition, or transfer of property.

(11) "Position of trust and confidence" with respect to an elderly person or a disabled adult means the position of a person who:

(a) Is a parent, spouse, adult child, or other relative by blood or marriage of the elderly person or disabled adult;

(b) Is a joint tenant or tenant in common with the elderly person or disabled adult;

(c) Has a legal or fiduciary relationship with the elderly person or disabled adult, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator;

(d) Is a caregiver of the elderly person or disabled adult; or

(e) Is any other person who has been entrusted with or has assumed responsibility for the use or management of the elderly person's or disabled adult's funds, assets, or property.

(12) "Property" means anything of value and includes:

(a) Real property, including things growing on, affixed to, and found in land.

(b) Tangible or intangible personal property, including rights, privileges, interests, and claims.

(c) Services.

(13) "Services" means anything of value resulting from a person's physical or mental labor or skill, or from the use, possession, or presence of property, and includes:

(a) Repairs or improvements to property.

(b) Professional services.

(c) Private, public, or governmental communication, transportation, power, water, or sanitation services.

(d) Lodging accommodations.

(e) Admissions to places of exhibition or entertainment.

(14) "Value" means value determined according to any of the following:

(a) 1. The market value of the property at the time and place of the offense or, if the market value cannot be satisfactorily ascertained, the cost of replacing the property within a reasonable time after the offense.

2. In the case of a written instrument such as a check, draft, or promissory note, which does not have a readily ascertainable market value, the value is the amount due or collectible. The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is the greatest amount of economic loss that the owner of the instrument might reasonably suffer by the loss of the instrument.

3. The value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the damage to the owner suffered by reason of losing advantage over those who do not know of or use the trade secret.

(b) If the value of the property cannot be ascertained, the trier of fact may find the value to be not less than a certain amount; if no such minimum value can be ascertained, the value is an amount less than $100.

(c) Amounts of value of separate properties involved in exploitation committed pursuant to one scheme or course of conduct, whether the exploitation involves the same person or several persons, may be aggregated in determining the degree of the offense.

825.102. Abuse, aggravated abuse, and neglect of an elderly person or disabled adult; penalties.

(1) "Abuse of an elderly person or disabled adult" means:

(a) Intentional infliction of physical or psychological injury upon an elderly person or disabled adult;

(b) An intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; or

(c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult.

A person who knowingly or willfully abuses an elderly person or disabled adult without causing great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) "Aggravated abuse of an elderly person or disabled adult" occurs when a person:

(a) Commits aggravated battery on an elderly person or disabled adult;

(b) Willfully tortures, maliciously punishes, or willfully and unlawfully cages, an elderly person or disabled adult; or

(c) Knowingly or willfully abuses an elderly person or disabled adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult.

A person who commits aggravated abuse of an elderly person or disabled adult commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) (a) "Neglect of an elderly person or disabled adult" means:

1. A caregiver's failure or omission to provide an elderly person or disabled adult with the care, supervision, and services necessary to maintain the elderly person's or disabled adult's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would

consider essential for the well-being of the elderly person or disabled adult; or

2. A caregiver's failure to make a reasonable effort to protect an elderly person or disabled adult from abuse, neglect, or exploitation by another person.

Neglect of an elderly person or disabled adult may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or psychological injury, or a substantial risk of death, to an elderly person or disabled adult.

(b) A person who willfully or by culpable negligence neglects an elderly person or disabled adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) A person who willfully or by culpable negligence neglects an elderly person or disabled adult without causing great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

825.1025. Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.

(1) As used in this section, "sexual activity" means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

(2) (a) "Lewd or lascivious battery upon an elderly person or disabled person" occurs when a person encourages, forces, or entices an elderly person or disabled person to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity, when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent.

(b) A person who commits lewd or lascivious battery upon an elderly person or disabled person commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) (a) "Lewd or lascivious molestation of an elderly person or disabled person" occurs when a person intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of an elderly person or disabled person when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent.

(b) A person who commits lewd or lascivious molestation of an elderly person or disabled person commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) (a) "Lewd or lascivious exhibition in the presence of an elderly person or disabled person" occurs when a person, in the presence of an elderly person or disabled person:

1. Intentionally masturbates;

2. Intentionally exposes his or her genitals in a lewd or lascivious manner; or

3. Intentionally commits any other lewd or lascivious act that does not involve actual physical or sexual contact with the elderly person or disabled person, including but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity,

when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent to having such act committed in his or her presence.

(b) A person who commits a lewd or lascivious exhibition in the presence of an elderly person or disabled person commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

825.103. Exploitation of an elderly person or disabled adult; penalties.

(1) "Exploitation of an elderly person or disabled adult" means:

(a) Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

1. Stands in a position of trust and confidence with the elderly person or disabled adult; or

2. Has a business relationship with the elderly person or disabled adult;

(b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the

use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent; or

(c) Breach of a fiduciary duty to an elderly person or disabled adult by the person's guardian or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property.

(2) (a) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at $100,000 or more, the offender commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at $20,000 or more, but less than $100,000, the offender commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) If the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at less than $20,000, the offender commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

825.104. Knowledge of victim's age.

It does not constitute a defense to a prosecution for any violation of this chapter that the accused did not know the age of the victim.

CHAPTER 826
BIGAMY; INCEST

826.01. Bigamy; punishment.

Whoever, having a husband or wife living, marries another person shall, except in the cases mentioned in § 826.02, be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

826.02. Exceptions.

The provisions of § 826.01 shall not extend to any person:

(1) Who reasonably believes that the prior spouse is dead.

(2) Whose prior spouse has voluntarily deserted him or her and remained absent for the space of 3 years continuously, the party marrying again not knowing the other to be living within that time.

(3) Whose bonds of matrimony have been dissolved.

(4) Who violates its provisions because a domestic or foreign court has entered an invalid judgment purporting to terminate or annul the prior marriage and the defendant does not know that judgment to be invalid.

(5) Who reasonably believes that he or she is legally eligible to remarry.

826.03. Knowingly marrying husband or wife of another.

Whoever knowingly marries the husband or wife of another person, knowing him or her to be the spouse of another person, shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

826.04. Incest.

Whoever knowingly marries or has sexual intercourse with a person to whom he or she is related by lineal consanguinity, or a brother, sister, uncle, aunt, nephew, or niece, commits incest, which constitutes a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. "Sexual intercourse" is the penetration of the female sex organ by the male sex organ, however slight; emission of semen is not required.

CHAPTER 827
ABUSE OF CHILDREN

827.01. Definitions.

As used in this chapter:

(1) "Caregiver" means a parent, adult household member, or other person responsible for a child's welfare.

(2) "Child" means any person under the age of 18 years.

(3) "Placement" means the giving or transferring of possession or custody of a child by any person to another person for adoption or with the intent or purpose of surrendering the control of the child.

827.03. Abuse, aggravated abuse, and neglect of a child; penalties.

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

(a) "Aggravated child abuse" occurs when a person:

1. Commits aggravated battery on a child;

2. Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child; or

3. Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.

(b) "Child abuse" means:

1. Intentional infliction of physical or mental injury upon a child;

2. An intentional act that could reasonably be expected to result in physical or mental injury to a child; or

3. Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

(c) "Maliciously" means wrongfully, intentionally, and without legal justification or excuse. Maliciousness may be established by circumstances from which one could conclude that a reasonable parent would not have engaged in the damaging acts toward the child for any valid reason and that the primary purpose of the acts was to cause the victim unjustifiable pain or injury.

(d) "Mental injury" means injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony.

(e) "Neglect of a child" means:

1. A caregiver's failure or omission to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or

2. A caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

Except as otherwise provided in this section, neglect of a child may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.

(2) OFFENSES.—

(a) A person who commits aggravated child abuse commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) A person who willfully or by culpable negligence neglects a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(d) A person who willfully or by culpable negligence neglects a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) EXPERT TESTIMONY.—

(a) Except as provided in paragraph (b), a physician may not provide expert testimony in a criminal child abuse case unless the physician is a physician licensed under chapter 458 or chapter 459 or has obtained certification as an expert witness pursuant to § 458.3175.

(b) A physician may not provide expert testimony in a criminal child abuse case regarding mental injury unless the physician is a physician licensed under chapter 458 or chapter 459 who has completed an accredited residency in psychiatry or has obtained certification as an expert witness pursuant to § 458.3175.

(c) A psychologist may not give expert testimony in a criminal child abuse case regarding mental injury unless the psychologist is licensed under chapter 490.

(d) The expert testimony requirements of this subsection apply only to criminal child abuse cases and not to family court or dependency court cases.

827.035. Newborn infants.

It shall not constitute neglect of a child pursuant to § 827.03 or contributing to the dependency of a child pursuant to § 827.04, if a parent leaves a newborn infant at a hospital, emergency medical services station, or fire station or brings a newborn infant to an emergency room and expresses an intent to leave the infant and not return, in compliance with § 383.50.

827.04. Contributing to the delinquency or dependency of a child; penalty.

(1) Any person who:

(a) Commits any act which causes, tends to cause, encourages, or contributes to a child becoming a delinquent or dependent child or a child in need of services; or

(b) Induces or endeavors to induce, by act, threat, command, or persuasion, a child to commit or perform any act, follow any course of conduct, or live in a manner that causes or tends to cause such child to become or to

remain a dependent or delinquent child or a child in need of services,

commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) It is not necessary for any court exercising juvenile jurisdiction to make an adjudication that any child is delinquent or dependent or a child in need of services in order to prosecute a violation of this section. An adjudication that a child is delinquent or dependent or a child in need of services shall not preclude a subsequent prosecution of a violation of this section.

(3) A person 21 years of age or older who impregnates a child under 16 years of age commits an act of child abuse which constitutes a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. A person who impregnates a child in violation of this subsection commits an offense under this subsection regardless of whether the person is found to have committed, or has been charged with or prosecuted for, any other offense committed during the course of the same criminal transaction or episode, including, but not limited to, an offense proscribed under § 800.04, relating to lewd, lascivious, or indecent assault or act upon any person under 16 years of age. Neither the victim's lack of chastity nor the victim's consent is a defense to the crime proscribed under this subsection.

827.06. Nonsupport of dependents.

(1) The Legislature finds that most parents want to support their children and remain connected to their families. The Legislature also finds that while many parents lack the financial resources and other skills necessary to provide that support, some parents willfully fail to provide support to their children even when they are aware of the obligation and have the ability to do so. The Legislature further finds that existing statutory provisions for civil enforcement of support have not proven sufficiently effective or efficient in gaining adequate support for all children. Recognizing that it is the public policy of this state that children shall be maintained primarily from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs, it is the intent of the Legislature that the criminal penalties provided for in this section are to be pursued in all appropriate cases where civil enforcement has not resulted in payment.

(2) Any person who willfully fails to provide support which he or she has the ability to provide to a child or a spouse whom the person knows he or she is legally obligated to support commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) Any person who is convicted of a fourth or subsequent violation of subsection (2) or who violates subsection (2) and who has owed to that child or spouse for more than 1 year support in an amount equal to or greater than $5,000 commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) Upon a conviction under this section, the court shall order restitution in an amount equal to the total unpaid support obligation as it exists at the time of sentencing.

(5) (a) Evidence that the defendant willfully failed to make sufficient good faith efforts to legally acquire the resources to pay legally ordered support may be sufficient to prove that he or she had the ability to provide support but willfully failed to do so, in violation of this section.

(b) The element of knowledge may be proven by evidence that a court or tribunal as defined by § 88.1011(22) has entered an order that obligates the defendant to provide the support.

(6) [Intentionally omitted.]

827.071. Sexual performance by a child; penalties.

(1) As used in this section, the following definitions shall apply:

(a) "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(b) "Intentionally view" means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time.

(c) "Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

(d) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same.

(e) "Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

(f) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(g) "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(h) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(i) "Sexual performance" means any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.

(j) "Simulated" means the explicit depiction of conduct set forth in paragraph (h) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) (a) It is unlawful for any person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense. If such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes sexual conduct by more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense. A person who violates this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) This subsection does not apply to material possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

(6) Prosecution of any person for an offense under this section shall not prohibit prosecution of that person in this state for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.

CHAPTER 828
ANIMALS: CRUELTY; SALES; ANIMAL ENTERPRISE PROTECTION

828.02. Definitions.

In this chapter, and in every law of the state relating to or in any way affecting animals, the word "animal" shall be held to include every living dumb creature; the words "torture," "torment," and "cruelty" shall be held to include every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, except when done in the interest of medical science, permitted, or allowed to continue when there is reasonable remedy or relief; and the words "owner" and "person" shall be held to include corporations, and the knowledge and acts of agents and employees of corporations in regard to animals transported, owned, employed by or in the custody of a corporation, shall be held to be the knowledge and act of such corporation.

828.05. Killing an injured or diseased domestic animal.

(1) The purpose of this section is to provide a swift and merciful means whereby domestic animals which are suffering from an incurable or untreatable condition or are imminently near death from injury or disease may be destroyed without unconscionable delay and in a humane and proficient manner.

(2) As used in this section, the term "officer" means:

(a) Any law enforcement officer;

(b) Any veterinarian; and

(c) Any officer or agent of any municipal or county animal control unit or of any society or association for the prevention of cruelty to animals, or the designee of such an officer or agent.

(3) Whenever any domestic animal is so injured or diseased as to appear useless and is suffering, and it reasonably appears to an officer that such animal is imminently near death or cannot be cured or rendered fit for service and the officer has made a reasonable and concerted, but unsuccessful, effort to locate the owner, the owner's agent, or a veterinarian, then such officer, acting in good faith and upon reasonable belief, may immediately destroy such animal by shooting the animal or injecting it with a barbiturate drug. If the officer locates the owner or the owner's agent, the officer shall notify him or her of the animal's location and condition. If the officer locates only a veterinarian, the officer shall destroy the animal only upon the advice of the veterinarian. However, this section does not prohibit an owner from destroying his or her own domestic animal in a humane and proficient manner when the conditions described in this section exist.

(4) No officer or veterinarian acting in good faith and with due care pursuant to this section will be liable either criminally or civilly for such act, nor will any civil or criminal liability attach to the employer of the officer or veterinarian.

(5) A court order is not necessary to carry out the provisions of this section.

828.073. Animals found in distress; when agent may take charge; hearing; disposition; sale.

(1) The purpose of this section is to provide a means by which a neglected or mistreated animal can be:

(a) Removed from its present custody, or

(b) Made the subject of an order to provide care, issued to its owner by the county court, any law enforcement officer, or any agent of the county or of any society or association for the prevention of cruelty to animals appointed under § 828.03,

and given protection and an appropriate and humane disposition made.

(2) Any law enforcement officer or any agent of any county or of any society or association for the prevention of cruelty to animals appointed under the provisions of § 828.03 may:

(a) Lawfully take custody of any animal found neglected or cruelly treated by removing the animal from its present location, or

(b) Order the owner of any animal found neglected or cruelly treated to provide certain care to the animal at the owner's expense without removal of the animal from its present location,

and shall file a petition seeking relief under this section in the county court of the county in which the animal is found within 10 days after the animal is seized or an order to provide care is issued. The court shall schedule and commence a hearing on the petition within 30 days after the petition is filed to determine whether the owner, if known, is able to provide adequately for the animal and is fit to have custody of the animal. The hearing shall be concluded and the court order entered thereon within 60 days after the date the hearing is commenced. The timeframes set forth in this subsection are not jurisdictional. However, if a failure to meet

such timeframes is attributable to the officer or agent, the owner is not required to pay the officer or agent for care of the animal during any period of delay caused by the officer or agent. A fee may not be charged for filing the petition. This subsection does not require court action for the taking into custody and making proper disposition of stray or abandoned animals as lawfully performed by animal control agents.

(3) The officer or agent of any county or of any society or association for the prevention of cruelty to animals taking charge of any animal pursuant to the provisions of this section shall have written notice served, at least 3 days before the hearing scheduled under subsection (2), upon the owner of the animal, if he or she is known and is residing in the county where the animal was taken, in conformance with the provisions of chapter 48 relating to service of process. The sheriff of the county shall not charge a fee for service of such notice.

(4) (a) The officer or agent of any county or of any society or association for the prevention of cruelty to animals taking charge of an animal as provided for in this section shall provide for the animal until either:

1. The owner is adjudged by the court to be able to provide adequately for, and have custody of, the animal, in which case the animal shall be returned to the owner upon payment by the owner for the care and provision for the animal while in the agent's or officer's custody; or

2. The animal is turned over to the officer or agent as provided in paragraph (c) and a humane disposition of the animal is made.

(b) If the court determines that the owner is able to provide adequately for, and have custody of, the animal, the order shall provide that the animal in the possession of the officer or agent be claimed and removed by the owner within 7 days after the date of the order.

(c) Upon the court's judgment that the owner of the animal is unable or unfit to adequately provide for the animal:

1. The court may:

a. Order that the animal be sold by the sheriff at public auction, that the current owner have no further custody of the animal, and that any animal not bid upon be remanded to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society, the county, or any agency or person the judge deems appropriate, to be disposed of as the agency or person sees fit; or

b. Order that the animal be destroyed or remanded directly to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society, the county, or any agency or person the judge deems appropriate, to be disposed of as the agency or person sees fit.

2. The court, upon proof of costs incurred by the officer or agent, may require that the owner pay for the care of the animal while in the custody of the officer or agent. A separate hearing may be held.

3. The court may order that other animals that are in the custody of the owner and that were not seized by the officer or agent be turned over to the officer or agent, if the court determines that the owner is unable or unfit to adequately provide for the animals. The court may enjoin the owner's further possession or custody of other animals.

(5) In determining the person's fitness to have custody of an animal under the provisions of this act, the court may consider, among other matters:

(a) Testimony from the agent or officer who seized the animal and other witnesses as to the condition of the animal when seized and as to the conditions under which the animal was kept.

(b) Testimony and evidence as to the veterinary care provided to the animal.

(c) Testimony and evidence as to the type and amount of care provided to the animal.

(d) Expert testimony as to the community standards for proper and reasonable care of the same type of animal.

(e) Testimony from any witnesses as to prior treatment or condition of this or other animals in the same custody.

(f) The owner's past record of judgments under the provisions of this chapter.

(g) Convictions under the statutes prohibiting cruelty to animals.

(h) Any other evidence the court considers to be material or relevant.

(6) If the evidence indicates a lack of proper and reasonable care of the animal, the burden is on the owner to demonstrate by clear and convincing evidence that he or she is able and fit to have custody of and provide adequately for the animal.

(7) In any case in which an animal is offered for auction under the provisions of this section, the proceeds shall be:

(a) Applied, first, to the cost of the sale.

(b) Applied, secondly, to the care and provision for the animal by the officer or agent of any county or of any society or association

for the prevention of cruelty to animals taking charge.

(c) Applied, thirdly, to the payment of the owner for the sale of the animal.

(d) Paid over to the court if the owner is not known.

828.08. Penalty for exposing poison.

Whoever leaves or deposits any poison or any substance containing poison, in any common street, alley, lane, or thoroughfare of any kind, or in any yard or enclosure other than the yard or enclosure occupied or owned by such person, shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

828.12. Cruelty to animals.

(1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, commits animal cruelty, a misdemeanor of the first degree, punishable as provided in § 775.082 or by a fine of not more than $5,000, or both.

(2) A person who intentionally commits an act to any animal, or a person who owns or has the custody or control of any animal and fails to act, which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, commits aggravated animal cruelty, a felony of the third degree, punishable as provided in § 775.082 or by a fine of not more than $10,000, or both.

(a) A person convicted of a violation of this subsection, where the finder of fact determines that the violation includes the knowing and intentional torture or torment of an animal that injures, mutilates, or kills the animal, shall be ordered to pay a minimum mandatory fine of $2,500 and undergo psychological counseling or complete an anger management treatment program.

(b) A person convicted of a second or subsequent violation of this subsection shall be required to pay a minimum mandatory fine of $5,000 and serve a minimum mandatory period of incarceration of 6 months. In addition, the person shall be released only upon expiration of sentence, is not eligible for parole, control release, or any form of early release, and must serve 100 percent of the court-imposed sentence. Any plea of nolo contendere shall be considered a conviction for purposes of this subsection.

(3) A person who commits multiple acts of animal cruelty or aggravated animal cruelty against an animal may be charged with a separate offense for each such act. A person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.

(4) A veterinarian licensed to practice in the state shall be held harmless from either criminal or civil liability for any decisions made or services rendered under the provisions of this section. Such a veterinarian is, therefore, under this subsection, immune from a lawsuit for his or her part in an investigation of cruelty to animals.

(5) A person who intentionally trips, fells, ropes, or lassos the legs of a horse by any means for the purpose of entertainment or sport shall be guilty of a third degree felony, punishable as provided in § 775.082, § 775.083, or § 775.084. As used in this subsection, "trip" means any act that consists of the use of any wire, pole, stick, rope, or other apparatus to cause a horse to fall or lose its balance, and "horse" means any animal of any registered breed of the genus Equus, or any recognized hybrid thereof. The provisions of this subsection shall not apply when tripping is used:

(a) To control a horse that is posing an immediate threat to other livestock or human beings;

(b) For the purpose of identifying ownership of the horse when its ownership is unknown; or

(c) For the purpose of administering veterinary care to the horse.

828.122. Fighting or baiting animals; offenses; penalties.

(1) This act may be cited as "The Animal Fighting Act."

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

(a) "Animal fighting" means fighting between roosters or other birds or between dogs, bears, or other animals.

(b) "Baiting" means to attack with violence, to provoke, or to harass an animal with one or more animals for the purpose of training an animal for, or to cause an animal to engage in, fights with or among other animals. In addition, "baiting" means the use of live animals in the training of racing greyhounds.

(c) "Person" means every natural person, firm, copartnership, association, or corporation.

(3) Any person who knowingly commits any of the following acts commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084:

(a) Baiting, breeding, training, transporting, selling, owning, possessing, or using any wild or domestic animal for the purpose of animal fighting or baiting;

(b) Owning, possessing, or selling equipment for use in any activity described in paragraph (a);

(c) Owning, leasing, managing, operating, or having control of any property kept or used for any activity described in paragraph (a) or paragraph (b);

(d) Promoting, staging, advertising, or charging any admission fee to a fight or baiting between two or more animals;

(e) Performing any service or act to facilitate animal fighting or baiting, including, but not limited to, providing security, refereeing, or handling or transporting animals or being a stakeholder of any money wagered on animal fighting or baiting;

(f) Removing or facilitating the removal of any animal impounded under this section from an agency where the animal is impounded or from a location designated by the court under subsection (4), subsection (5), or subsection (7), without the prior authorization of the court;

(g) Betting or wagering any money or other valuable consideration on the fighting or baiting of animals; or

(h) Attending the fighting or baiting of animals.

Notwithstanding any provision of this subsection to the contrary, possession of the animal alone does not constitute a violation of this section.

(4) If a court finds probable cause to believe that a violation of this section or § 828.12 has occurred, the court shall order the seizure of any animals and equipment used in committing the violation and shall provide for appropriate and humane care or disposition of the animals. This subsection is not a limitation on the power to seize animals as evidence at the time of arrest.

(5) If an animal shelter or other location is unavailable, a court may order the animal to be impounded on the property of its owner or possessor and shall order such person to provide all necessary care for the animal and to allow regular inspections of the animal by a person designated by the court.

(6) If a veterinarian finds that an animal kept or used in violation of this section is suffering from an injury or a disease severe enough that it is not possible to humanely house and care for the animal pending completion of a hearing held under § 828.073(2), final disposition of the criminal charges, or court-ordered forfeiture, the veterinarian may euthanize the animal as specified in § 828.058. A veterinarian licensed to practice in this state shall be held harmless from criminal or civil liability for any decisions made or services rendered under this subsection.

(7) If an animal can be housed in a humane manner, the provisions of § 828.073 shall apply. For the purpose of a hearing provided pursuant to § 828.073(2), any animal baited, bred, trained, transported, sold, owned, possessed, or used for the purpose of animal fighting or baiting shall be considered mistreated.

(8) In addition to other penalties prescribed by law, the court may issue an order prohibiting a person who is convicted of a violation of this section from owning, possessing, keeping, harboring, or having custody or control over any animals within the species that are the subject of the conviction, or any animals kept for the purpose of fighting or baiting, for a period of time determined by the court.

(9) This section shall not apply to:

(a) Any person simulating a fight for the purpose of using the simulated fight as part of a motion picture which will be used on television or in a motion picture, provided § 828.12 is not violated.

(b) Any person using animals to pursue or take wildlife or to participate in any hunting regulated or subject to being regulated by the rules and regulations of the Fish and Wildlife Conservation Commission.

(c) Any person using animals to work livestock for agricultural purposes.

(d) Any person violating § 828.121.

(e) Any person using dogs to hunt wild hogs or to retrieve domestic hogs pursuant to customary hunting or agricultural practices.

(10) This section shall not prohibit, impede, or otherwise interfere with recognized animal husbandry and training techniques or practices not otherwise specifically prohibited by law.

828.123. Killing dog or cat with intent of selling or giving away pelt; possession, sale, or importation of pelt with intent of selling or giving away; penalty.

(1) A person who kills any dog or cat with the sole intent of selling or giving away the pelt of such animal commits a felony of

the third degree, punishable as provided in § 775.082 or by a fine of not more than $10,000, or by both imprisonment and a fine.

(2) A person who possesses, imports into this state, sells, buys, gives away, or accepts any pelt of a dog or cat with the sole intent of selling or giving away the pelt of the dog or cat commits a misdemeanor of the first degree, punishable as provided in § 775.082 or by a fine of $5,000, or by both imprisonment and a fine.

(3) A person who possesses, imports into the state, sells, buys, gives away, or accepts any dog or cat with the sole intent of killing such dog or cat, or having such dog or cat killed, for the purpose of selling or giving away the pelt of such animal commits a felony of the third degree, punishable as provided in § 775.082 or by a fine of not more than $10,000, or by both imprisonment and a fine.

(4) It is unlawful for any person to knowingly engage in the business of a dealer or buyer in the pelts or furs of any dog or cat in the state or to purchase such pelts or furs within the state. No common carrier shall knowingly ship or transport or receive for transportation any dog or cat pelts or furs within the state. Any person who violates this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

828.1231. Sale of garments or items of clothing containing dog or cat fur prohibited; sale of pelt of any dog or cat prohibited; penalty.

(1) It is unlawful for any person to knowingly sell or offer for sale, directly or indirectly, at wholesale or at retail, in this state any garment, or any item of clothing or apparel that is made, in whole or in part, from the fur of any dog or cat, or which contains or to which is attached any dog or cat fur.

(2) It is unlawful for any person to knowingly sell or offer for sale, directly or indirectly, at wholesale or at retail, or to give away, in this state the pelt of any dog or cat.

(3) Any person who violates the provisions of this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Upon a second or subsequent conviction for a violation of this subsection, the offender commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) Any law enforcement agency, or humane officer as defined in § 828.03, may institute proceedings in the appropriate circuit court to enforce compliance with the provisions of this section. Any law enforcement agency, or humane officer as defined in § 828.03, may seek a civil penalty of up to $5,000 for each violation.

828.125. Killing or aggravated abuse of horses or cattle; offenses; penalties.

Any other provisions of this chapter to the contrary notwithstanding:

(1) Any person who willfully and unlawfully, by any means whatsoever, kills, maims, mutilates, or causes great bodily harm or permanent breeding disability to any animal of the genus Equus (horse) or any animal of any registered breed or recognized registered hybrid of the genus Bos (cattle) commits a felony of the second degree, punishable as provided by § 775.082, § 775.083, or § 775.084, except that any person who commits a violation of this subsection shall be sentenced to a minimum mandatory fine of $3,500 and a minimum mandatory period of incarceration of 1 year.

(2) Any person who individually attempts or solicits, or jointly agrees, conspires, combines, or confederates with another person to commit, any act prohibited by subsection (1) and does an act in furtherance of said attempt, solicitation, or conspiracy shall be guilty of a felony of the second degree and is punishable as if the person or persons had actually committed such prohibited act as enumerated in subsection (1), notwithstanding any provisions found in § 777.04. Nothing in this subsection shall be construed to prohibit separate convictions and sentences for a violation of this subsection and any violation of subsection (1).

(3) Any person who verbally or in writing threatens to commit any act prohibited by subsection (1) and has the apparent ability to carry out such threat and places the owner or custodian of said animal in fear that such an act as described in subsection (1) is about to take place shall be guilty of a felony of the third degree, punishable as provided by § 775.082, § 775.083 or § 775.084.

(4) In addition to any other fines or penalties authorized by law, a person found guilty of violating any provision of subsection (1), subsection (2), or subsection (3) may be ordered by the court to make restitution to the aggrieved party in an amount not to exceed twice the gross fair market value of the said Equus or Bos killed or abused in an aggravated manner, or up to twice the gross loss caused, whichever is greater, plus attorney's fees and any and all related costs. Upon notice the court shall hold a hearing to determine the amount of fines, restitution, or

costs to be imposed under this section, if not agreed upon by the parties.

(5) This section shall not be construed to abridge, impede, prohibit, or otherwise interfere in any way with the application, implementation, or conduct of recognized livestock husbandry practices or techniques by or at the direction of the owner of the livestock so husbanded; nor shall any person be held culpable for any act prohibited by this chapter which results from weather conditions or other acts of God, providing that the person is in compliance with recognized livestock husbandry practices.

828.126. Sexual activities involving animals.

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

(a) "Sexual conduct" means any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person.

(b) "Sexual contact" means any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any penetration, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any penetration of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or sexual arousal of the person.

(2) A person may not:

(a) Knowingly engage in any sexual conduct or sexual contact with an animal;

(b) Knowingly cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal;

(c) Knowingly permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; or

(d) Knowingly organize, promote, conduct, advertise, aid, abet, participate in as an observer, or perform any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose.

(3) A person who violates this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(4) This section does not apply to accepted animal husbandry practices, conformation judging practices, or accepted veterinary medical practices.

828.13. Confinement of animals without sufficient food, water, or exercise; abandonment of animals.

(1) As used in this section:

(a) "Abandon" means to forsake an animal entirely or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner.

(b) "Owner" includes any owner, custodian, or other person in charge of an animal.

(2) Whoever:

(a) Impounds or confines any animal in any place and fails to supply the animal during such confinement with a sufficient quantity of good and wholesome food and water,

(b) Keeps any animals in any enclosure without wholesome exercise and change of air, or

(c) Abandons to die any animal that is maimed, sick, infirm, or diseased,

is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or by a fine of not more than $5,000, or by both imprisonment and a fine.

(3) Any person who is the owner or possessor, or has charge or custody, of any animal who abandons such animal to suffer injury or malnutrition or abandons any animal in a street, road, or public place without providing for the care, sustenance, protection, and shelter of such animal is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or by a fine of not more than $5,000, or by both imprisonment and a fine.

828.1615. Prohibiting artificial coloring and sale of certain animals.

(1) It is unlawful for a person to:

(a) Dye or artificially color an animal that is under 12 weeks of age, or a fowl or rabbit of any age;

(b) Bring a dyed or artificially colored animal that is under 12 weeks of age, or a fowl or rabbit of any age, into this state; or

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

(2) The prohibitions in paragraphs (1)(a) and (b) do not apply to animals that are temporarily dyed by agricultural entities for protective health purposes.

(3) This section does not apply to an animal that is under 12 weeks of age, or a fowl or rabbit of any age, that is used or raised for agricultural purposes by a person with proper facilities to care for it or for the purpose of poultry or livestock exhibitions.

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

CHAPTER 831
FORGERY AND COUNTERFEITING

831.01. Forgery.

Whoever falsely makes, alters, forges or counterfeits a public record, or a certificate, return or attestation of any clerk or register of a court, public register, notary public, town clerk or any public officer, in relation to a matter wherein such certificate, return or attestation may be received as a legal proof; or a charter, deed, will, testament, bond, or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange or promissory note, or an order, acquittance, or discharge for money or other property, or an acceptance of a bill of exchange or promissory note for the payment of money, or any receipt for money, goods or other property, or any passage ticket, pass or other evidence of transportation issued by a common carrier, with intent to injure or defraud any person, shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

831.02. Uttering forged instruments.

Whoever utters and publishes as true a false, forged or altered record, deed, instrument or other writing mentioned in § 831.01 knowing the same to be false, altered, forged or counterfeited, with intent to injure or defraud any person, shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

831.031. Evidence.

In any proceeding under or related to §§ 831.03-831.034:

(1) Proof that a person is in possession of more than 25 goods, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging or any other components of any type or nature bearing a counterfeit mark, unless satisfactorily explained, gives rise to an inference that such property is being possessed with intent to offer it for sale or distribution.

(2) A state or federal certificate of registration of trademark shall be prima facie evidence of the facts stated therein.

831.032. Offenses involving forging or counterfeiting private labels.

(1) Whoever, knowingly and willfully, forges or counterfeits, or causes or procures to be forged or counterfeited, manufactures, distributes or transports, or possesses with intent to distribute or transport, upon or in connection with any goods or services, the trademark or service mark of any person, entity, or association, which goods or services are intended for resale, or knowingly possesses tools or other reproduction materials for reproduction of specific forged or counterfeit trademarks or service marks commits the crime of counterfeiting.

(2) Whoever knowingly sells or offers for sale, or knowingly purchases and keeps or has in his or her possession, with intent that the same shall be sold or disposed, or vends any goods having thereon a forged or counterfeit trademark, or who knowingly sells or offers for sale any service which is sold in conjunction with a forged or counterfeit service mark, of any person, entity, or association, knowing the same to be forged or counterfeited, commits the crime of selling or offering for sale counterfeit goods or services.

(3) (a) Violation of subsection (1) or subsection (2) is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, except that:

1. A violation of subsection (1) or subsection (2) is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the offense involves 100 or more but less than 1,000 items bearing one or more counterfeit marks or if the goods involved in the offense have a total retail value of more than $2,500, but less than $20,000.

2. A violation of subsection (1) or subsection (2) is a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the offense involves 1,000 or more items bearing one or more counterfeit marks or if the goods involved in the offense have a total retail value of $20,000 or more.

3. A violation of subsection (1) or subsection (2) is a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084 if, during the commission or as a result of the commission of the offense, the person engaging in the offense knowingly or by culpable negligence causes or allows to be caused bodily injury to another.

4. A violation of subsection (1) or subsection (2) is a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084 if, during the commission or as a result of the commission of the offense, the

person engaging in the offense knowingly or by culpable negligence causes or allows to be caused serious bodily injury to another.

5. A violation of subsection (1) or subsection (2) is a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084 if, during the commission or as a result of the commission of the offense, the person engaging in the offense knowingly or by culpable negligence causes or allows to be caused death to another.

(b) For any person who, having previously been convicted for an offense under this section, is subsequently convicted for another offense under this section, such subsequent offense shall be reclassified as follows:

1. In the case of a felony of the second degree, to a felony of the first degree.

2. In the case of a felony of the third degree, to a felony of the second degree.

3. In the case of a misdemeanor of the first degree, to a felony of the third degree. For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, such offense is ranked in level 4 of the offense severity ranking chart.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under § 921.0022 or § 921.0023 of the felony offense committed.

(c) In lieu of a fine otherwise authorized by law, when any person has been convicted of an offense under this section, the court may fine the person up to three times the retail value of the goods seized, manufactured, or sold, whichever is greater, and may enter orders awarding court costs and the costs of investigation and prosecution, reasonably incurred. The court shall hold a hearing to determine the amount of the fine authorized by this paragraph.

(d) When a person is convicted of an offense under this section, the court, pursuant to § 775.089, shall order the person to pay restitution to the trademark owner and any other victim of the offense. In determining the value of the property loss to the trademark owner, the court shall include expenses incurred by the trademark owner in the investigation or prosecution of the offense as well as the disgorgement of any profits realized by a person convicted of the offense.

(4) All defenses, affirmative defenses, and limitations on remedies that would be applicable in an action under the Lanham Act, 15 U.S.C. §§ 1051 et seq., or to an action under § 495.131 shall be applicable in a prosecution under this section.

831.033. Forging or counterfeiting private labels; destruction; forfeiture.

(1) (a) Any goods to which forged or counterfeit trademarks or service marks are attached or affixed or any tools or other materials for the reproduction of any specific forged or counterfeit trademark or service mark which are produced or possessed in violation of this section may be seized by any law enforcement officer.

(b) Any personal property, including, but not limited to, any item, object, tool, machine, or vehicle of any kind, employed as an instrumentality in the commission of, or in aiding or abetting in the commission of, the crime of counterfeiting, as proscribed by §§ 831.03-831.034, and not otherwise included in paragraph (a), may be seized and is subject to forfeiture pursuant to §§ 932.701-932.704.

(2) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the state the following:

(a) Any property constituting or derived from any proceeds the person obtained, directly or indirectly, as the result of the offense.

(b) Any of the person's property used, or intended to be used, in any manner or part, to commit, facilitate, aid, or abet the commission of the offense.

(c) Any item that bears or consists of a counterfeit mark used in committing the offense.

(3) At the conclusion of all forfeiture proceedings, the court shall order that any forfeited item bearing or consisting of a counterfeit mark be destroyed or alternatively disposed of in another manner with the written consent of the trademark owners. The owners of the registered or protected mark shall be responsible for the costs incurred in the disposition of the forged or counterfeit items.

831.08. Possessing certain forged notes, bills, checks, or drafts.

Whoever has in his or her possession 10 or more similar false, altered, forged, or counterfeit notes, bills of credit, bank bills, checks, drafts, or notes, such as are mentioned in any of the preceding sections of this chapter, payable to the bearer thereof or to the order of any person, knowing the same to be false, altered, forged, or counterfeit, with intent to utter and pass the same as true,

and thereby to injure or defraud any person, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

831.09. Uttering forged bills, checks, drafts, or notes.

Whoever utters or passes or tenders in payment as true, any such false, altered, forged, or counterfeit note, or any bank bill, check, draft, or promissory note, payable to the bearer thereof or to the order of any person, issued as aforesaid, knowing the same to be false, altered, forged, or counterfeit, with intent to injure or defraud any person, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

831.11. Bringing into the state forged bank bills, checks, drafts, or notes.

Whoever brings into this state or has in his or her possession a false, forged, or counterfeit bill, check, draft, or note in the similitude of the bills or notes payable to the bearer thereof or to the order of any person issued by or for any bank or banking company established in this state, or within the United States, or any foreign province, state or government, with intent to utter and pass the same or to render the same current as true, knowing the same to be false, forged, or counterfeit, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

831.15. Counterfeiting coin; having 10 or more such coins in possession with intent to utter.

Whoever counterfeits any gold, silver, or any metallic money coin, current by law or usage within this state, or has in his or her possession at the same time 10 or more pieces of false money, or coin counterfeited in the similitude of any gold, silver or metallic coin; current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

831.16. Having fewer than 10 counterfeit coins in possession with intent to utter.

Whoever has in his or her possession any number of pieces fewer than 10 of the counterfeit coin mentioned in § 831.15, knowing the same to be counterfeit, with intent to utter or pass the same as true, or who utters, passes or tenders in payment as true any such counterfeit coin, knowing the same to be false and counterfeit, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

831.18. Making or possessing instruments for forging bills.

Whoever engraves, makes, or amends, or begins to engrave, make, or amend, any plate, block, press, or other tool, instrument, or implement, or makes or provides any paper or other material, adapted and designed for the making of a false and counterfeit note, certificate, or other bill of credit, purporting to be issued by lawful authority for a debt of this state, or a false or counterfeit note or bill, in the similitude of the notes or bills issued by any bank or banking company established in this state, or within the United States, or in any foreign province, state, or government; and whoever has in his or her possession any such plate or block engraved in any part, or any press or other tool, instrument, or any paper or other material adapted and designed as aforesaid, with intent to issue the same, or to cause or permit the same to be used in forging or making any such false and counterfeit certificates, bills, or notes, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

831.19. Making or having instruments for counterfeiting coin.

Whoever casts, stamps, engraves, makes or amends, or knowingly has in his or her possession any mould, pattern, die, puncheon, engine, press or other tool or instrument, adapted and designed for coining or making counterfeit coin in the similitude of any gold, silver or metallic coin, current by law or usage in this state, with intent to use or employ the same, or to cause or to permit the same to be used or employed in coining and making any such false and counterfeit coin as aforesaid, shall be punished by imprisonment in the state prison not exceeding 10 years, or by fine not exceeding $1,000.

831.20. Counterfeit bills and counterfeiters' tools to be seized.

When false, forged or counterfeit bank bills or notes, or plates, dies or other tools, instruments or implements used by counterfeiters, designed for the forging or making of false or counterfeit notes, coin or bills, or worthless and uncurrent bank bills or notes described in this chapter shall come to the knowledge of any sheriff, police officer or other officer of justice in this state, such officer

shall immediately seize and take possession of and deliver the same into the custody of the court having jurisdiction of the offense of counterfeiting in the county, and the court shall, as soon as the ends of justice will permit, cause the same to be destroyed by an officer of the court who shall make return to the court of his or her doings in the premises.

831.21. Forging or counterfeiting doctor's certificate of examination.

Whoever falsely makes, alters, forges, or counterfeits any doctor's certificate or record of examination to an application for a policy of insurance, or knowing such doctor's certificate or record of examination to be falsely made, altered, forged, or counterfeited, passes, utters, or publishes such certificate as true, with intent to injure or defraud any person, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

831.28. Counterfeiting a payment instrument; possessing a counterfeit payment instrument; penalties.

(1) As used in this section, the term "counterfeit" means the manufacture of or arrangement to manufacture a payment instrument, as defined in § 560.103, without the permission of the financial institution, account holder, or organization whose name, routing number, or account number appears on the payment instrument, or the manufacture of any payment instrument with a fictitious name, routing number, or account number.

(2) (a) It is unlawful to counterfeit a payment instrument with the intent to defraud a financial institution, account holder, or any other person or organization or for a person to have any counterfeit payment instrument in such person's possession. Any person who violates this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) The printing of a payment instrument in the name of a person or entity or with the routing number or account number of a person or entity without the permission of the person or entity to manufacture or reproduce such payment instrument with such name, routing number, or account number is prima facie evidence of intent to defraud.

(3) This section does not apply to a law enforcement agency that produces or displays counterfeit payment instruments for investigative or educational purposes.

831.29. Making or having instruments and material for counterfeiting driver's licenses or identification cards.

Any person who has control, custody, or possession of any plate, block, press, stone, or other tool, instrument, or implement, or any part thereof; engraves, makes, or amends, or begins to engrave, make, or amend, any plate, block, press, stone, or other tool, instrument, or implement; brings into the state any such plate, block, press, stone, or other tool, instrument, or implement, or any part thereof, in the similitude of the driver's licenses or identification cards issued by the Department of Highway Safety and Motor Vehicles or its duly authorized agents or those of any state or jurisdiction that issues licenses recognized in this state for the operation of a motor vehicle or that issues identification cards recognized in this state for the purpose of indicating a person's true name and age; has control, custody, or possession of or makes or provides any paper or other material adapted and designed for the making of a false and counterfeit driver's license or identification card purporting to be issued by the Department of Highway Safety and Motor Vehicles or its duly authorized agents or those of any state or jurisdiction that issues licenses recognized in this state for the operation of a motor vehicle or that issues identification cards recognized in this state for the purpose of indicating a person's true name and age; has in his or her possession, control, or custody any such plate or block engraved in any part, or any press or other tool or instrument or any paper or other material adapted and designed as aforesaid with intent to sell, issue, publish, pass, or utter the same or to cause or permit the same to be used in forging or making any such false or counterfeit driver's license or identification card; or prints, photographs, or in any manner makes or executes any engraved photograph, print, or impression by any process whatsoever in the similitude of any such licenses or identification cards with the intent to sell, issue, publish, or utter the same or to cause or permit the same to be used in forging or making any such false and counterfeit driver's license or identification card of this state or any state or jurisdiction that issues licenses recognized in this state for the operation of a motor vehicle or that issues identification cards recognized in this state for the purpose of indicating a person's true name and age is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

831.30. Medicinal drugs; fraud in obtaining.

Whoever:

(1) Falsely makes, alters, or forges any prescription, as defined in § 465.003, for a medicinal drug other than a drug controlled by chapter 893;

(2) Knowingly causes such prescription to be falsely made, altered, forged, or counterfeited; or

(3) Passes, utters, or publishes such prescription or otherwise knowingly holds out such false or forged prescription as true

with intent to obtain such drug commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. A second or subsequent conviction constitutes a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

831.31. Counterfeit controlled substance; sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver.

(1) It is unlawful for any person to sell, manufacture, or deliver, or to possess with intent to sell, manufacture, or deliver, a counterfeit controlled substance. Any person who violates this subsection with respect to:

(a) A controlled substance named or described in § 893.03(1), (2), (3), or (4) is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) A controlled substance named or described in § 893.03(5) is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) For purposes of this section, "counterfeit controlled substance" means:

(a) A controlled substance named or described in § 893.03 which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or number, or any likeness thereof, of a manufacturer other than the person who in fact manufactured the controlled substance; or

(b) Any substance which is falsely identified as a controlled substance named or described in § 893.03.

831.311. Unlawful sale, manufacture, alteration, delivery, uttering, or possession of counterfeit-resistant prescription blanks for controlled substances.

(1) It is unlawful for any person having the intent to injure or defraud any person or to facilitate any violation of § 893.13 to sell, manufacture, alter, deliver, utter, or possess with intent to injure or defraud any person, or to facilitate any violation of § 893.13, any counterfeit-resistant prescription blanks for controlled substances, the form and content of which are adopted by rule of the Department of Health pursuant to § 893.065.

(2) Any person who violates this section commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

CHAPTER 832
VIOLATIONS INVOLVING CHECKS AND DRAFTS

832.05. Giving worthless checks, drafts, and debit card orders; penalty; duty of drawee; evidence; costs; complaint form.

(1) PURPOSE.—The purpose of this section is to remedy the evil of giving checks, drafts, bills of exchange, debit card orders, and other orders on banks without first providing funds in or credit with the depositories on which the same are made or drawn to pay and satisfy the same, which tends to create the circulation of worthless checks, drafts, bills of exchange, debit card orders, and other orders on banks, bad banking, check kiting, and a mischief to trade and commerce.

(2) WORTHLESS CHECKS, DRAFTS, OR DEBIT CARD ORDERS; PENALTY.—

(a) It is unlawful for any person, firm, or corporation to draw, make, utter, issue, or deliver to another any check, draft, or other written order on any bank or depository, or to use a debit card, for the payment of money or its equivalent, knowing at the time of the drawing, making, uttering, issuing, or delivering such check or draft, or at the time of using such debit card, that the maker or drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same on presentation; except that this section does not apply to any check when the payee or holder knows or has been expressly notified prior to the drawing or uttering of the check, or has reason to believe, that the drawer did not have on deposit or to the drawer's credit with the drawee sufficient funds to ensure payment as aforesaid, nor does this section apply to any postdated check.

(b) A violation of the provisions of this subsection constitutes a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, unless the check, draft, debit card order, or other written order drawn,

made, uttered, issued, or delivered is in the amount of $150, or its equivalent, or more and the payee or a subsequent holder thereof receives something of value therefor. In that event, the violation constitutes a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) CASHING OR DEPOSITING ITEM WITH INTENT TO DEFRAUD; PENALTY.—

(a) It is unlawful for any person, by act or common scheme, to cash or deposit any item, as defined in § 674.104(1)(i), in any bank or depository with intent to defraud.

(b) A violation of the provisions of this subsection constitutes a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) OBTAINING PROPERTY OR SERVICES IN RETURN FOR WORTHLESS CHECKS, DRAFTS, OR DEBIT CARD ORDERS; PENALTY.—

(a) It is unlawful for any person, firm, or corporation to obtain any services, goods, wares, or other things of value by means of a check, draft, or other written order upon any bank, person, firm, or corporation, knowing at the time of the making, drawing, uttering, issuing, or delivering of such check or draft that the maker thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same upon presentation. However, no crime may be charged in respect to the giving of any such check or draft or other written order when the payee knows, has been expressly notified, or has reason to believe that the drawer did not have on deposit or to the drawer's credit with the drawee sufficient funds to ensure payment thereof. A payee does not have reason to believe a payor does not have sufficient funds to ensure payment of a check solely because the payor has previously issued a worthless check to him or her.

(b) It is unlawful for any person to use a debit card to obtain money, goods, services, or anything else of value knowing at the time of such use that he or she does not have sufficient funds on deposit with which to pay for the same or that the value thereof exceeds the amount of credit which is available to him or her through an overdraft financing agreement or prearranged line of credit which is accessible by the use of the card.

(c) A violation of the provisions of this subsection, if the check, draft, other written order, or debit card order is for an amount less than $150 or its equivalent, constitutes a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. A violation of the provisions of this subsection, if the check, draft, other written order, or debit card order is in the amount of $150, or its equivalent, or more, constitutes a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) PAYMENT NO DEFENSE.—Payment of a dishonored check, draft, bill of exchange, or other order does not constitute a defense or ground for dismissal of charges brought under this section.

(6) "CREDIT," "DEBIT CARD" DEFINED.—

(a) The word "credit" as used herein shall be construed to mean an arrangement or understanding with the drawee for the payment of such check, draft, or other written order.

(b) As used in this section, the term "debit card" means a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may order, instruct, or authorize a financial institution to debit a demand deposit, savings deposit, or other asset account.

(7) REASON FOR DISHONOR, DUTY OF DRAWEE.—It is the duty of the drawee of any check, draft, or other written order, before refusing to pay the same to the holder thereof upon presentation, to cause to be written, printed, or stamped in plain language thereon or attached thereto the reason for the drawee's dishonor or refusal to pay it. In any prosecution under this section, the introduction in evidence of any unpaid and dishonored check, draft, or other written order having the drawee's refusal to pay stamped or written thereon or attached thereto, with the reason therefor as aforesaid, is prima facie evidence of the making or uttering of such check, draft, or other written order, of the due presentation to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reasons written, stamped, or attached by the drawee on such dishonored check, draft, or other written order. As against the maker or drawer thereof, the withdrawing from deposit with the drawee named in the check, draft, or other written order of the funds on deposit with such drawee necessary to ensure payment of such check, draft, or other written order upon presentation within a reasonable time after negotiation or the drawing, making, uttering, or delivering of a check, draft, or written order, payment of which is refused by the drawee, is prima facie evidence of knowledge of insufficient funds in or credit with such drawee. However, if it is deter-

mined at the trial in a prosecution hereunder that the payee of any such check, draft, or written order, at the time of accepting such check, draft, or written order, had knowledge of or reason to believe that the drawer of such check, draft, or other written order did not have sufficient funds on deposit in or credit with such drawee, then the payee instituting such criminal prosecution shall be assessed all costs of court incurred in connection with such prosecution.

(8) COSTS.—When a prosecution is initiated under this section before any committing trial court judge, the party applying for the warrant shall be held liable for costs accruing in the event the case is dismissed for want of prosecution. No costs shall be charged to the county in such dismissed cases.

(9) STATE ATTORNEYS; WORTHLESS CHECKS; FORM OF COMPLAINT.—The state attorneys of Florida shall collectively promulgate a single form to be used in all judicial circuits by persons reporting a violation of this chapter.

(10) CONSTRUCTION; PAYEE OR HOLDER; INSUFFICIENT FUNDS.—For the purposes of construction of this section, a payee or holder does not have knowledge, express notification, or reason to believe that the maker or drawer has insufficient funds to ensure payment of a check, draft, or debit card solely because the maker or drawer has previously drawn or issued a worthless check, draft, or debit card order to the payee or holder.

832.07. Prima facie evidence of intent; identity.

(1) INTENT.—

(a) In any prosecution or action under this chapter, the making, drawing, uttering, or delivery of a check, draft, or order, payment of which is refused by the drawee because of lack of funds or credit, shall be prima facie evidence of intent to defraud or knowledge of insufficient funds in, or credit with, such bank, banking institution, trust company, or other depository, unless such maker or drawer, or someone for him or her, shall have paid the holder thereof the amount due thereon, together with a service charge not to exceed the service fees authorized under § 832.08(5) or an amount of up to 5 percent of the face amount of the check, whichever is greater, within 15 days after written notice has been sent to the address printed on the check or given at the time of issuance that such check, draft, or order has not been paid to the holder thereof, and bank fees incurred by the holder. In the event of legal action for recovery, the maker or drawer may be additionally liable for court costs and reasonable attorney's fees. Notice mailed by certified or registered mail, evidenced by return receipt, or by first-class mail, evidenced by an affidavit of service of mail, to the address printed on the check or given at the time of issuance shall be deemed sufficient and equivalent to notice having been received by the maker or drawer, whether such notice shall be returned undelivered or not. The form of such notice shall be substantially as follows:

"You are hereby notified that a check, numbered _____, in the face amount of $, issued by you on _____ (date), drawn upon _____ (name of bank), and payable to , has been dishonored. Pursuant to Florida law, you have 15 days from the date of this notice to tender payment of the full amount of such check plus a service charge of $25, if the face value does not exceed $50, $30, if the face value exceeds $50 but does not exceed $300, $40, if the face value exceeds $300, or an amount of up to 5 percent of the face amount of the check, whichever is greater, the total amount due being $ _____ and _____ cents. Unless this amount is paid in full within the time specified above, the holder of such check may turn over the dishonored check and all other available information relating to this incident to the state attorney for criminal prosecution. You may be additionally liable in a civil action for triple the amount of the check, but in no case less than $50, together with the amount of the check, a service charge, court costs, reasonable attorney fees, and incurred bank fees, as provided in § 68.065."

Subsequent persons receiving a check, draft, or order from the original payee or a successor endorsee have the same rights that the original payee has against the maker of the instrument, provided such subsequent persons give notice in a substantially similar form to that provided above. Subsequent persons providing such notice shall be immune from civil liability for the giving of such notice and for proceeding under the forms of such notice, so long as the maker of the instrument has the same defenses against these subsequent persons as against the original payee. However, the remedies available under this section may be exercised only by one party in interest.

(b) When a check is drawn on a bank in which the maker or drawer has no account or a closed account, it shall be presumed that such check was issued with intent to defraud,

and the notice requirement set forth in this section shall be waived.

(2) IDENTITY.—

(a) In any prosecution or action under the provisions of this chapter, a check, draft, or order for which the information required in paragraph (b), paragraph (d), paragraph (e), or paragraph (f) is available at the time of issuance constitutes prima facie evidence of the identity of the person issuing the check, draft, or order and that such person is authorized to draw upon the named account.

(b) To establish this prima facie evidence:

1. The driver's license number or state identification number, specifying the state of issuance of the person presenting the check must be written on the check; or

2. The following information regarding the identity of the person presenting the check must be obtained by the person accepting such check: The presenter's full name, residence address, home phone number, business phone number, place of employment, sex, date of birth, and height.

(c) The information required in subparagraph (b)2. may be provided by either of two methods:

1. The information may be recorded on the check; or

2. The number of a check-cashing identification card issued by the accepter of the check may be recorded on the check. In order to be used to establish identity, such check-cashing identification card may not be issued until the information required in subparagraph (b)2. has been placed on file with the accepter of the check.

(d) If a check is received by a payee through the mail or by delivery to a representative of the payee, the prima facie evidence referred to in paragraph (a) may be established by presenting the original contract, order, or request for services that the check purports to pay for, bearing the signature of the person who signed the check, or by presenting a copy of the information required in subparagraph (b)2. which is on file with the accepter of the check together with the signature of the person presenting the check.

(e) If a check is received by a payee and the drawer or maker has a check-cashing identification card on file with the payee, the prima facie evidence referred to in paragraph (a) may be established by presenting the signature found on the check-cashing identification card bearing the signature of the person who signed the check.

(f) If a check is received by the Department of Revenue through the mail or by delivery to a representative of the Department of Revenue, the prima facie evidence referred to in paragraph (a) may be established by presenting the original tax return, certificate, license, application for certificate or license, or other document relating to amounts owed by that person or taxpayer which the check purports to pay for, bearing the signature of the person who signed the check, or by presenting a copy of the information required in subparagraph (b)2. which is on file with the accepter of the check together with the signature of the person presenting the check. The use of taxpayer information for purposes of establishing the identity of a person pursuant to this paragraph shall be considered a use of such information for official purposes.

832.09. Suspension of driver license after warrant or capias is issued in worthless check case.

(1) Any person who is being prosecuted for passing a worthless check in violation of § 832.05, who fails to appear before the court and against whom a warrant or capias for failure to appear is issued by the court shall have his or her driver's license suspended or revoked pursuant to § 322.251.

(2) Within 5 working days after the issuance of a warrant or capias for failure to appear, the clerk of the court in the county where the warrant or capias is issued shall notify the Department of Highway Safety and Motor Vehicles by the most efficient method available of the action of the court.

CHAPTER 836
DEFAMATION; LIBEL; THREATENING LETTERS AND SIMILAR OFFENSES

836.01. Punishment for libel.

Any person convicted of the publication of a libel shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

836.05. Threats; extortion.

Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of any crime or offense, or by such communication maliciously threatens an injury to the person, property or reputation of another, or maliciously threatens to expose another to disgrace, or to expose any secret affecting another, or to impute any deformity or lack of chastity to another, with intent thereby to extort money or any pecuniary advantage whatsoever, or

with intent to compel the person so threatened, or any other person, to do any act or refrain from doing any act against his or her will, shall be guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

836.10. Written threats to kill or do bodily injury; punishment.

Any person who writes or composes and also sends or procures the sending of any letter, inscribed communication, or electronic communication, whether such letter or communication be signed or anonymous, to any person, containing a threat to kill or to do bodily injury to the person to whom such letter or communication is sent, or a threat to kill or do bodily injury to any member of the family of the person to whom such letter or communication is sent commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

836.11. Publications which tend to expose persons to hatred, contempt, or ridicule prohibited.

(1) It shall be unlawful to print, publish, distribute or cause to be printed, published or distributed by any means, or in any manner whatsoever, any publication, handbill, dodger, circular, booklet, pamphlet, leaflet, card, sticker, periodical, literature, paper or other printed material which tends to expose any individual or any religious group to hatred, contempt, ridicule or obloquy unless the following is clearly printed or written thereon:

(a) The true name and post office address of the person, firm, partnership, corporation or organization causing the same to be printed, published or distributed; and,

(b) If such name is that of a firm, corporation or organization, the name and post office address of the individual acting in its behalf in causing such printing, publication or distribution.

(2) Any person, firm or corporation violating any of the sections of this statute shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 837
PERJURY

837.011. Definitions.

In this chapter, unless a different meaning plainly is required:

(1) "Official proceeding" means a proceeding heard, or which may be or is required to be heard, before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, general or special magistrate, administrative law judge, hearing officer, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.

(2) "Oath" includes affirmation or any other form of attestation required or authorized by law by which a person acknowledges that he or she is bound in conscience or law to testify truthfully in an official proceeding or other official matter.

(3) "Material matter" means any subject, regardless of its admissibility under the rules of evidence, which could affect the course or outcome of the proceeding. Whether a matter is material in a given factual situation is a question of law.

837.012. Perjury when not in an official proceeding.

(1) Whoever makes a false statement, which he or she does not believe to be true, under oath, not in an official proceeding, in regard to any material matter shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the defendant's mistaken belief that his or her statement was not material is not a defense.

837.02. Perjury in official proceedings.

(1) Except as provided in subsection (2), whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) Whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding that relates to the prosecution of a capital felony, commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Knowledge of the materiality of the statement is not an element of the crime of perjury under subsection (1) or subsection (2), and the defendant's mistaken belief that the statement was not material is not a defense.

837.021. Perjury by contradictory statements.

(1) Except as provided in subsection (2), whoever, in one or more official proceedings, willfully makes two or more material statements under oath which contradict each other, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) Whoever, in one or more official proceedings that relate to the prosecution of a capital felony, willfully makes two or more material statements under oath which contradict each other, commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) In any prosecution for perjury under this section:

(a) The prosecution may proceed in a single count by setting forth the willful making of contradictory statements under oath and alleging in the alternative that one or more of them are false.

(b) The question of whether a statement was material is a question of law to be determined by the court.

(c) It is not necessary to prove which, if any, of the contradictory statements is not true.

(d) It is a defense that the accused believed each statement to be true at the time the statement was made.

(4) A person may not be prosecuted under this section for making contradictory statements in separate proceedings if the contradictory statement made in the most recent proceeding was made under a grant of immunity under § 914.04; but such person may be prosecuted under § 837.02 for any false statement made in that most recent proceeding, and the contradictory statements may be received against him or her upon any criminal investigation or proceeding for such perjury.

837.05. False reports to law enforcement authorities.

(1) (a) Except as provided in paragraph (b) or subsection (2), a person who knowingly gives false information to a law enforcement officer concerning the alleged commission of any crime, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(b) A person who commits a violation of paragraph (a) commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if the person has previously been convicted of a violation of paragraph (a) and subparagraph 1. or subparagraph 2. applies:

1. The information the person gave to the law enforcement officer was communicated orally and the officer's account of that information is corroborated by:

a. An audio recording or audio recording in a video of that information;

b. A written or recorded statement made by the person who gave that information; or

c. Another person who was present when that person gave that information to the officer and heard that information.

2. The information the person gave to the law enforcement officer was communicated in writing.

(2) A person who knowingly gives false information to a law enforcement officer concerning the alleged commission of a capital felony, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

837.055. False information to law enforcement during investigation.

(1) Whoever knowingly and willfully gives false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) Whoever knowingly and willfully gives false information to a law enforcement officer who is conducting a missing person investigation involving a child 16 years of age or younger with the intent to mislead the officer or impede the investigation, and the child who is the subject of the investigation suffers great bodily harm, permanent disability, permanent disfigurement, or death, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

837.06. False official statements.

Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 839
OFFENSES BY PUBLIC OFFICERS AND EMPLOYEES

839.11. Extortion by officers of the state.

Any officer of this state who willfully charges, receives, or collects any greater fees or services than the officer is entitled to charge, receive, or collect by law is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

839.13. Falsifying records.

(1) Except as provided in subsection (2), if any judge, justice, mayor, alderman, clerk, sheriff, coroner, or other public officer, or employee or agent of or contractor with a public agency, or any person whatsoever, shall steal, embezzle, alter, corruptly withdraw, falsify or avoid any record, process, charter, gift, grant, conveyance, or contract, or any paper filed in any judicial proceeding in any court of this state, or shall knowingly and willfully take off, discharge or conceal any issue, forfeited recognizance, or other forfeiture, or other paper above mentioned, or shall forge, deface, or falsify any document or instrument recorded, or filed in any court, or any registry, acknowledgment, or certificate, or shall fraudulently alter, deface, or falsify any minutes, documents, books, or any proceedings whatever of or belonging to any public office within this state; or if any person shall cause or procure any of the offenses aforesaid to be committed, or be in anywise concerned therein, the person so offending shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) (a) Any person who knowingly falsifies, alters, destroys, defaces, overwrites, removes, or discards an official record relating to an individual in the care and custody of a state agency, which act has the potential to detrimentally affect the health, safety, or welfare of that individual, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. For the purposes of this paragraph, the term "care and custody" includes, but is not limited to, a child abuse protective investigation, protective supervision, foster care and related services, or a protective investigation or protective supervision of a vulnerable adult, as defined in chapter 39, chapter 409, or chapter 415.

(b) Any person who commits a violation of paragraph (a) which contributes to great bodily harm to or the death of an individual in the care and custody of a state agency commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. For the purposes of this paragraph, the term "care and custody" includes, but is not limited to, a child abuse protective investigation, protective supervision, foster care and related services, or a protective investigation or protective supervision of a vulnerable adult, as defined in chapter 39, chapter 409, or chapter 415.

(c) Any person who knowingly falsifies, alters, destroys, defaces, overwrites, removes, or discards records of the Department of Children and Family Services or its contract provider with the intent to conceal a fact material to a child abuse protective investigation, protective supervision, foster care and related services, or a protective investigation or protective supervision of a vulnerable adult, as defined in chapter 39, chapter 409, or chapter 415, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Nothing in this paragraph prohibits prosecution for a violation of paragraph (a) or paragraph (b) involving records described in this paragraph.

(d) This section does not prohibit the disposing or archiving of records as otherwise provided by law. In addition, this section does not prohibit any person from correcting or updating records.

(3) In any prosecution under this section, it shall not be necessary to prove the ownership or value of any paper or instrument involved.

839.19. Failure to execute process generally.

Any sheriff or other officer authorized to execute process, who willfully or corruptly refuses or neglects to execute and return, according to law, any process delivered to him or her, shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

839.20. Refusal to execute criminal process.

If any officer authorized to serve process, willfully and corruptly refuses to execute any lawful process to him or her directed and requiring him or her to apprehend and confine any person convicted or charged with an offense, or willfully and corruptly omits or delays to execute such process, whereby such person escapes and goes at large, the officer shall be guilty of a misdemeanor of the first

degree, punishable as provided in § 775.082 or § 775.083.

839.21. Refusal to receive prisoner.

Any jailer or other officer, who willfully refuses to receive into the jail or into her or his custody a prisoner lawfully directed to be committed thereto on a criminal charge or conviction, or any lawful process whatever, shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

839.23. Officer taking insufficient bail.

An official who takes bail which the official knows is not sufficient, accepts a surety she or he knows does not have the qualifications required by law, or accepts as a surety a professional bond agent who is not registered with the clerk of the circuit court and qualified to act as surety shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. An official convicted of violating this section may be removed from office by the Governor.

839.24. Penalty for failure to perform duty required of officer.

A sheriff, county court judge, prosecuting officer, court reporter, stenographer, interpreter, or other officer required to perform any duty under the criminal procedure law who willfully fails to perform his or her duty shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

839.26. Misuse of confidential information.

Any public servant who, in contemplation of official action by herself or himself or by a governmental unit with which the public servant is associated, or in reliance on information to which she or he has access in her or his official capacity and which has not been made public, commits any of the following acts:

(1) Acquisition of a pecuniary interest in any property, transaction, or enterprise or gaining of any pecuniary or other benefit which may be affected by such information or official action;

(2) Speculation or wagering on the basis of such information or action; or

(3) Aiding another to do any of the foregoing,

shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 843
OBSTRUCTING JUSTICE

843.01. Resisting officer with violence to his or her person.

Whoever knowingly and willfully resists, obstructs, or opposes any officer as defined in § 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Parole Commission or any administrative aide or supervisor employed by the commission; parole and probation supervisor; county probation officer; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person, is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

843.02. Resisting officer without violence to his or her person.

Whoever shall resist, obstruct, or oppose any officer as defined in § 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Parole Commission or any administrative aide or supervisor employed by the commission; county probation officer; parole and probation supervisor; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

843.021. Unlawful possession of a concealed handcuff key.

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

(a) "In custody" means any time while a person has been placed in handcuffs by a law enforcement officer, regardless of whether such person is under formal arrest.

(b) "Handcuff key" means any key, tool, device, implement, or other thing used, designed, or intended to aid in unlocking or removing handcuffs.

(c) "Concealed handcuff key" means any handcuff key carried by a person in a manner that indicates an intent to prevent discovery of the key by a law enforcement officer, including, but not limited to, a handcuff key carried:

1. In a pocket of a piece of clothing of a person, and unconnected to any key ring;

2. On a necklace of a person;

3. On the body part of a person or on any item of clothing of such person, when the handcuff key is secured on the body part or item of clothing by use of tape, glue, line, or other material;

4. In or within any compartment, seam, fold, or other encasement within any item of clothing, belt, shoe, or jewelry of a person;

5. In or within any sock, hose, shoe, belt, undergarment, glove, hat, or similar item of clothing or accessory of a person;

6. By a person and disguised as jewelry or other object; or

7. In or within any body cavity of a person.

(2) Any person who possesses a concealed handcuff key commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) It is a defense to a charge of violating this section that, immediately upon being placed in custody, the person in custody actually and effectively disclosed to the law enforcement officer that he or she was in possession of a concealed handcuff key.

(4) (a) It is a defense to a charge of violating this section that the person in custody and in possession of a concealed handcuff key is:

1. A federal, state, or local law enforcement officer, including a reserve or auxiliary officer, a licensed security officer, or a private investigator as defined in § 493.6101; or

2. A professional bail bond agent, temporary bail bond agent, runner, or limited surety agent as defined in § 648.25.

(b) However, the defense is not available to any officer, investigator, agent, or runner listed in this subsection if the officer, investigator, agent, or runner, immediately upon being placed in custody, fails to actually and effectively disclose possession of the concealed handcuff key.

843.025. Depriving officer of means of protection or communication.

It is unlawful for any person to deprive a law enforcement officer as defined in § 943.10(1), a correctional officer as defined in § 943.10(2), or a correctional probation officer as defined in § 943.10(3) of her or his weapon or radio or to otherwise deprive the officer of the means to defend herself or himself or summon assistance. Any person who violates this section is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

843.03. Obstruction by disguised person.

Whoever in any manner disguises himself or herself with intent to obstruct the due execution of the law, or with the intent to intimidate, hinder, or interrupt any officer, beverage enforcement agent, or other person in the legal performance of his or her duty or the exercise of his or her rights under the constitution or laws of this state, whether such intent is effected or not, shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

843.06. Neglect or refusal to aid peace officers.

Whoever, being required in the name of the state by any officer of the Florida Highway Patrol, police officer, beverage enforcement agent, or watchman, neglects or refuses to assist him or her in the execution of his or her office in a criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in case of the rescue or escape of a person arrested upon civil process, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

843.08. Falsely personating officer, etc.

A person who falsely assumes or pretends to be a sheriff, officer of the Florida Highway Patrol, officer of the Fish and Wildlife Conservation Commission, officer of the Department of Transportation, officer of the Department of Financial Services, officer of the Department of Corrections, correctional probation officer, deputy sheriff, state attorney or assistant state attorney, statewide prosecutor or assistant statewide prosecutor, state attorney investigator, coroner, police officer, lottery special agent or lottery investigator, beverage enforcement agent, or watchman, or any member of the Parole Commission and any administrative aide or supervisor employed by the commission, or any personnel or representative of the Department of Law Enforcement, or a federal law enforcement officer as defined in § 901.1505, and takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. However, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second de-

gree, punishable as provided in § 775.082, § 775.083, or § 775.084. If the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

843.081. Prohibited use of certain lights; penalty.

(1) The Legislature finds and declares that Florida's citizens are vulnerable to becoming the victims of criminal acts through the illegal use of blue lights by the criminal elements. It is the intent of the Legislature to reduce this vulnerability to injury and loss of life and property by prohibiting the use of certain blue lights by any person other than an authorized law enforcement officer.

(2) It is unlawful for a person to use in or on any nongovernmentally owned vehicle or vessel any flashing or rotating blue light unless such person is a law enforcement officer employed by a federal, state, county, or city law enforcement agency or is a person appointed by the Governor pursuant to chapter 354.

(3) The provisions of this section shall not apply to salespersons, service representatives, or other employees of businesses licensed to sell or repair law enforcement equipment.

(4) For the purposes of this section, the term "flashing or rotating blue light" includes all forms of lights which display a blue light source or which were designed with the intent of displaying a blue light source whether or not such light is actually in use.

(5) Any person who violates any of the provisions of this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

843.085. Unlawful use of police badges or other indicia of authority.

(1) Unless appointed by the Governor pursuant to chapter 354, authorized by the appropriate agency, or displayed in a closed or mounted case as a collection or exhibit, to wear or display any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof, of any federal, state, county, or municipal law enforcement agency, or other criminal justice agency as now or hereafter defined in § 943.045, which could deceive a reasonable person into believing that such item is authorized by any of the agencies described above for use by the person displaying or wearing it, or which displays in any manner or combination the word or words "police," "patrolman," "agent," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "state attorney," "public defender," "marshal," "constable," or "bailiff," which could deceive a reasonable person into believing that such item is authorized by any of the agencies described above for use by the person displaying or wearing it.

(2) To own or operate a motor vehicle marked or identified in any manner or combination by the word or words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff," or by any lettering, marking, or insignia, or colorable imitation thereof, including, but not limited to, stars, badges, or shields, officially used to identify the vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency as now or hereafter defined in § 943.045, which could deceive a reasonable person into believing that such vehicle is authorized by any of the agencies described above for use by the person operating the motor vehicle, unless such vehicle is owned or operated by the appropriate agency and its use is authorized by such agency, or the local law enforcement agency authorizes the use of such vehicle or unless the person is appointed by the Governor pursuant to chapter 354.

(3) To sell, transfer, or give away the authorized badge, or colorable imitation thereof, including miniatures, of any criminal justice agency as now or hereafter defined in § 943.045, or bearing in any manner or combination the word or words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," "agent," "state attorney," "public defender," or "bailiff," which could deceive a reasonable person into believing that such item is authorized by any of the agencies described above, except for agency purchases or upon the presentation and recordation of both a driver's license and other identification showing any transferee to actually be a member of such criminal justice agency or unless the person is appointed by the Governor pursuant to chapter 354. A transferor of an item covered by this subsection is required to maintain for 2 years a written record of such transaction, including records showing compliance with this subsection,

and if such transferor is a business, it shall make such records available during normal business hours for inspection by any law enforcement agency having jurisdiction in the area where the business is located.

(4) Nothing in this section shall prohibit a fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries, from using the following words, in any manner or in any combination, if those words appear in the official name of the organization or association: "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff."

(5) Violation of any provision of this section is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. This section is cumulative to any law now in force in the state.

843.09. Escape through voluntary action of officer.

If a jailer or other officer voluntarily suffers a prisoner in her or his custody, upon conviction of any criminal charge, to escape, she or he shall be guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

843.10. Escape by negligence of officer.

If a jailer or other officer, through negligence, suffers a prisoner in her or his custody upon conviction of any criminal charge to escape, she or he shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

843.11. Conveying tools into jail to aid escape; forcible rescue.

Whoever conveys into a jail or other like place of confinement, any disguise, instrument, tool, weapon, or other thing adapted or useful to aid a prisoner in making his or her escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained, or, by any means whatever, aids or assists such prisoner in his or her endeavors to escape therefrom, whether such escape is effected or attempted or not; and whoever forcibly rescues any prisoner held in custody upon any conviction or charge of an offense, shall be guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084; or if the person whose escape or rescue was effected or intended, was charged with an offense not capital nor punishable by imprisonment in the state prison, then a person who assists a prisoner as described in this section shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083; or if the prisoner while his or her escape or rescue is being effected or attempted commits any crime with the weapon, tool, or instrument conveyed to him or her, the person conveying the weapon, tool, or instrument to the prisoner shall be subject to whatever fine, imprisonment, or other punishment the law imposes for the crime committed, as an accessory before the fact.

843.12. Aiding escape.

Whoever knowingly aids or assists a person in escaping, attempting to escape, or who has escaped, from an officer or person who has or is entitled to the lawful custody of such person, is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

843.13. Aiding escape of juvenile inmates of correctional institutions.

Whoever in any manner knowingly aids or assists any inmate of any correctional institution for boys or girls in the state to escape therefrom, or who knowingly, or having good reason to believe that any person is an inmate of such schools and is escaping or attempting to escape therefrom, aids or assists such inmate to make his or her escape or to avoid detention or recapture, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

843.14. Compounding felony.

Whoever, having knowledge of the commission of an offense punishable with death or by imprisonment in the state prison, takes money or a gratuity or reward, or an engagement therefor, upon an agreement or understanding, expressed or implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, shall when such offense of which he or she has knowledge is punishable with death or imprisonment in the state prison for life, be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084; and where the offense of which he or she so had knowledge was punishable in any other manner, he or she shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

843.15. Failure of defendant on bail to appear.

(1) Whoever, having been released pursuant to chapter 903, willfully fails to appear

before any court or judicial officer as required shall incur a forfeiture of any security which was given or pledged for her or his release and, in addition, shall:

(a) If she or he was released in connection with a charge of felony or while awaiting sentence or pending review by certiorari after conviction of any offense, be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, or;

(b) If she or he was released in connection with a charge of misdemeanor, be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) Nothing in this section shall interfere with or prevent the exercise by any court of its power to punish for contempt.

843.16. Unlawful to install or transport radio equipment using assigned frequency of state or law enforcement officers; definitions; exceptions; penalties.

(1) A person, firm, or corporation may not install or transport in any motor vehicle or business establishment, except an emergency vehicle or crime watch vehicle as herein defined or a place established by municipal, county, state, or federal authority for governmental purposes, any frequency modulation radio receiving equipment so adjusted or tuned as to receive messages or signals on frequencies assigned by the Federal Communications Commission to police or law enforcement officers or fire rescue personnel of any city or county of the state or to the state or any of its agencies. Provided, nothing herein shall be construed to affect any radio station licensed by the Federal Communications System or to affect any recognized newspaper or news publication engaged in covering the news on a full-time basis or any alarm system contractor certified pursuant to part II of chapter 489, operating a central monitoring system.

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

(a) "Emergency vehicle" shall specifically mean:

1. Any motor vehicle used by any law enforcement officer or employee of any city, any county, the state, the Federal Bureau of Investigation, or the Armed Forces of the United States while on official business;

2. Any fire department vehicle of any city or county of the state or any state fire department vehicle;

3. Any motor vehicle designated as an emergency vehicle by the Department of Highway Safety and Motor Vehicles when said vehicle is to be assigned the use of frequencies assigned to the state;

4. Any motor vehicle designated as an emergency vehicle by the sheriff or fire chief of any county in the state when said vehicle is to be assigned the use of frequencies assigned to the said county;

5. Any motor vehicle designated as an emergency vehicle by the chief of police or fire chief of any city in the state when said vehicle is to be assigned the use of frequencies assigned to the said city.

(b) "Crime watch vehicle" means any motor vehicle used by any person participating in a citizen crime watch or neighborhood watch program when such program and use are approved in writing by the appropriate sheriff or chief of police where the vehicle will be used and the vehicle is assigned the use of frequencies assigned to the county or city. Such approval shall be renewed annually.

(3) This section does not apply to the following:

(a) Any holder of a valid amateur radio operator or station license issued by the Federal Communications Commission.

(b) Any recognized newspaper or news publication engaged in covering the news on a full-time basis.

(c) Any alarm system contractor certified pursuant to part II of chapter 489, operating a central monitoring system.

(d) Any sworn law enforcement officer as defined in § 943.10 or emergency service employee as defined in § 496.404 while using personal transportation to and from work.

(e) An employee of a government agency that holds a valid Federal Communications Commission station license or that has a valid agreement or contract allowing access to another agency's radio station.

(4) Any person, firm, or corporation violating any of the provisions of this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

843.165. Unauthorized transmissions to and interference with governmental and associated radio frequencies prohibited; penalties; exceptions.

(1) A person may not transmit or cause to be transmitted over any radio frequency with knowledge that such frequency is assigned by the Federal Communications Commission to a state, county, or municipal governmental agency or water management district, including, but not limited to, a law enforcement, fire, government administration, or emergency management agency or any pub-

lic or private emergency medical services provider, any sounds, jamming device, jamming transmissions, speech, or radio frequency carrier wave except: those persons who are authorized in writing to do so by the agency's chief administrator; employees of the agency who are authorized to transmit by virtue of their duties with the agency; and those persons holding a valid station license assigned by the Federal Communications Commission to transmit on such frequencies.

(2) A person may not knowingly obstruct, jam, or interfere with radio transmissions made by volunteer communications personnel of any state, county, or municipal governmental agency, water management district, volunteers of any public or private emergency medical services provider, or volunteers in any established Skywarn program when the volunteers are providing communications support upon request of the governmental agency during tests, drills, field operations, or emergency events.

(3) Any person who violates this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(4) It is lawful for any person to transmit or cause to be transmitted speech or sounds over any authorized transmitter operating on frequencies specified in subsection (1) when the person:

(a) Has been commanded to do so by an authorized operator of the transmitter;

(b) Is acting to summon assistance for the authorized operator who, for any reason, is unable to make the transmission; or

(c) Is a radio technician or installer who is testing, repairing, or installing radio equipment at the request of a state, county, or municipal governmental agency, water management district, or licensed public or private emergency medical services provider.

843.167. Unlawful use of police communications; enhanced penalties.

(1) A person may not:

(a) Intercept any police radio communication by use of a scanner or any other means for the purpose of using that communication to assist in committing a crime or to escape from or avoid detection, arrest, trial, conviction, or punishment in connection with the commission of such crime.

(b) Divulge the existence, contents, substance, purport, effect, or meaning of a police radio communication to any person he or she knows to be a suspect in the commission of a crime with the intent that the suspect may escape from or avoid detention, arrest, trial, conviction, or punishment.

(2) Any person who is charged with a crime and who, during the time such crime was committed, possessed or used a police scanner or similar device capable of receiving police radio transmissions is presumed to have violated paragraph (1)(a).

(3) The penalty for a crime that is committed by a person who violates paragraph (1)(a) shall be enhanced as follows:

(a) A misdemeanor of the second degree shall be punished as if it were a misdemeanor of the first degree.

(b) A misdemeanor of the first degree shall be punished as if it were a felony of the third degree.

(c) A felony of the third degree shall be punished as if it were a felony of the second degree.

(d) A felony of the second degree shall be punished as if it were a felony of the first degree.

(e) A felony of the first degree shall be punished as if it were a life felony.

(4) Any person who violates paragraph (1)(b) commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

843.18. Boats; fleeing or attempting to elude a law enforcement officer.

(1) It is unlawful for the operator of any boat plying the waters of the state, having knowledge that she or he has been directed to stop such vessel by a duly authorized law enforcement officer, willfully to refuse or fail to stop in compliance with such directive or, having stopped in knowing compliance with such a directive, willfully to flee in an attempt to elude such officer. Any person violating this section is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) Any violation of this section with respect to any vessel shall constitute such vessel as contraband which may be seized by a law enforcement agency and which shall be subject to forfeiture pursuant to §§ 932.701-932.704.

843.19. Offenses against police dogs, fire dogs, SAR dogs, or police horses.

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

(a) "Police dog" means any dog, and "police horse" means any horse, that is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity,

enforcement of laws, or apprehension of offenders.

(b) "Fire dog" means any dog that is owned, or the service of which is employed, by a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of flammable materials or the investigation of fires.

(c) "SAR dog" means any search and rescue dog that is owned, or the service of which is utilized, by a fire department, a law enforcement agency, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of missing persons, including, but not limited to, persons who are lost, who are trapped under debris as the result of a natural, manmade, or technological disaster, or who are drowning victims.

(2) Any person who intentionally and knowingly, without lawful cause or justification, causes great bodily harm, permanent disability, or death to, or uses a deadly weapon upon, a police dog, fire dog, SAR dog, or police horse commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Any person who actually and intentionally maliciously touches, strikes, or causes bodily harm to a police dog, fire dog, SAR dog, or police horse commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(4) Any person who intentionally or knowingly maliciously harasses, teases, interferes with, or attempts to interfere with a police dog, fire dog, SAR dog, or police horse while the animal is in the performance of its duties commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(5) A person convicted of an offense under this section shall make restitution for injuries caused to the police dog, fire dog, SAR dog, or police horse and shall pay the replacement cost of the animal if, as a result of the offense, the animal can no longer perform its duties.

843.20. Harassment of participant of neighborhood crime watch program prohibited; penalty; definitions.

(1) It shall be a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, for any person to willfully harass, threaten, or intimidate an identifiable member of a neighborhood crime watch program while such member is engaged in, or traveling to or from, an organized neighborhood crime watch program activity or a member who is participating in an ongoing criminal investigation, as designated by a law enforcement officer.

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

(a) "Harass" means to engage in a course of conduct directed at a specific person which causes substantial emotional distress in that person and serves no legitimate purpose.

(b) "Organized neighborhood crime watch program activity" means any prearranged event, meeting, or other scheduled activity, or neighborhood patrol, conducted by or at the direction of a neighborhood crime watch program or the program's authorized designee.

843.21. Depriving crime victim of medical care.

A person who takes custody of or exercises control over a person he or she knows to be injured as a result of criminal activity and deprives that person of medical care with the intent to avoid, delay, hinder, or obstruct any investigation of the criminal activity contributing to the injury commits:

(1) If the victim's medical condition worsens as a result of the deprivation of medical care, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) If deprivation of medical care contributes or results in the death of the victim, a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

CHAPTER 847
OBSCENITY

847.001. Definitions.

As used in this chapter, the term:

(1) "Adult" means a person 18 years of age or older.

(2) "Adult entertainment establishment" means the following terms as defined:

(a) "Adult bookstore" means any corporation, partnership, or business of any kind which restricts or purports to restrict admission only to adults, which has as part of its stock books, magazines, other periodicals, videos, discs, or other graphic media and which offers, sells, provides, or rents for a fee any sexually oriented material.

(b) "Adult theater" means an enclosed building or an enclosed space within a building used for presenting either films, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities for ob-

servation by patrons, and which restricts or purports to restrict admission only to adults.

(c) "Special Cabaret" means any business that features persons who engage in specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults.

(d) "Unlicensed massage establishment" means any business or enterprise that offers, sells, or provides, or that holds itself out as offering, selling, or providing, massages that include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees or attendants, by hand or by any electrical or mechanical device, on or off the premises. The term "unlicensed massage establishment" does not include an establishment licensed under § 480.043 which routinely provides medical services by state-licensed health care practitioners and massage therapists licensed under § 480.041.

(3) "Child pornography" means any image depicting a minor engaged in sexual conduct.

(4) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device. The term also includes: any online service, Internet service, or local bulletin board; any electronic storage device, including a floppy disk or other magnetic storage device; or any compact disc that has read-only memory and the capacity to store audio, video, or written materials.

(5) "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(6) "Harmful to minors" means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

(a) Predominantly appeals to a prurient, shameful, or morbid interest;

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and

(c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

A mother's breastfeeding of her baby is not under any circumstance "harmful to minors."

(7) "Masochism" means sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture, or death.

(8) "Minor" means any person under the age of 18 years.

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

(10) "Obscene" means the status of material which:

(a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

(b) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

A mother's breastfeeding of her baby is not under any circumstance "obscene."

(11) "Person" includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(12) "Sadism" means sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death upon another person or an animal.

(13) "Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

(14) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(15) "Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(16) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(17) "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

(18) "Sexually oriented material" means any book, article, magazine, publication, or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(19) "Simulated" means the explicit depiction of conduct described in subsection (16) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(20) "Specific sexual activities" includes the following sexual activities and the exhibition of the following anatomical areas:

(a) Human genitals in the state of sexual stimulation or arousal.

(b) Acts of human masturbation, sexual intercourse, sodomy, cunnilingus, fellatio, or any excretory function, or representation thereof.

(c) The fondling or erotic touching of human genitals, the pubic region, the buttocks, or the female breasts.

(d) Less than completely and opaquely covered:

1. Human genitals or the pubic region.

2. Buttocks.

3. Female breasts below the top of the areola.

4. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

847.002. Child pornography prosecutions.

(1) Any law enforcement officer who, pursuant to a criminal investigation, recovers images or movies of child pornography shall:

(a) Provide such images or movies to the law enforcement agency representative assigned to the Child Victim Identification Program at the National Center for Missing and Exploited Children, as required by the center's guidelines.

(b) Request the law enforcement agency contact information from the Child Victim Identification Program for any images or movies recovered which contain an identified victim of child pornography as defined in § 960.03.

(c) Provide case information to the Child Victim Identification Program, as required by the National Center for Missing and Exploited Children guidelines, in any case where the law enforcement officer identifies a previously unidentified victim of child pornography.

(2) Any law enforcement officer submitting a case for prosecution which involves the production, promotion, or possession of child pornography shall submit to the designated prosecutor the law enforcement agency contact information provided by the Child Victim Identification Program at the National Center for Missing and Exploited Children, for any images or movies involved in the case which contain the depiction of an identified victim of child pornography as defined in § 960.03.

(3) In every filed case involving an identified victim of child pornography, as defined in § 960.03, the prosecuting agency shall enter the following information into the Victims in Child Pornography Tracking Repeat Exploitation database maintained by the Office of the Attorney General:

(a) The case number and agency file number.

(b) The named defendant.

(c) The circuit court division and county.

(d) Current court dates and the status of the case.

(e) Contact information for the prosecutor assigned.

(f) Verification that the prosecutor is or is not in possession of a victim impact statement and will use the statement in sentencing.

847.011. Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.

(1) (a) Except as provided in paragraph (c), any person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose; or who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character; or who knowingly writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting to state, where, how, of whom, or by what means any, or what purports to be any, such material, matter, article, or thing of any such character can be purchased, obtained, or had; or who in any manner knowingly hires, employs, uses, or permits any person knowingly to do or assist in doing any act or thing mentioned above, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. A person who, after having been convicted of a violation of this subsection, thereafter violates any of its provisions, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) The knowing possession by any person of three or more identical or similar materials, matters, articles, or things coming within the provisions of paragraph (a) is prima facie evidence of the violation of the paragraph.

(c) A person who commits a violation of paragraph (a) or subsection (2) which is based on materials that depict a minor engaged in any act or conduct that is harmful to minors commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(d) A person's ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent may not be raised as a defense in a prosecution for one or more violations of paragraph (a) or subsection (2).

(2) Except as provided in paragraph (1)(c), a person who knowingly has in his or her possession, custody, or control any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, film, any sticker, decal, emblem or other device attached to a motor vehicle containing obscene descriptions, photographs, or depictions, any figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. In any prosecution for such possession, it is not necessary to allege or prove the absence of such intent.

(3) No person shall as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, or publication require that the purchaser or consignee receive for resale any other article, paper, magazine, book, periodical, or publication reasonably believed by the purchaser or consignee to be obscene, and no person shall deny or threaten to deny or revoke any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure of any person to accept any such article, paper, magazine, book, periodical, or publication, or by reason of the return thereof. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) Any person who knowingly promotes, conducts, performs, or participates in an ob-

scene show, exhibition, or performance by live persons or a live person before an audience is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Any person who, after having been convicted of violating this subsection, thereafter violates any of its provisions and is convicted thereof is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) Every act, thing, or transaction forbidden by this section shall constitute a separate offense and shall be punishable as such.

(6) Proof that a defendant knowingly committed any act or engaged in any conduct referred to in this section may be made by showing that at the time such act was committed or conduct engaged in the defendant had actual knowledge of the contents or character of the material, matter, article, or thing possessed or otherwise dealt with, by showing facts and circumstances from which it may fairly be inferred that he or she had such knowledge, or by showing that he or she had knowledge of such facts and circumstances as would put a person of ordinary intelligence and caution on inquiry as to such contents or character.

(7) There shall be no right of property in any of the materials, matters, articles, or things possessed or otherwise dealt with in violation of this section; and, upon the seizure of any such material, matter, article, or thing by any authorized law enforcement officer, the same shall be held by the arresting agency. When the same is no longer required as evidence, the prosecuting officer or any claimant may move the court in writing for the disposition of the same and, after notice and hearing, the court, if it finds the same to have been possessed or otherwise dealt with in violation of this section, shall order the sheriff to destroy the same in the presence of the clerk; otherwise, the court shall order the same returned to the claimant if the claimant shows that he or she is entitled to possession. If destruction is ordered, the sheriff and clerk shall file a certificate of compliance.

(8) (a) The circuit court has jurisdiction to enjoin a threatened violation of this section upon complaint filed by the state attorney or attorney for a municipality in the name of the state upon the relation of such state attorney or attorney for a municipality.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator state attorney or attorney for a municipality requests a judge of such court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within 3 days after the making of such request. No such order shall be made unless such judge is satisfied that sufficient notice of the application therefor has been given to the party restrained of the time when and place where the application for such restraining order is to be made; however, such notice shall be dispensed with when it is manifest to such judge, from the sworn allegations of the complaint or the affidavit of the plaintiff or other competent person, that the apprehended violation will be committed if an immediate remedy is not afforded.

(c) The person sought to be enjoined shall be entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days of the conclusion of the trial.

(d) In any action brought as provided in this subsection, no bond or undertaking shall be required of the state attorney or the municipality or its attorney before the issuance of a restraining order provided for by paragraph (b), and there shall be no liability on the part of the state or the state attorney or the municipality or its attorney for costs or for damages sustained by reason of such restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(e) Every person who has possession, custody, or control of, or otherwise deals with, any of the materials, matters, articles, or things described in this section, after the service upon him or her of a summons and complaint in an action for injunction brought under this subsection, is chargeable with knowledge of the contents and character thereof.

(9) The several sheriffs and state attorneys shall vigorously enforce this section within their respective jurisdictions.

(10) This section shall not apply to the exhibition of motion picture films permitted by § 847.013.

847.012. Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty.

(1) As used in this section, "knowingly" means having the general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

(a) The character and content of any material described in this section which is rea-

sonably susceptible of examination by the defendant; and

(b) The age of the minor.

(2) A person's ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent may not be raised as a defense in a prosecution for a violation of this section.

(3) A person may not knowingly sell, rent, or loan for monetary consideration to a minor:

(a) Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording that contains any matter defined in § 847.001, explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and that is harmful to minors.

(4) A person may not knowingly use a minor in the production of any material described in subsection (3), regardless of whether the material is intended for distribution to minors or is actually distributed to minors.

(5) An adult may not knowingly distribute to a minor on school property, or post on school property, any material described in subsection (3). As used in this subsection, the term "school property" means the grounds or facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic. This subsection does not apply to the distribution or posting of school-approved instructional materials that by design serve as a major tool for assisting in the instruction of a subject or course by school officers, instructional personnel, administrative personnel, school volunteers, educational support employees, or managers as those terms are defined in § 1012.01.

(6) Any person violating any provision of this section commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(7) Every act, thing, or transaction forbidden by this section constitutes a separate offense and is punishable as such.

(8) (a) The circuit court has jurisdiction to enjoin a violation of this section upon complaint filed by the state attorney in the name of the state upon the relation of such state attorney.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator state attorney requests a judge of such court to set a hearing upon an application for a restraining order, the judge shall set the hearing for a time within 3 days after the making of the request. The order may not be made unless the judge is satisfied that sufficient notice of the application therefor has been given to the party restrained of the time when and place where the application for the restraining order is to be made.

(c) The person sought to be enjoined is entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days after the conclusion of the trial.

(d) If a final decree of injunction is entered, it must contain a provision directing the defendant having the possession, custody, or control of the materials, matters, articles, or things affected by the injunction to surrender the same to the sheriff and requiring the sheriff to seize and destroy the same. The sheriff shall file a certificate of her or his compliance.

(e) In any action brought as provided in this section, a bond or undertaking may not be required of the state or the state attorney before the issuance of a restraining order provided for by paragraph (b), and the state or the state attorney may not be held liable for costs or for damages sustained by reason of the restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(f) Every person who has possession, custody, or control of, or otherwise deals with, any of the materials, matters, articles, or things described in this section, after the service upon her or him of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents and character thereof.

(9) The several sheriffs and state attorneys shall vigorously enforce this section within their respective jurisdictions.

(10) This section does not apply to the exhibition of motion pictures, shows, presentations, or other representations regulated under § 847.013.

847.0125. Retail display of materials harmful to minors prohibited.

(1) "KNOWINGLY" DEFINED.—As used in this section, "knowingly" means having general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

(a) The character and content of any material described herein which is reasonably susceptible of examination by the defendant, and

(b) The age of the minor; however, an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

(2) OFFENSES AND PENALTIES.—

(a) It is unlawful for anyone offering for sale in a retail establishment open to the general public any book, magazine, or other printed material, the cover of which depicts material which is harmful to minors, to knowingly exhibit such book, magazine, or material in such establishment in such a way that it is on open display to, or within the convenient reach of, minors who may frequent the retail establishment. Such items shall, however, be displayed, either individually or collectively, behind an opaque covering which conceals the book, magazine, or other printed material.

(b) It is unlawful for anyone offering for sale in a retail establishment open to the general public any book, magazine, or other printed material, the content of which exploits, is devoted to, or is principally made up of descriptions or depictions of material which is harmful to minors, to knowingly exhibit such book, magazine, or material in such establishment in such a way that it is within the convenient reach of minors who may frequent the retail establishment.

(c) A violation of any provision of this section constitutes a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

847.013. Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.

(1) "KNOWINGLY" DEFINED.—As used in this section "knowingly" means having general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

(a) The character and content of any motion picture described herein which is reasonably susceptible of examination by the defendant, or the character of any exhibition, presentation, representation, or show described herein, other than a motion picture show, which is reasonably susceptible of being ascertained by the defendant; and

(b) The age of the minor.

(2) MINOR'S AGE.—A person's ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent may not be raised as a defense in a prosecution for a violation of this section.

(3) OFFENSES AND PENALTIES.—

(a) A person may not knowingly exhibit for a monetary consideration to a minor or knowingly sell or rent a videotape of a motion picture to a minor or knowingly sell to a minor an admission ticket or pass or knowingly admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.

(b) A person may not knowingly rent or sell, or loan to a minor for monetary consideration, a videocassette or a videotape of a motion picture, or similar presentation, which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.

(c) The provisions of paragraph (a) do not apply to a minor when the minor is accompanied by his or her parents or either of them.

(d) A minor may not falsely represent to the owner of any premises mentioned in paragraph (a), or to the owner's agent, or to any person mentioned in paragraph (b), that the minor is 17 years of age or older, with the intent to procure the minor's admission to such premises, or the minor's purchase or rental of a videotape, for a monetary consideration.

(e) A person may not knowingly make a false representation to the owner of any premises mentioned in paragraph (a), or to the owner's agent, or to any person mentioned in paragraph (b), that he or she is the parent of any minor or that any minor is 17 years of age or older, with intent to procure the minor's admission to the premises or to aid the minor in procuring admission thereto, or to aid or enable the minor's purchase or rental of a videotape, for a monetary consideration.

(f) A violation of any provision of this subsection constitutes a misdemeanor of the first

degree, punishable as provided in § 775.082 or § 775.083.

(4) INJUNCTIVE PROCEEDINGS.—

(a) The circuit court has jurisdiction to enjoin a threatened violation of subsection (2) upon complaint filed by the state attorney in the name of the state upon the relation of such state attorney.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person or persons complained of until final hearing or further order of the court. Whenever the relator requests a judge of the court to set a hearing upon an application for a restraining order, the judge shall set the hearing for a time within 3 days after the making of the request. An order may not be made unless the judge is satisfied that sufficient notice of the application therefor has been given to the person or persons restrained of the time when and place where the application for the restraining order is to be heard. However, the notice shall be dispensed with when it is manifest to the judge, from the allegations of a sworn complaint or independent affidavit, sworn to by the relator or by some person associated with him or her in the field of law enforcement and filed by the relator, that the apprehended violation will be committed if an immediate remedy is not afforded.

(c) The person or persons sought to be enjoined are entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days after the conclusion of the trial.

(d) In any action brought as provided in this section, a bond or undertaking is not required of the state or the relator state attorney before the issuance of a restraining order provided for by this section, and there is no liability on the part of the state or the relator state attorney for costs or damages sustained by reason of such restraining order in any case in which a final decree is rendered in favor of the person or persons sought to be enjoined.

(e) Every person who has possession, custody, or control of, or otherwise deals with, any motion picture, exhibition, show, representation, or presentation described in this section, after the service upon him or her of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents or character thereof.

(5) LEGISLATIVE INTENT.—In order to make the application and enforcement of this section uniform throughout the state, it is the intent of the Legislature to preempt the field, to the exclusion of counties and municipalities, insofar as it concerns exposing persons under 17 years of age to harmful motion pictures, exhibitions, shows, representations, presentations, and commercial or sexual exploitation. To that end, it is hereby declared that every county ordinance and every municipal ordinance adopted prior to July 1, 1969, and relating to such subject shall stand abrogated and unenforceable on and after such date and that no county, municipality, or consolidated county-municipal government shall have the power to adopt any ordinance relating to that subject on or after such effective date.

847.0133. Protection of minors; prohibition of certain acts in connection with obscenity; penalty.

(1) A person may not knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene material to a minor. For purposes of this section "obscene material" means any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing paper, card, picture, drawing, photograph, motion picture film, figure, image, videotape, videocassette, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose. The term "obscene" has the same meaning as set forth in § 847.001.

(2) As used in this section "knowingly" has the same meaning set forth in § 847.012(1). A "minor" is any person under the age of 18 years.

(3) A violation of the provisions of this section constitutes a felony of the third degree, punishable as provided in § 775.082 or § 775.083.

847.0134. Prohibition of adult entertainment establishment that displays, sells, or distributes materials harmful to minors within 2,500 feet of a school.

(1) Except for those establishments that are legally operating or have been granted a permit from a local government to operate as adult entertainment establishments on or before July 1, 2001, an adult entertainment establishment that sells, rents, loans, distributes, transmits, shows, or exhibits any obscene material, as described in § 847.0133,

or presents live entertainment or a motion picture, slide, or other exhibit that, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, sexual bestiality, or sadomasochistic abuse and that is harmful to minors, as described in § 847.001, may not be located within 2,500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipality approves the location under proceedings as provided in § 125.66(4) for counties or § 166.041(3)(c) for municipalities.

(2) A violation of this section constitutes a felony of the third degree, punishable as provided in § 775.082 or § 775.083.

847.0135. Computer pornography; traveling to meet minor; penalties.

(1) SHORT TITLE.—This section shall be known and may be cited as the "Computer Pornography and Child Exploitation Prevention Act."

(2) COMPUTER PORNOGRAPHY.—A person who:

(a) Knowingly compiles, enters into, or transmits by use of computer;

(b) Makes, prints, publishes, or reproduces by other computerized means;

(c) Knowingly causes or allows to be entered into or transmitted by use of computer; or

(d) Buys, sells, receives, exchanges, or disseminates,

any notice, statement, or advertisement of any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

(3) CERTAIN USES OF COMPUTER SERVICES OR DEVICES PROHIBITED.—Any person who knowingly uses a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

(a) Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child; or

(b) Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct,

commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Any person who, in violating this subsection, misrepresents his or her age, commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Each separate use of a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission wherein an offense described in this section is committed may be charged as a separate offense.

(4) TRAVELING TO MEET A MINOR.—Any person who travels any distance either within this state, to this state, or from this state by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of engaging in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child or with another person believed by the person to be a child after using a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

(a) Seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to engage in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child; or

(b) Solicit, lure, or entice or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct,

commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) CERTAIN COMPUTER TRANSMISSIONS PROHIBITED.—

(a) A person who:

1. Intentionally masturbates;

2. Intentionally exposes the genitals in a lewd or lascivious manner; or

3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity

live over a computer online service, Internet service, or local bulletin board service and who knows or should know or has reason to believe that the transmission is viewed on a computer or television monitor by a victim who is less than 16 years of age, commits lewd or lascivious exhibition in violation of this subsection. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this subsection shall not constitute a defense to a prosecution under this subsection.

(b) An offender 18 years of age or older who commits a lewd or lascivious exhibition using a computer commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) An offender less than 18 years of age who commits a lewd or lascivious exhibition using a computer commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(d) A mother's breastfeeding of her baby does not under any circumstance constitute a violation of this subsection.

(6) OWNERS OR OPERATORS OF COMPUTER SERVICES LIABLE.—It is unlawful for any owner or operator of a computer online service, Internet service, or local bulletin board service knowingly to permit a subscriber to use the service to commit a violation of this section. Any person who violates this section commits a misdemeanor of the first degree, punishable by a fine not exceeding $2,000.

(7) STATE CRIMINAL JURISDICTION.—A person is subject to prosecution in this state pursuant to chapter 910 for any conduct proscribed by this section which the person engages in, while either within or outside this state, if by such conduct the person commits a violation of this section involving a child, a child's guardian, or another person believed by the person to be a child or a child's guardian.

(8) EFFECT OF PROSECUTION.—Prosecution of any person for an offense under this section shall not prohibit prosecution of that person in this state or another jurisdiction for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.

847.0137. Transmission of pornography by electronic device or equipment prohibited; penalties.

(1) For purposes of this section:

(a) "Minor" means any person less than 18 years of age.

(b) "Transmit" means the act of sending and causing to be delivered any image, information, or data from one or more persons or places to one or more other persons or places over or through any medium, including the Internet, by use of any electronic equipment or device.

(2) Notwithstanding §§ 847.012 and 847.0133, any person in this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in § 847.001, to another person in this state or in another jurisdiction commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Notwithstanding §§ 847.012 and 847.0133, any person in any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in § 847.001, to any person in this state commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) This section shall not be construed to prohibit prosecution of a person in this state or another jurisdiction for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section, for the transmission of child pornography, as defined in § 847.001, to any person in this state.

(5) A person is subject to prosecution in this state pursuant to chapter 910 for any act or conduct proscribed by this section, including a person in a jurisdiction other than this state, if the act or conduct violates subsection (3).

The provisions of this section do not apply to subscription-based transmissions such as list servers.

847.0138. Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties.

(1) For purposes of this section:

(a) "Known by the defendant to be a minor" means that the defendant had actual knowledge or believed that the recipient of the communication was a minor.

(b) "Transmit" means to send to a specific individual known by the defendant to be a minor via electronic mail.

(2) Notwithstanding §§ 847.012 and 847.0133, any person who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors, as defined in § 847.001, to a specific individual known by the defendant to be a minor commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Notwithstanding §§ 847.012 and 847.0133, any person in any jurisdiction other than this state who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors, as defined in § 847.001, to a specific individual known by the defendant to be a minor commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

The provisions of this section do not apply to subscription-based transmissions such as list servers.

847.0139. Immunity from civil liability for reporting child pornography, transmission of child pornography, or any image, information, or data harmful to minors to a minor in this state.

Any person who reports to a law enforcement officer what the person reasonably believes to be child pornography, transmission of child pornography, or any image, information, or data that is harmful to minors to a minor in this state may not be held civilly liable for such reporting. For purposes of this section, such reporting may include furnishing the law enforcement officer with any image, information, or data that the person reasonably believes to be evidence of child pornography, transmission of child pornography, or an image, information, or data that is harmful to minors to a minor in this state.

847.0141. Sexting; prohibited acts; penalties.

(1) A minor commits the offense of sexting if he or she knowingly:

(a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity, as defined in § 847.001(9), and is harmful to minors, as defined in § 847.001(6).

(b) Possesses a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity, as defined in § 847.001(9), and is harmful to minors, as defined in § 847.001(6). A minor does not violate this paragraph if all of the following apply:

1. The minor did not solicit the photograph or video.

2. The minor took reasonable steps to report the photograph or video to the minor's legal guardian or to a school or law enforcement official.

3. The minor did not transmit or distribute the photograph or video to a third party.

(2) (a) The transmission or distribution of multiple photographs or videos prohibited by paragraph (1)(a) is a single offense if the photographs or videos were transmitted or distributed within the same 24-hour period.

(b) The possession of multiple photographs or videos that were transmitted or distributed by a minor prohibited by paragraph (1)(b) is a single offense if the photographs or videos were transmitted or distributed by a minor in the same 24-hour period.

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

(a) Commits a noncriminal violation for a first violation, punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a $60 fine. The court may also order the minor to participate in suitable training or instruction in lieu of, or in addition to, community service or a fine.

(b) Commits a misdemeanor of the first degree for a violation that occurs after being found to have committed a noncriminal violation for sexting, punishable as provided in § 775.082 or § 775.083.

(c) Commits a felony of the third degree for a violation that occurs after being found to have committed a misdemeanor of the first degree for sexting, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) This section does not prohibit the prosecution of a minor for a violation of any law of this state if the photograph or video that depicts nudity also includes the depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking under § 784.048.

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

847.0145. Selling or buying of minors; penalties.

(1) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, either:

(a) With knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(b) With intent to promote either:

1. The engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

2. The rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be guilty of a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor, either:

(a) With knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct;

(b) With intent to promote either:

1. The engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

2. The rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be guilty of a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

847.0147. Obscene telephone service prohibited; penalty.

(1) It is unlawful for any telephone subscriber to sell, offer for sale, or transmit, over telephone lines, any obscene material or message described and promoted as "adult" and of a nature which is commonly understood to be for the purposes of sexually oriented entertainment.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

847.02. Confiscation of obscene material.

Whenever anyone is convicted under § 847.011, the court in awarding sentence shall make an order confiscating said obscene material and authorize the sheriff of the county in which the material is held to destroy the same. The sheriff shall file with the court a certificate of his or her compliance.

847.03. Officer to seize obscene material.

Whenever any officer arrests any person charged with any offense under § 847.011, the officer shall seize said obscene material and take the same into his or her custody to await the sentence of the court upon the trial of the offender.

847.06. Obscene matter; transportation into state prohibited; penalty.

(1) Whoever knowingly transports into the state or within the state for the purpose of sale or distribution any obscene book; magazine; periodical; pamphlet; newspaper; comic book; story; paper; written or printed story or article; writing; paper; card; picture; drawing; photograph; motion picture film; figure; image; phonograph record, or wire or tape or other recording, or other article capable of producing sound; or any other matter of obscene character shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) When any person is convicted of a violation of this section, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of such items described herein which were found in the possession or under the immediate control of such person at the time of his or her arrest.

847.07. Wholesale promotion of obscene materials; penalties.

(1) As used in this section, "wholesale promote" means to manufacture, issue, sell, provide, deliver, transfer, transmit, publish, distribute, circulate, or disseminate, or offer or agree to do the same, with or without consideration, for purposes of resale or redistribution.

(2) Any person who knowingly wholesale promotes any obscene matter or performance, or in any manner knowingly hires, employs, uses, or permits any person to wholesale promote or assist in wholesale promoting any obscene matter or performance, is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) No person shall, as a condition to sale, allocation, consignment, or delivery for resale of any matter or performance, require that the purchaser or consignee receive for resale any other matter or performance reasonably believed by the purchaser or consignee to be obscene; and no person shall deny or revoke any franchise, or threaten to do so, or impose or threaten to impose any penalty, financial or otherwise, by reason of the refusal or failure of any person to accept any such matter or by reason of the return thereof. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

847.08. Hearings for determination of probable cause.

Whenever an indictment, information, or affidavit is filed under the provisions of §§ 847.07-847.09, the state attorney or his or her duly appointed assistant may apply to the court for the issuance of an order directing the defendant or his or her principal agent or bailee or other like person to produce the allegedly obscene materials at a time and place so designated by the court for the purpose of determining whether there is probable cause to believe said material is obscene. After hearing the parties on the issue, if the court determines probable cause exists, it may order the material held by the clerk of the court pending further order of the court. This section shall not be construed to prohibit the seizure of obscene materials by any other lawful means.

847.09. Legislative intent.

(1) In order to make the application and enforcement of §§ 847.07-847.09 uniform throughout the state, it is the intent of the Legislature to preempt the field, to the exclusion of counties and municipalities, insofar as it concerns exposing persons over 17 years of age to harmful motion pictures, exhibitions, shows, representations, and presentations. To that end, it is hereby declared that every county ordinance and every municipal ordinance adopted prior to July 1, 1973, and relating to said subject shall stand abrogated and unenforceable on and after such date and that no county, municipality, or consolidated county-municipal government shall have the power to adopt any ordinance relating to the subject on or after such effective date. If §§ 847.07-847.09 are declared to be illegal, unconstitutional, or otherwise unenforceable, any county or municipal ordinance abrogated before §§ 847.07-847.09 were declared unconstitutional shall be in full force and effect, and each county, municipality, and consolidated county-municipal government shall have the power to adopt ordinances relating to this subject.

(2) Nothing in §§ 847.07-847.09 shall be construed to repeal or in any way supersede the provisions of § 847.011, § 847.012, or § 847.013.

(3) Nothing herein shall be construed to limit the free exercise of free speech or picketing by any organization, group, or individual for the purpose of upholding community standards.

847.202. Video movie; official rating of motion picture.

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

(a) "Official rating" means an official rating of the Motion Picture Association of America, and the Film Advisory Board, Inc., or any other official rating organization.

(b) "Person" means an individual, corporation, partnership, or any other legal or commercial entity.

(c) "Video movie" means a videotape or video disc copy of a motion picture film.

(2) It is unlawful for a person to sell at retail, rent to another, attempt to sell at retail, or attempt to rent to another, a video movie in this state unless the official rating of the motion picture from which it is copied is clearly displayed on the outside of its cassette, case, jacket, or other covering. If the motion picture from which the video movie is copied has no official rating or if the video movie has been altered so that its content materially differs from the motion picture, such video movie shall be clearly and prominently marked as "N.R." or "Not Rated." Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 849
GAMBLING

849.01. Keeping gambling houses, etc.

Whoever by herself or himself, her or his servant, clerk or agent, or in any other man-

ner has, keeps, exercises or maintains a gaming table or room, or gaming implements or apparatus, or house, booth, tent, shelter or other place for the purpose of gaming or gambling or in any place of which she or he may directly or indirectly have charge, control or management, either exclusively or with others, procures, suffers or permits any person to play for money or other valuable thing at any game whatever, whether heretofore prohibited or not, shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

849.02. Agents or employees of keeper of gambling house.

Whoever acts as servant, clerk, agent, or employee of any person in the violation of § 849.01 shall be punished in the manner and to the extent therein mentioned.

849.03. Renting house for gambling purposes.

Whoever, whether as owner or agent, knowingly rents to another a house, room, booth, tent, shelter or place for the purpose of gaming shall be punished in the manner and to the extent mentioned in § 849.01.

849.04. Permitting minors and persons under guardianship to gamble.

The proprietor, owner, or keeper of any E. O., keno or pool table, or billiard table, wheel of fortune, or other game of chance kept for the purpose of betting, who willfully and knowingly allows a minor or person who is mentally incompetent or under guardianship to play at such game or to bet on such game of chance; or whoever aids or abets or otherwise encourages such playing or betting of any money or other valuable thing upon the result of such game of chance by a minor or person who is mentally incompetent or under guardianship, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. For the purpose of this section, the term "person who is mentally incompetent" means a person who because of mental illness, intellectual disability, senility, excessive use of drugs or alcohol, or other mental incapacity is incapable of managing his or her property or caring for himself or herself or both.

849.05. Prima facie evidence.

If any of the implements, devices or apparatus commonly used in games of chance in gambling houses or by gamblers, are found in any house, room, booth, shelter or other place it shall be prima facie evidence that the said house, room, booth, shelter or other place where the same are found is kept for the purpose of gambling.

849.07. Permitting gambling on billiard or pool table by holder of license.

If any holder of a license to operate a billiard or pool table shall permit any person to play billiards or pool or any other game for money, or any other thing of value, upon such tables, she or he shall be deemed guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

849.08. Gambling.

Whoever plays or engages in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

849.085. Certain penny-ante games not crimes; restrictions.

(1) Notwithstanding any other provision of law, it is not a crime for a person to participate in a game described in this section if such game is conducted strictly in accordance with this section.

(2) As used in this section:

(a) "Penny-ante game" means a game or series of games of poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mahjongg in which the winnings of any player in a single round, hand, or game do not exceed $10 in value.

(b) "Dwelling" means residential premises owned or rented by a participant in a penny-ante game and occupied by such participant or the common elements or common areas of a condominium, cooperative, residential subdivision, or mobile home park of which a participant in a penny-ante game is a unit owner, or the facilities of an organization which is tax-exempt under § 501(c)(7) of the Internal Revenue Code. The term "dwelling" also includes a college dormitory room or the common recreational area of a college dormitory or a publicly owned community center owned by a municipality or county.

(3) A penny-ante game is subject to the following restrictions:

(a) The game must be conducted in a dwelling.

(b) A person may not receive any consideration or commission for allowing a penny-ante game to occur in his or her dwelling.

(c) A person may not directly or indirectly charge admission or any other fee for participation in the game.

(d) A person may not solicit participants by means of advertising in any form, advertise the time or place of any penny-ante game, or advertise the fact that he or she will be a participant in any penny-ante game.

(e) A penny-ante game may not be conducted in which any participant is under 18 years of age.

(4) A debt created or owed as a consequence of any penny-ante game is not legally enforceable.

(5) The conduct of any penny-ante game within the common elements or common area of a condominium, cooperative, residential subdivision, or mobile home park or the conduct of any penny-ante game within the dwelling of an eligible organization as defined in subsection (2) or within a publicly owned community center owned by a municipality or county creates no civil liability for damages arising from the penny-ante game on the part of a condominium association, cooperative association, a homeowners' association as defined in § 720.301, mobile home owners' association, dwelling owner, or municipality or county or on the part of a unit owner who was not a participant in the game.

849.09. Lottery prohibited; exceptions.

(1) It is unlawful for any person in this state to:

(a) Set up, promote, or conduct any lottery for money or for anything of value;

(b) Dispose of any money or other property of any kind whatsoever by means of any lottery;

(c) Conduct any lottery drawing for the distribution of a prize or prizes by lot or chance, or advertise any such lottery scheme or device in any newspaper or by circulars, posters, pamphlets, radio, telegraph, telephone, or otherwise;

(d) Aid or assist in the setting up, promoting, or conducting of any lottery or lottery drawing, whether by writing, printing, or in any other manner whatsoever, or be interested in or connected in any way with any lottery or lottery drawing;

(e) Attempt to operate, conduct, or advertise any lottery scheme or device;

(f) Have in her or his possession any lottery wheel, implement, or device whatsoever for conducting any lottery or scheme for the disposal by lot or chance of anything of value;

(g) Sell, offer for sale, or transmit, in person or by mail or in any other manner whatsoever, any lottery ticket, coupon, or share, or any share in or fractional part of any lottery ticket, coupon, or share, whether such ticket, coupon, or share represents an interest in a live lottery not yet played or whether it represents, or has represented, an interest in a lottery that has already been played;

(h) Have in her or his possession any lottery ticket, or any evidence of any share or right in any lottery ticket, or in any lottery scheme or device, whether such ticket or evidence of share or right represents an interest in a live lottery not yet played or whether it represents, or has represented, an interest in a lottery that has already been played;

(i) Aid or assist in the sale, disposal, or procurement of any lottery ticket, coupon, or share, or any right to any drawing in a lottery;

(j) Have in her or his possession any lottery advertisement, circular, poster, or pamphlet, or any list or schedule of any lottery prizes, gifts, or drawings; or

(k) Have in her or his possession any so-called "run down sheets," tally sheets, or other papers, records, instruments, or paraphernalia designed for use, either directly or indirectly, in, or in connection with, the violation of the laws of this state prohibiting lotteries and gambling.

Provided, that nothing in this section shall prohibit participation in any nationally advertised contest, drawing, game or puzzle of skill or chance for a prize or prizes unless it can be construed as a lottery under this section; and, provided further, that this exemption for national contests shall not apply to any such contest based upon the outcome or results of any horserace, harness race, dograce, or jai alai game.

(2) Any person who is convicted of violating any of the provisions of paragraph (a), paragraph (b), paragraph (c), or paragraph (d) of subsection (1) is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Any person who is convicted of violating any of the provisions of paragraph (e), paragraph (f), paragraph (g), paragraph (i), or paragraph (k) of subsection (1) is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Any person who, having been convicted of violating any provision thereof, thereafter violates any provision thereof is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. The provisions of this section do not apply to bingo as provided for in § 849.0931.

(4) Any person who is convicted of violating any of the provisions of paragraph (h) or paragraph (j) of subsection (1) is guilty of a

misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Any person who, having been convicted of violating any provision thereof, thereafter violates any provision thereof is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

849.091. Chain letters, pyramid clubs, etc., declared a lottery; prohibited; penalties.

(1) The organization of any chain letter club, pyramid club, or other group organized or brought together under any plan or device whereby fees or dues or anything of material value to be paid or given by members thereof are to be paid or given to any other member thereof, which plan or device includes any provision for the increase in such membership through a chain process of new members securing other new members and thereby advancing themselves in the group to a position where such members in turn receive fees, dues, or things of material value from other members, is hereby declared to be a lottery, and whoever shall participate in any such lottery by becoming a member of, or affiliating with, any such group or organization or who shall solicit any person for membership or affiliation in any such group or organization commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) A "pyramid sales scheme," which is any sales or marketing plan or operation whereby a person pays a consideration of any kind, or makes an investment of any kind, in excess of $100 and acquires the opportunity to receive a benefit or thing of value which is not primarily contingent on the volume or quantity of goods, services, or other property sold in bona fide sales to consumers, and which is related to the inducement of additional persons, by himself or herself or others, regardless of number, to participate in the same sales or marketing plan or operation, is hereby declared to be a lottery, and whoever shall participate in any such lottery by becoming a member of or affiliating with, any such group or organization or who shall solicit any person for membership or affiliation in any such group or organization commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. For purposes of this subsection, the term "consideration" and the term "investment" do not include the purchase of goods or services furnished at cost for use in making sales, but not for resale, or time and effort spent in the pursuit of sales or recruiting activities.

849.10. Printing lottery tickets, etc., prohibited.

(1) Except as otherwise provided by law, it is unlawful for any person, in any house, office, shop or building in this state to write, typewrite, print, or publish any lottery ticket or advertisement, circular, bill, poster, pamphlet, list or schedule, announcement or notice, of lottery prizes or drawings or any other matter or thing in any way connected with any lottery drawing, scheme or device, or to set up any type or plate for any such purpose, to be used or distributed in this state, or to be sent out of this state.

(2) Except as otherwise provided by law, it is unlawful for the owner or lessee of any such house, shop or building knowingly to permit the printing, typewriting, writing or publishing therein of any lottery ticket or advertisement, circular, bill, poster, pamphlet, list, schedule, announcement or notice of lottery prizes or drawings, or any other matter or thing in any way connected with any lottery drawing, scheme or device, or knowingly to permit therein the setting up of any type or plate for any such purpose to be used or distributed in this state, or to be sent out of the state.

(3) Nothing in this chapter shall make unlawful the printing or production of any advertisement or any lottery ticket for a lottery conducted in any other state or nation where such lottery is not prohibited by the laws of such state or nation, or the sale of such materials by the manufacturer thereof to any person or entity conducting or participating in the conduct of such a lottery in any other state or nation. This section does not authorize any advertisement within Florida relating to lotteries of any other state or nation, or the sale or resale within Florida of such lottery tickets, chances, or shares to individuals, or any other acts otherwise in violation of any laws of the state.

(4) Any violation of this section shall be a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

849.11. Plays at games of chance by lot.

Whoever sets up, promotes or plays at any game of chance by lot or with dice, cards, numbers, hazards or any other gambling device whatever for, or for the disposal of money or other thing of value or under the pretext of a sale, gift or delivery thereof, or for any right, share or interest therein, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

849.14. Unlawful to bet on result of trial or contest of skill, etc.

Whoever stakes, bets or wagers any money or other thing of value upon the result of any trial or contest of skill, speed or power or endurance of human or beast, or whoever receives in any manner whatsoever any money or other thing of value staked, bet or wagered, or offered for the purpose of being staked, bet or wagered, by or for any other person upon any such result, or whoever knowingly becomes the custodian or depositary of any money or other thing of value so staked, bet, or wagered upon any such result, or whoever aids, or assists, or abets in any manner in any of such acts all of which are hereby forbidden, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

849.141. Bowling tournaments exempted from chapter.

(1) Nothing contained in this chapter shall be applicable to participation in or the conduct of a bowling tournament conducted at a bowling center which requires the payment of entry fees, from which fees the winner receives a purse or prize.

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

(a) "Bowling tournament" means a contest in which participants engage in the sport of bowling, wherein a heavy ball is bowled along a bowling lane in an attempt to knock over bowling pins, 10 in number, set upright at the far end of the lane, according to specified regulations and rules of the American Bowling Congress, the Womens International Bowling Congress, or the Bowling Proprietors Association of America.

(b) "Bowling center" means a place of business having at least 12 bowling lanes on the premises which are operated for the entertainment of the general public for the purpose of engaging in the sport of bowling.

849.15. Manufacture, sale, possession, etc., of coin-operated devices prohibited.

(1) It is unlawful:

(a) To manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of, or for any person to permit to be placed, maintained, or used or kept in any room, space, or building owned, leased or occupied by the person or under the person's management or control, any slot machine or device or any part thereof; or

(b) To make or to permit to be made with any person any agreement with reference to any slot machine or device, pursuant to which the user thereof, as a result of any element of chance or other outcome unpredictable to him or her, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value.

(2) [Intentionally omitted.]

849.16. Machines or devices which come within provisions of law defined.

(1) As used in this chapter, the term "slot machine or device" means any machine or device or system or network of devices that is adapted for use in such a way that, upon activation, which may be achieved by, but is not limited to, the insertion of any piece of money, coin, account number, code, or other object or information, such device or system is directly or indirectly caused to operate or may be operated and if the user, whether by application of skill or by reason of any element of chance or any other outcome unpredictable by the user, may:

(a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or

(b) Secure additional chances or rights to use such machine, apparatus, or device, even though the device or system may be available for free play or, in addition to any element of chance or unpredictable outcome of such operation, may also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value. The term "slot machine or device" includes, but is not limited to, devices regulated as slot machines pursuant to chapter 551.

(2) This chapter may not be construed, interpreted, or applied to the possession of a reverse vending machine. As used in this section, the term "reverse vending machine" means a machine into which empty beverage containers are deposited for recycling and which provides a payment of money, merchandise, vouchers, or other incentives. At a frequency less than upon the deposit of each beverage container, a reverse vending machine may pay out a random incentive bonus greater than that guaranteed payment in the form of money, merchandise, vouchers,

or other incentives. The deposit of any empty beverage container into a reverse vending machine does not constitute consideration, and a reverse vending machine may not be deemed a slot machine as defined in this section.

(3) There is a rebuttable presumption that a device, system, or network is a prohibited slot machine or device if it is used to display images of games of chance and is part of a scheme involving any payment or donation of money or its equivalent and awarding anything of value.

849.161. Amusement games or machines; when chapter inapplicable.

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

(a) "Amusement games or machines" means games which operate by means of the insertion of a coin, and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons, the cost value of which does not exceed 75 cents on any game played, which may be exchanged for merchandise. The term does not include casino-style games in which the outcome is determined by factors unpredictable by the player or games in which the player may not control the outcome of the game through skill.

(b) "Arcade amusement center" means a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility.

(c) "Game played" means the event occurring from the initial activation of the machine until the results of play are determined without payment of additional consideration. Free replays do not constitute additional consideration.

(d) "Merchandise" means noncash prizes, including toys and novelties. The term does not include cash or any equivalent thereof, including gift cards or certificates, or alcoholic beverages.

(e) "Truck stop" means any dealer registered pursuant to chapter 212, excluding marinas, which:

1. Declared its primary fuel business to be the sale of diesel fuel;

2. Operates a minimum of six functional diesel fuel pumps; and

3. Has coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as bona fide amusement games or machines.

(2) Nothing contained in this chapter shall be taken or construed to prohibit an arcade amusement center or truck stop from operating amusement games or machines in conformance with this section.

(3) This section applies only to games and machines which are operated for the entertainment of the general public and tourists as bona fide amusement games or machines.

(4) This section shall not be construed to authorize any game or device defined as a gambling device in 15 U.S.C. § 1171, which requires identification of each device by permanently affixing seriatim numbering and name, trade name, and date of manufacture under § 1173, and registration with the United States Attorney General, unless excluded from applicability of the chapter under § 1178, or video poker games or any other game or machine that may be construed as a gambling device under Florida law.

(5) This section does not apply to a coin-operated game or device designed and manufactured only for bona fide amusement purposes which game or device may by application of skill entitle the player to replay the game or device at no additional cost, if the game or device: can accumulate and react to no more than 15 free replays; can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay; can make no permanent record, directly or indirectly, of free replays; and is not classified by the United States as a gambling device in 15 U.S.C. § 1171, which requires identification of each device by permanently affixing seriatim numbering and name, trade name, and date of manufacture under § 1173, and registration with the United States Attorney General, unless excluded from applicability of the chapter under § 1178. This subsection shall not be construed to authorize video poker games, or any other game or machine that may be construed as a gambling device under Florida law.

849.17. Confiscation of machines by arresting officer.

Upon the arrest of any person charged with the violation of any of the provisions of §§ 849.15-849.23 the arresting officer shall take into his or her custody any such machine, apparatus or device, and its contents, and the arresting agency, at the place of seizure, shall make a complete and correct list and inventory of all such things so taken into his or her custody, and deliver to the person from whom such article or articles may have been seized, a true copy of the list of

all such articles. The arresting agency shall retain all evidence seized and shall have the same forthcoming at any investigation, prosecution or other proceedings, incident to charges of violation of any of the provisions of §§ 849.15-849.23.

849.23. Penalty for violations of §§ 849.15-849.22.

Whoever shall violate any of the provisions of §§ 849.15-849.22 shall, upon conviction thereof, be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Any person convicted of violating any provision of §§ 849.15-849.22, a second time shall, upon conviction thereof, be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Any person violating any provision of §§ 849.15-849.22 after having been twice convicted already shall be deemed a "common offender," and shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

849.231. Gambling devices; manufacture, sale, purchase or possession unlawful.

(1) Except in instances when the following described implements or apparatus are being held or transported by authorized persons for the purpose of destruction, as hereinafter provided, and except in instances when the following described instruments or apparatus are being held, sold, transported, or manufactured by persons who have registered with the United States Government pursuant to the provisions of Title 15 of the United States Code, §§ 1171 et seq., as amended, so long as the described implements or apparatus are not displayed to the general public, sold for use in Florida, or held or manufactured in contravention of the requirements of 15 U.S.C. §§ 1171 et seq., it shall be unlawful for any person to manufacture, sell, transport, offer for sale, purchase, own, or have in his or her possession any roulette wheel or table, faro layout, crap table or layout, chemin de fer table or layout, chuck-a-luck wheel, bird cage such as used for gambling, bolita balls, chips with house markings, or any other device, implement, apparatus, or paraphernalia ordinarily or commonly used or designed to be used in the operation of gambling houses or establishments, excepting ordinary dice and playing cards.

(2) In addition to any other penalties provided for the violation of this section, any occupational license held by a person found guilty of violating this section shall be suspended for a period not to exceed 5 years.

(3) This section and § 849.05 do not apply to a vessel of foreign registry or a vessel operated under the authority of a country except the United States, while docked in this state or transiting in the territorial waters of this state.

849.232. Property right in gambling devices; confiscation.

There shall be no right of property in any of the implements or devices enumerated or included in § 849.231 and upon the seizure of any such implement, device, apparatus or paraphernalia by an authorized enforcement officer the same shall be delivered to and held by the clerk of the court having jurisdiction of such offenses and shall not be released by such clerk until he or she shall be advised by the prosecuting officer of such court that the said implement is no longer required as evidence and thereupon the said clerk shall deliver the said implement to the sheriff of the county who shall immediately cause the destruction of such implement in the presence of the said clerk or his or her authorized deputy.

849.233. Penalty for violation of § 849.231.

Any person, including any enforcement officer, clerk or prosecuting official who shall violate the provisions of § 849.231 shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

849.235. Possession of certain gambling devices; defense.

(1) It is a defense to any action or prosecution under §§ 849.15-849.233 for the possession of any gambling device specified therein that the device is an antique slot machine and that it is not being used for gambling. For the purpose of this section, an antique slot machine is one which was manufactured at least 20 years prior to such action or prosecution.

(2) Notwithstanding any provision of this chapter to the contrary, upon a successful defense to a prosecution for the possession of a gambling device pursuant to the provisions of this section, the antique slot machine shall be returned to the person from whom it was seized.

849.25. "Bookmaking" defined; penalties; exceptions.

(1) (a) The term "bookmaking" means the act of taking or receiving, while engaged in

the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever.

(b) The following factors shall be considered in making a determination that a person has engaged in the offense of bookmaking:

1. Taking advantage of betting odds created to produce a profit for the bookmaker or charging a percentage on accepted wagers.

2. Placing all or part of accepted wagers with other bookmakers to reduce the chance of financial loss.

3. Taking or receiving more than five wagers in any single day.

4. Taking or receiving wagers totaling more than $500 in any single day, or more than $1,500 in any single week.

5. Engaging in a common scheme with two or more persons to take or receive wagers.

6. Taking or receiving wagers on both sides on a contest at the identical point spread.

7. Any other factor relevant to establishing that the operating procedures of such person are commercial in nature.

(c) The existence of any two factors listed in paragraph (b) may constitute prima facie evidence of a commercial bookmaking operation.

(2) Any person who engages in bookmaking shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Notwithstanding the provisions of § 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(3) Any person who has been convicted of bookmaking and thereafter violates the provisions of this section shall be guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Notwithstanding the provisions of § 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(4) Notwithstanding the provisions of § 777.04, any person who is guilty of conspiracy to commit bookmaking shall be subject to the penalties imposed by subsections (2) and (3).

(5) This section shall not apply to pari-mutuel wagering in Florida as authorized under chapter 550.

(6) This section shall not apply to any prosecutions filed and pending at the time of the passage hereof, but all such cases shall be disposed of under existing laws at the time of the institution of such prosecutions.

849.35. Definitions.

In construing §§ 849.36-849.46 and each and every word, phrase, or part thereof, where the context permits:

(1) The singular includes the plural and vice versa.

(2) Gender-specific language includes the other gender and neuter.

(3) The term "vessel" includes every description of watercraft, vessel or contrivance used, or capable of being used, as a means of transportation in or on water, or in or on the water and in the air.

(4) The term "vehicle" includes every description of vehicle, carriage, animal or contrivance used, or capable of being used, as a means of transportation on land, in the air, or on land and in the air.

(5) The term "gambling paraphernalia" includes every description of apparatus, implement, machine, device or contrivance used in, or in connection with, any violation of the lottery, gaming and gambling statutes, and laws of this state, except facilities and equipment furnished by a public utility in the regular course of business, and which remain the property of such utility while so furnished.

(6) The term "lottery ticket" shall include every ticket, token, emblem, card, paper or other evidence of a chance, interest, prize or share in, or in connection with any lottery, game of chance or hazard or other things in violation of the lottery and gambling statutes and laws of this state (including bolita, cuba, bond, New York bond, butter and eggs, night house and other like and similar operations, but not excluding others). The said term shall also include so-called rundown sheets, tally sheets, and all other papers, records, instruments, and things designed for use, either directly or indirectly, in, or in connection with, the violation of the statutes and laws of this state prohibiting lotteries and gambling in this state.

849.36. Seizure and forfeiture of property used in the violation of lottery and gambling statutes.

(1) Every vessel or vehicle used for, or in connection with, the removal, transporta-

tion, storage, deposit, or concealment of any lottery tickets, or used in connection with any lottery or game in violation of the statutes and laws of this state, shall be subject to seizure and forfeiture, as provided by the Florida Contraband Forfeiture Act.

(2) All gambling paraphernalia and lottery tickets as herein defined used in connection with a lottery, gambling, unlawful game of chance or hazard, in violation of the statutes and laws of this state, found by an officer in searching a vessel or vehicle used in the violation of the gambling laws shall be safely kept so long as it is necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court before whom the case is brought or certified to any other court having jurisdiction, either state or federal.

(3) The presence of any lottery ticket in any vessel or vehicle owned or being operated by any person charged with a violation of the gambling laws of the state, shall be prima facie evidence that such vessel or vehicle was or is being used in connection with a violation of the lottery and gambling statutes and laws of this state and as a means of removing, transporting, depositing, or concealing lottery tickets and shall be sufficient evidence for the seizure of such vessel or vehicle.

(4) The presence of lottery tickets in any room or place, including vessels and vehicles, shall be prima facie evidence that such room, place, vessel, or vehicle, and all apparatus, implements, machines, contrivances, or devices therein, (herein referred to as "gambling paraphernalia") capable of being used in connection with a violation of the lottery and gambling statutes and laws of this state and shall be sufficient evidence for the seizure of such gambling paraphernalia.

(5) It shall be the duty of every peace officer in this state finding any vessel, vehicle, or paraphernalia being used in violation of the statutes and laws of this state as aforesaid to seize and take possession of such property for disposition as hereinafter provided. It shall also be the duty of every peace officer finding any such property being so used, in connection with any lawful search made by her or him, to seize and take possession of the same for disposition as hereinafter provided.

CHAPTER 856
DRUNKENNESS; OPEN HOUSE PARTIES; LOITERING; PROWLING; DESERTION

856.011. Disorderly intoxication.

(1) No person in the state shall be intoxicated and endanger the safety of another person or property, and no person in the state shall be intoxicated or drink any alcoholic beverage in a public place or in or upon any public conveyance and cause a public disturbance.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(3) Any person who shall have been convicted or have forfeited collateral under the provisions of subsection (1) three times in the preceding 12 months shall be deemed a habitual offender and may be committed by the court to an appropriate treatment resource for a period of not more than 60 days. Any peace officer, in lieu of incarcerating an intoxicated person for violation of subsection (1), may take or send the intoxicated person to her or his home or to a public or private health facility, and the law enforcement officer may take reasonable measures to ascertain the commercial transportation used for such purposes is paid for by such person in advance. Any law enforcement officers so acting shall be considered as carrying out their official duty.

856.015. Open house parties.

(1) Definitions.—As used in this section:

(a) "Alcoholic beverage" means distilled spirits and any beverage containing 0.5 percent or more alcohol by volume. The percentage of alcohol by volume shall be determined in accordance with the provisions of § 561.01(4)(b).

(b) "Control" means the authority or ability to regulate, direct, or dominate.

(c) "Drug" means a controlled substance, as that term is defined in §§ 893.02(4) and 893.03.

(d) "Minor" means an individual not legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562.

(e) "Open house party" means a social gathering at a residence.

(f) "Person" means an individual 18 years of age or older.

(g) "Residence" means a home, apartment, condominium, or other dwelling unit.

(2) A person having control of any residence may not allow an open house party to take place at the residence if any alcoholic beverage or drug is possessed or consumed at the residence by any minor where the person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the residence and where the person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.

(3) The provisions of this section shall not apply to the use of alcoholic beverages at legally protected religious observances or activities.

(4) Any person who violates any of the provisions of subsection (2) commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. A person who violates subsection (2) a second or subsequent time commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(5) If a violation of subsection (2) causes or contributes to causing serious bodily injury, as defined in § 316.1933, or death to the minor, or if the minor causes or contributes to causing serious bodily injury or death to another as a result of the minor's consumption of alcohol or drugs at the open house party, the violation is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

856.021. Loitering or prowling; penalty.

(1) It is unlawful for any person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.

(2) Among the circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern.

(3) Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

856.022. Loitering or prowling by certain offenders in close proximity to children; penalty.

(1) Except as provided in subsection (2), this section applies to a person convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction against a victim who was under 18 years of age at the time of the offense: § 787.01, § 787.02, or § 787.025(2)(c), where the victim is a minor and the offender was not the victim's parent or guardian; § 794.011, excluding § 794.011(10); § 794.05; § 796.03; § 796.035; § 800.04; § 825.1025; § 827.071; § 847.0133; § 847.0135, excluding § 847.0135(6); § 847.0137; § 847.0138; § 847.0145; § 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subsection, if the person has not received a pardon for any felony or similar law of another jurisdiction necessary for the operation of this subsection and a conviction of a felony or similar law of another jurisdiction necessary for the operation of this subsection has not been set aside in any postconviction proceeding.

(2) This section does not apply to a person who has been removed from the requirement to register as a sexual offender or sexual predator pursuant to § 943.04354.

(3) A person described in subsection (1) commits loitering and prowling by a person convicted of a sexual offense against a minor if, in committing loitering and prowling, he or she was within 300 feet of a place where children were congregating.

(4) It is unlawful for a person described in subsection (1) to:

(a) Knowingly approach, contact, or communicate with a child under 18 years of age in any public park building or on real property comprising any public park or playground with the intent to engage in conduct of a sexual nature or to make a communication of any type with any content of a sexual nature. This paragraph applies only to a person

described in subsection (1) whose offense was committed on or after May 26, 2010.

(b) 1. Knowingly be present in any child care facility or school containing any students in prekindergarten through grade 12 or on real property comprising any child care facility or school containing any students in prekindergarten through grade 12 when the child care facility or school is in operation unless the person had previously provided written notification of his or her intent to be present to the school board, superintendent, principal, or child care facility owner;

2. Fail to notify the child care facility owner or the school principal's office when he or she arrives and departs the child care facility or school; or

3. Fail to remain under direct supervision of a school official or designated chaperone when present in the vicinity of children. As used in this paragraph, the term "school official" means a principal, a school resource officer, a teacher or any other employee of the school, the superintendent of schools, a member of the school board, a child care facility owner, or a child care provider.

(c) A person is not in violation of paragraph (b) if:

1. The child care facility or school is a voting location and the person is present for the purpose of voting during the hours designated for voting; or

2. The person is only dropping off or picking up his or her own children or grandchildren at the child care facility or school.

(5) Any person who violates this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

856.031. Arrest without warrant.

Any sheriff, police officer, or other law enforcement officer may arrest any suspected loiterer or prowler without a warrant in case delay in procuring one would probably enable such suspected loiterer or prowler to escape arrest.

CHAPTER 859
POISONS; ADULTERATED DRUGS

859.01. Poisoning food or water.

Whoever introduces, adds, or mingles any poison, bacterium, radioactive material, virus, or chemical compound with food, drink, medicine, or any product designed to be ingested, consumed, or applied to the body with intent to kill or injure another person, or willfully poisons or introduces, adds, or mingles any bacterium, radioactive material, virus, or chemical compound into any spring, well, or reservoir of water with such intent, commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

859.02. Selling certain poisons by registered pharmacists and others.

Any violation of the law, relative to sale of poisons, not specially provided for, shall constitute a misdemeanor of the second degree, punishable as provided in § 775.083.

859.04. Provisions concerning poisons.

(1) It is unlawful for any person not a registered pharmacist to retail any poisons enumerated below: Arsenic and all its preparations, corrosive sublimate, white and red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnine, and all other poisonous vegetable alkaloids and their salts, and the essential oil of almonds, opium, and its preparations of opium containing less than two grains to the ounce, aconite, belladonna, colchicum, conium, nux vomica, henbane, savin, ergot, cotton root, cantharides, creosote, veratrum digitalis, and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic and oxalic acids; and she or he shall label the box, vessel, or paper in which said poison is contained with the name of the article, the word "poison," and the name and place of business of the seller.

(2) No person shall deliver or sell any poisons enumerated above unless upon due inquiry it be found that the purchaser is aware of its poisonous character and represents that it is to be used for a legitimate purpose. The provisions of this section shall not apply to the dispensing of poisons in not unusual quantities or doses upon the prescriptions of practitioners of medicine.

(3) Any violation of this section shall render the principal of said store guilty of a misdemeanor of the second degree, punishable as provided in § 775.083. However, this section shall not apply to manufacturers making and selling at wholesale any of the above poisons. Each box, vessel, or paper in which said poison is contained shall be labeled with the name of the article, the word "poison," and the name and place of business of the seller.

CHAPTER 860
OFFENSES CONCERNING AIRCRAFT, MOTOR VEHICLES, VESSELS, AND RAILROADS

860.03. Intoxicated servant of common carrier.

If any person while in charge of a locomotive engine, acting as the conductor or superintendent of a car or train, on the car or train as a brakeman, employed to attend the switches, drawbridges or signal stations on any railway, or acting as captain or pilot on any steamboat shall be intoxicated, the person shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

860.04. Riding or attempting to ride on a railroad train with intent to ride free.

Any person who, without permission of those having authority, with the intention of being transported free, rides or attempts to ride on any railroad train in this state shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

860.05. Unauthorized person interfering with railroad train, cars, or engines.

Any person, other than an employee or authorized agent of the railroad company acting within the line of duty, who shall knowingly or willfully detach or uncouple any train; put on, apply, or tamper with any brake, bell cord, or emergency valve; or otherwise interfere with any train, engine, car, or part thereof is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

860.065. Commercial transportation; penalty for use in commission of a felony.

(1) It is unlawful for any person to attempt to obtain, solicit to obtain, or obtain any means of public or commercial transportation or conveyance, including vessels, aircraft, railroad trains, or commercial vehicles as defined in § 316.003(66), with the intent to use such public or commercial transportation or conveyance to commit any felony or to facilitate the commission of any felony.

(2) Any person who violates the provisions of subsection (1) commits a felony of the third degree, punishable as provided for in § 775.082, § 775.083, or § 775.084.

860.08. Interference with railroad signals prohibited; penalty.

Any person, other than an employee or authorized agent of a railroad company acting within the line of duty, who knowingly or willfully interferes with or removes any railroad signal system used to control railroad operations, any railroad crossing warning devices, or any lantern, light, lamp, torch, flag, fuse, torpedo, or other signal used in connection with railroad operations is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

860.09. Interference with railroad track and other equipment prohibited; penalties.

Any person, other than an employee or authorized agent of a railroad company acting within the line of duty, who knowingly or willfully moves, interferes with, removes, or obstructs any railroad switch, bridge, track, crossties, or other equipment located on the right-of-way or property of a railroad and used in railroad operations is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

860.091. Violations of § 860.05, § 860.08, or § 860.09 resulting in death; penalty.

Any person who violates the provisions of § 860.05, § 860.08, or § 860.09 when such violation results in the death of another person is guilty of homicide as defined in chapter 782, punishable as provided in § 775.082.

860.11. Injuring railroad structures; driving cattle on tracks.

Whoever otherwise wantonly or maliciously injures any bridge, trestle, culvert, cattle guard, or other superstructure of any railroad company or salts the track of any railroad company for the purpose of attracting cattle thereto, or who shall drive cattle thereon, shall be guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

860.121. Crimes against railroad vehicles; penalties.

(1) It shall be unlawful for any person to shoot at, throw any object capable of causing death or great bodily harm at, or place any object capable of causing death or great bodily harm in the path of any railroad train, locomotive, car, caboose, or other railroad vehicle.

(2) (a) Any person who violates subsection (1) with respect to an unoccupied railroad vehicle is guilty of a felony of the third

degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Any person who violates subsection (1) with respect to an occupied railroad vehicle or a railroad vehicle connected thereto is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) Any person who violates subsection (1), if such violation results in great bodily harm, is guilty of a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(d) Any person who violates subsection (1), if such violation results in death, is guilty of homicide as defined in chapter 782, punishable as provided in § 775.082.

860.13. Operation of aircraft while intoxicated or in careless or reckless manner; penalty.

(1) It shall be unlawful for any person:

(a) To operate an aircraft in the air or on the ground or water while under the influence of:

1. Alcoholic beverages;

2. Any substance controlled under chapter 893;

3. Any chemical substance set forth in § 877.111; or

(b) To operate an aircraft in the air or on the ground or water in a careless or reckless manner so as to endanger the life or property of another.

(2) In any prosecution charging careless or reckless operation of aircraft in violation of this section, the court, in determining whether the operation was careless or reckless, shall consider the standards for safe operation of aircraft as prescribed by federal statutes or regulations governing aeronautics.

(3) Violation of this section shall constitute a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) It shall be the duty of any court in which there is a conviction for violation of this statute to report such conviction to the Federal Aviation Administration for its guidance and information with respect to the pilot's certificate.

860.14. Motor vehicle parts and accessories; records of certain purchases.

Every person engaged in the business of buying and selling parts and accessories for motor vehicles who purchases such parts and accessories from any person other than manufacturers, distributors, wholesalers, retailers, or other persons usually and regularly engaged in the business of selling such parts and accessories shall keep a daily record of all such parts and accessories so purchased, which record shall show the date and time of each purchase of such parts and accessories, the name and address of each person from whom such parts and accessories were purchased, the number of the driver's license of such person or, if such person does not have a driver's license, adequate information to properly identify such person, and a detailed description of the parts and accessories purchased from such person, which description shall include all serial and other identifying numbers, if any. Such records shall be retained for not less than 1 year and shall at all times be subject to the inspection of all police or peace officers. Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

860.146. Fake airbags; junk-filled airbag compartment.

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

(a) "Fake airbag" means any item other than an airbag that was designed in accordance with federal safety regulations for a given make, model, and year of motor vehicle as part of a motor vehicle inflatable restraint system.

(b) "Junk-filled airbag compartment" means an airbag compartment that is filled with any substance that does not function in the same manner or to the same extent as an airbag to protect vehicle occupants in a vehicle crash. The term does not include a compartment from which an airbag has deployed if there is no concealment of the deployment.

(2) It is unlawful for anyone to knowingly purchase, sell, or install on any vehicle any fake airbag or junk-filled airbag compartment. Any person who violates this subsection commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

860.16. Aircraft piracy; penalty.

Whoever without lawful authority seizes or exercises control, by force or violence and with wrongful intent, of any aircraft containing a nonconsenting person or persons within this state is guilty of the crime of aircraft piracy, a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

860.17. Tampering with or interfering with motor vehicles or trailers.

Whoever, without authority, willfully, maliciously, or intentionally tampers with, attempts to tamper with, or otherwise interferes with any motor vehicle or trailer of another which results in the cargo or contents of such motor vehicle or trailer becoming unloaded or damaged, or which results in the mechanical functions of such motor vehicle or trailer becoming inoperative or impaired, is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. A second or subsequent conviction of any person violating this section is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

860.20. Outboard motors; identification numbers.

(1) (a) The Department of Highway Safety and Motor Vehicles shall adopt rules specifying the locations and manner in which serial numbers for outboard motors shall be affixed. In adopting such rules, the department shall consider the adequacy of voluntary industry standards, the current state of technology, and the overall purpose of reducing vessel and motor thefts in the state.

(b) Any outboard motor manufactured after October 1, 1985, which is for sale in the state shall comply with the serial number rules promulgated by the department. Any person, firm, or corporation which sells or offers for sale any outboard boat motor manufactured after October 1, 1985, which does not comply with this section is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) (a) It is unlawful for any person to possess any outboard boat motor with the knowledge that the serial number required by subsection (1) has been removed, erased, defaced, or otherwise altered to prevent identification.

(b) It is unlawful for any person to knowingly possess, manufacture, sell or exchange, offer to sell or exchange, supply in blank, or give away any counterfeit manufacturer's outboard motor serial number plate or decal used for the purpose of identification of any outboard motor; to authorize, direct, aid in exchange, or give away such counterfeit manufacturer's outboard motor serial number plate or decal; or to conspire to do any of the foregoing.

(c) Any person who violates any provision of this subsection is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) If any of the serial numbers required by this section to identify ownership of an outboard motor do not exist or have been removed, erased, defaced, or otherwise altered to prevent identification and its true identity cannot be determined, the outboard motor may be seized as contraband property by a law enforcement agency and shall be subject to forfeiture pursuant to §§ 932.701-932.704. Such outboard motor may not be sold or used to propel a vessel on the waters of the state unless the department is directed by written order of a court of competent jurisdiction to issue to the outboard motor a replacement identifying number which shall be affixed to the outboard motor and shall thereafter be used for identification purposes.

CHAPTER 861
OFFENSES RELATED TO PUBLIC ROADS, TRANSPORT, AND WATERS

861.01. Obstructing highway.

Whoever obstructs any public road or established highway by fencing across or into the same or by willfully causing any other obstruction in or to such road or highway, or any part thereof, shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, and the judgment of the court shall also be that the obstruction be removed.

861.011. Obstructing transportation facility.

Any person who obstructs any public transportation facility by fencing across or into it or by willfully causing any other obstruction in or to such transportation facility, or any part thereof, is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, and the judgment of the court shall also be that the obstruction be removed.

861.02. Obstructing watercourse.

Whoever erects or fixes on any navigable watercourse any dam, bridge, hedge, seine, drag, or other obstruction, whereby the navigation of boats drawing 3 feet of water or the passage of fish may be obstructed, shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.083.

861.021. Obstructing channels; misdemeanor.

(1) It is unlawful for any person to place any spiny lobster, crab, or fish trap or set net

or other similar device with a buoy or marker attached so that said buoy or marker obstructs the navigation of boats in channels of the waters of the state which are marked by, and which markers are continuously maintained by, the Coast Guard of the United States.

(2) Any person willfully violating the provision of this section is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

861.08. Obstructing county and settlement roads.

(1) Whoever shall fell, drag, or by any means place a tree, or other obstruction, in or across any county settlement or neighborhood road regularly used, or whoever causes such obstruction to be placed therein, shall remove the same from such road within 6 hours thereafter.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083; provided, that this law shall not apply to pasture fences, gates, nor the improvement of private property.

861.09. Certain vehicles prohibited from using hard-surfaced roads.

(1) It is unlawful for any person to drive, propel, or operate, or to have driven, propelled or operated, over the hard-surfaced public roads or parts of roads of this state any vehicle or implement having wheels that will carry more than 200 pounds per wheel for every vehicle having tires of 1 inch in width, or 500 pounds per wheel for every vehicle having tires of 2 inches in width, or 800 pounds per wheel for every vehicle having tires of 3 inches in width, or 1200 pounds per wheel for every vehicle having tires of 4 inches in width, or 1500 pounds per wheel for every vehicle having tires 5 inches in width, or that will carry any load greater than 6,000 pounds without first providing 1 inch of tire width per wheel for each additional 2,000 pounds, or fraction thereof, or to permit any vehicle or implement or any load or portion of load thereof to drag upon the surface of any hard-surfaced public road or parts of roads; provided, that nothing in this section shall be construed as prohibiting the use of roughened surfaces on rubber tires or on the wheels of farm implements weighing less than 1,000 pounds.

(2) "Hard-surfaced public roads or parts of roads" as used in this section shall be construed to be brick, concrete, asphaltic, sand clay, sand, or bituminous surfaced roads which are maintained by county or state funds.

(3) Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 870
AFFRAYS; RIOTS; ROUTS; UNLAWFUL ASSEMBLIES

870.01. Affrays and riots.

(1) All persons guilty of an affray shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) All persons guilty of a riot, or of inciting or encouraging a riot, shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

870.02. Unlawful assemblies.

If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

870.03. Riots and routs.

If any persons unlawfully assembled demolish, pull down or destroy, or begin to demolish, pull down or destroy, any dwelling house or other building, or any ship or vessel, each of them shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

870.04. Specified officers to disperse riotous assembly.

If any number of persons, whether armed or not, are unlawfully, riotously, or tumultuously assembled in any county, city, or municipality, the sheriff or the sheriff's deputies, or the mayor, or any commissioner, council member, alderman, or police officer of the city or municipality, or any officer or member of the Florida Highway Patrol, or any officer or agent of the Fish and Wildlife Conservation Commission, any beverage enforcement agent, any personnel or representatives of the Department of Law Enforcement or its successor, or any other peace officer, shall go among the persons so assembled, or as near to them as may be done with safety, and shall in the name of the state command all the persons so assembled immediately and peaceably to disperse. If such persons do not thereupon immediately and peaceably disperse, such officers shall command the assistance

of all such persons in seizing, arresting, and securing such persons in custody. If any person present being so commanded to aid and assist in seizing and securing such rioter or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, when required by such officers to depart from the place, refuses and neglects to do so, the person shall be deemed one of the rioters or persons unlawfully assembled, and may be prosecuted and punished accordingly.

870.043. Declaration of emergency.

Whenever the sheriff or designated city official determines that there has been an act of violence or a flagrant and substantial defiance of, or resistance to, a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the jurisdiction affected or a part or parts thereof, he or she may declare that a state of emergency exists within that jurisdiction or any part or parts thereof.

870.044. Automatic emergency measures.

Whenever the public official declares that a state of emergency exists, pursuant to § 870.043, the following acts shall be prohibited during the period of said emergency throughout the jurisdiction:

(1) The sale of, or offer to sell, with or without consideration, any ammunition or gun or other firearm of any size or description.

(2) The intentional display, after the emergency is declared, by or in any store or shop of any ammunition or gun or other firearm of any size or description.

(3) The intentional possession in a public place of a firearm by any person, except a duly authorized law enforcement official or person in military service acting in the official performance of her or his duty.

Nothing contained in this chapter shall be construed to authorize the seizure, taking, or confiscation of firearms that are lawfully possessed, unless a person is engaged in a criminal act.

870.048. Violations.

Any violation of a provision of §§ 870.041-870.047 or of any emergency measure established pursuant thereto shall be a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

870.05. When killing excused.

If, by reason of the efforts made by any of said officers or by their direction to disperse such assembly, or to seize and secure the persons composing the same, who have refused to disperse, any such person or other person present is killed or wounded, the said officers and all persons acting by their order or under their direction, shall be held guiltless and fully justified in law; and if any of said officers or any person acting under or by their direction is killed or wounded, all persons so assembled and all other persons present who when commanded refused to aid and assist said officer shall be held answerable therefor.

870.06. Unauthorized military organizations.

No body of persons, other than the regularly organized land and naval militia of this state, the troops of the United States, and the students of regularly chartered educational institutions where military science is a prescribed part of the course of instruction, shall associate themselves together as a military organization for drill or parade in public with firearms, in this state, without special license from the Governor for each occasion, and application for such license must be approved by the mayor and aldermen of the cities and towns where such organizations may propose to parade. Each person unlawfully engaging in the formation of such military organization, or participating in such drill or parade, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 871
DISTURBING RELIGIOUS AND OTHER ASSEMBLIES

871.01. Disturbing schools and religious and other assemblies.

(1) Whoever willfully interrupts or disturbs any school or any assembly of people met for the worship of God or for any lawful purpose commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) Whoever willfully interrupts or disturbs any assembly of people met for the purpose of acknowledging the death of an individual with a military funeral honors detail pursuant to 10 U.S.C. § 1491 commits a

misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

871.015. Unlawful protests.

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

(a) "Funeral or burial" means a service or ceremony offered or provided in connection with the final disposition, memorialization, [1]interment, entombment, or inurnment of human remains or cremated human remains.

(b) "Funeral procession" has the same meaning as provided in § 316.1974.

(c) "Protest activities" means any action, including picketing, which is undertaken with the intent to interrupt or disturb a funeral or burial.

(2) A person may not knowingly engage in protest activities or knowingly cause protest activities to occur within 500 feet of the property line of a residence, cemetery, funeral home, house of worship, or other location during or within 1 hour before or 1 hour after the conducting of a funeral or burial at that place. This subsection does not prohibit protest activities that occur adjacent to that portion of a funeral procession which extends beyond 500 feet of the property line of the location of the funeral or burial.

(3) A person who violates this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 872
OFFENSES CONCERNING DEAD BODIES AND GRAVES

872.02. Injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties.

(1) A person who willfully and knowingly destroys, mutilates, defaces, injures, or removes any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure or thing placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure before mentioned, or for any enclosure for the burial of the dead, or willfully destroys, mutilates, removes, cuts, breaks, or injures any tree, shrub, or plant placed or being within any such enclosure, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) A person who willfully and knowingly disturbs the contents of a tomb or grave commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) This section shall not apply to any person acting under the direction or authority of the Division of Historical Resources of the Department of State, to cemeteries operating under chapter 497, or to any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents, as described in subsection (1).

(4) For purposes of this section, the term "tomb" includes any mausoleum, columbarium, or belowground crypt.

872.06. Abuse of a dead human body; penalty.

(1) As used in this section, the term "sexual abuse" means:

(a) Anal or vaginal penetration of a dead human body by the sexual organ of a person or by any other object;

(b) Contact or union of the penis, vagina, or anus of a person with the mouth, penis, vagina, or anus of a dead human body; or

(c) Contact or union of a person's mouth with the penis, vagina, or anus of a dead human body.

(2) A person who mutilates, commits sexual abuse upon, or otherwise grossly abuses a dead human body commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Any act done for a bona fide medical purpose or for any other lawful purpose does not under any circumstance constitute a violation of this section.

CHAPTER 874
CRIMINAL GANG ENFORCEMENT AND PREVENTION

874.03. Definitions.

As used in this chapter:

(1) "Criminal gang" means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols, including, but not limited to, terrorist organizations and hate groups.

(a) As used in this subsection, "ongoing" means that the organization was in existence during the time period charged in a petition,

information, indictment, or action for civil injunctive relief.

(b) As used in this subsection, "primary activities" means that a criminal gang spends a substantial amount of time engaged in such activity, although such activity need not be the only, or even the most important, activity in which the criminal gang engages.

(2) "Criminal gang associate" means a person who:

(a) Admits to criminal gang association; or

(b) Meets any single defining criterion for criminal gang membership described in subsection (3).

(3) "Criminal gang member" is a person who meets two or more of the following criteria:

(a) Admits to criminal gang membership.

(b) Is identified as a criminal gang member by a parent or guardian.

(c) Is identified as a criminal gang member by a documented reliable informant.

(d) Adopts the style of dress of a criminal gang.

(e) Adopts the use of a hand sign identified as used by a criminal gang.

(f) Has a tattoo identified as used by a criminal gang.

(g) Associates with one or more known criminal gang members.

(h) Is identified as a criminal gang member by an informant of previously untested reliability and such identification is corroborated by independent information.

(i) Is identified as a criminal gang member by physical evidence.

(j) Has been observed in the company of one or more known criminal gang members four or more times. Observation in a custodial setting requires a willful association. It is the intent of the Legislature to allow this criterion to be used to identify gang members who recruit and organize in jails, prisons, and other detention settings.

(k) Has authored any communication indicating responsibility for the commission of any crime by the criminal gang.

Where a single act or factual transaction satisfies the requirements of more than one of the criteria in this subsection, each of those criteria has thereby been satisfied for the purposes of the statute.

(4) "Criminal gang-related activity" means:

(a) An activity committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purposes of increasing a person's own standing or position within a criminal gang;

(b) An activity in which the participants are identified as criminal gang members or criminal gang associates acting individually or collectively to further any criminal purpose of a criminal gang;

(c) An activity that is identified as criminal gang activity by a documented reliable informant; or

(d) An activity that is identified as criminal gang activity by an informant of previously untested reliability and such identification is corroborated by independent information.

(5) "Electronic communication" has the meaning provided in § 934.02 and includes, but is not limited to, photographs, video, telephone communications, text messages, facsimile, electronic mail messages as defined in § 668.602, and instant message real-time communications with other individuals through the Internet or other means.

(6) "Hate group" means an organization whose primary purpose is to promote animosity, hostility, and malice against a person or persons or against the property of a person or persons because of race, religion, disability, sexual orientation, ethnicity, or national origin.

(7) "Terrorist organization" means any organized group engaged in or organized for the purpose of engaging in terrorism as defined in § 775.30. This definition shall not be construed to prevent prosecution under this chapter of individuals acting alone.

874.045. Arrest and prosecution under other provisions.

Nothing in this chapter shall prohibit the arrest and prosecution of a criminal gang member under chapter 876, chapter 895, chapter 896, § 893.20, or any other applicable provision of law except to the extent otherwise prohibited pursuant to a statutory or constitutional provision.

874.05. Causing, encouraging, soliciting, or recruiting criminal gang membership.

(1) (a) Except as provided in paragraph (b), a person who intentionally causes, encourages, solicits, or recruits another person to become a criminal gang member where a condition of membership or continued membership is the commission of any crime commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) A person who commits a second or subsequent violation of this subsection commits a felony of the second degree, punish-

able as provided in § 775.082, § 775.083, or § 775.084.

(2) (a) Except as provided in paragraph (b), a person who intentionally causes, encourages, solicits, or recruits another person under 13 years of age to become a criminal gang member where a condition of membership or continued membership is the commission of any crime commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) A person who commits a second or subsequent violation of this subsection commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

874.08. Criminal gang activity and recruitment; forfeiture.

All profits, proceeds, and instrumentalities of criminal gang activity and all property used or intended or attempted to be used to facilitate the criminal activity of any criminal gang or of any criminal gang member; and all profits, proceeds, and instrumentalities of criminal gang recruitment and all property used or intended or attempted to be used to facilitate criminal gang recruitment are subject to seizure and forfeiture under the Florida Contraband Forfeiture Act, § 932.704.

874.10. Directing the activities of a criminal gang.

Any person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in § 775.082, § 775.083, or § 775.084.

874.11. Electronic communication.

Any person who, for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, uses electronic communication to intimidate or harass other persons, or to advertise his or her presence in the community, including, but not limited to, such activities as distributing, selling, transmitting, or posting on the Internet any audio, video, or still image of criminal activity, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

874.12. Identification documents; unlawful possession or creation.

(1) For purposes of this section, the term "identification document" includes, but is not limited to, a social security card or number, a birth certificate, a driver's license, an identification card issued pursuant to § 322.051, a naturalization certificate, an alien registration number, a passport, and any access credentials for a publicly operated facility or an infrastructure facility covered under 18 U.S.C. § 2332f.

(2) Any person possessing or manufacturing any blank, forged, stolen, fictitious, fraudulent, counterfeit, or otherwise unlawfully issued identification document for the purpose of benefiting, promoting, or furthering the interests of a criminal gang commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

CHAPTER 876
CRIMINAL ANARCHY, TREASON, AND OTHER CRIMES AGAINST PUBLIC ORDER

876.11. Public place defined.

For the purpose of §§ 876.11-876.21 the term "public place" includes all walks, alleys, streets, boulevards, avenues, lanes, roads, highways, or other ways or thoroughfares dedicated to public use or owned or maintained by public authority; and all grounds and buildings owned, leased by, operated, or maintained by public authority.

876.12. Wearing mask, hood, or other device on public way.

No person or persons over 16 years of age shall, while wearing any mask, hood, or device whereby any portion of the face is so hidden, concealed, or covered as to conceal the identity of the wearer, enter upon, or be or appear upon any lane, walk, alley, street, road, highway, or other public way in this state.

876.13. Wearing mask, hood, or other device on public property.

No person or persons shall in this state, while wearing any mask, hood, or device whereby any portion of the face is so hidden, concealed, or covered as to conceal the identity of the wearer, enter upon, or be, or appear upon or within the public property of any municipality or county of the state.

876.14. Wearing mask, hood, or other device on property of another.

No person or persons over 16 years of age shall, while wearing a mask, hood, or device whereby any portion of the face is so hidden, concealed, or covered as to conceal the identity of the wearer, demand entrance or admission or enter or come upon or into the prem-

ises, enclosure, or house of any other person in any municipality or county of this state.

876.15. Wearing mask, hood, or other device at demonstration or meeting.

No person or persons over 16 years of age, shall, while wearing a mask, hood, or device whereby any portion of the face is so hidden, concealed, or covered as to conceal the identity of the wearer, hold any manner of meeting, make any demonstration upon the private property of another unless such person or persons shall have first obtained from the owner or occupier of the property his or her written permission to so do.

876.155. Applicability; §§ 876.12-876.15.

The provisions of §§ 876.12-876.15 apply only if the person was wearing the mask, hood, or other device:

(1) With the intent to deprive any person or class of persons of the equal protection of the laws or of equal privileges and immunities under the laws or for the purpose of preventing the constituted authorities of this state or any subdivision thereof from, or hindering them in, giving or securing to all persons within this state the equal protection of the laws;

(2) With the intent, by force or threat of force, to injure, intimidate, or interfere with any person because of the person's exercise of any right secured by federal, state, or local law or to intimidate such person or any other person or any class of persons from exercising any right secured by federal, state, or local law;

(3) With the intent to intimidate, threaten, abuse, or harass any other person; or

(4) While she or he was engaged in conduct that could reasonably lead to the institution of a civil or criminal proceeding against her or him, with the intent of avoiding identification in such a proceeding.

876.16. Sections 876.11-876.15; exemptions.

The following persons are exempted from the provisions of §§ 876.11-876.15:

(1) Any person or persons wearing traditional holiday costumes;

(2) Any person or persons engaged in trades and employment where a mask is worn for the purpose of ensuring the physical safety of the wearer, or because of the nature of the occupation, trade, or profession;

(3) Any person or persons using masks in theatrical productions, including use in Gasparilla celebrations and masquerade balls;

(4) Persons wearing gas masks prescribed in emergency management drills and exercises.

876.37. Sabotage prevention law; definitions.

As used in §§ 876.37-876.50:

(1) "Highway" includes any private or public street, way, or other place used for travel to or from property.

(2) "Highway commissioners" means any individual, board, or other body having authority under then-existing law to discontinue the use of the highway which it is desired to restrict or close to public use and travel.

(3) "Public utility" includes any pipeline, gas, electric, heat, water, oil, sewer, telephone, telegraph, radio, railway, railroad, airplane, transportation, communication, or other system, by whomsoever owned or operated for public use.

876.38. Intentional injury to or interference with property.

Whoever intentionally destroys, impairs, or injures, or interferes or tampers with, real or personal property and such act hinders, delays, or interferes with the preparation of the United States, any country with which the United States shall then maintain friendly relations, or any of the states for defense or for war, or with the prosecution of war by the United States, is guilty of a life felony, punishable as provided in § 775.082.

876.40. Attempts.

Whoever attempts to commit any of the crimes defined by this law shall be liable to one-half the punishment by imprisonment, or by fine, or both, as prescribed in § 876.39 hereof. In addition to the acts which constitute an attempt to commit a crime under the law of this state, the solicitation or incitement of another to commit any of the crimes defined by this law not followed by the commission of the crime, the collection or assemblage of any materials with the intent that the same are to be used then or at a later time in the commission of such crime, or the entry, with or without permission, of a building, enclosure, or other premises of another with the intent to commit any such crime therein or thereon shall constitute an attempt to commit such crime.

876.41. Conspirators.

If two or more persons conspire to commit any crime defined by this law, each of such persons is guilty of conspiracy and subject to the same punishment as if he or she had committed the crime which he or she conspired

to commit, whether or not any act be done in furtherance of the conspiracy. It shall not constitute any defense or ground of suspension of judgment, sentence or punishment on behalf of any person prosecuted under this section, that any of his or her fellow conspirators has been acquitted, has not been arrested or convicted, is not amenable to justice or has been pardoned or otherwise discharged before or after conviction.

876.43. Unlawful entry on property.

Any individual, partnership, association, corporation, municipal corporation or state or any political subdivision thereof engaged in, or preparing to engage in, the manufacture, transportation or storage of any product to be used in the preparation of the United States, or of any country with which the United States shall then maintain friendly relations, or of any of the states for defense or for war or in the prosecution of war by the United States, or the manufacture, transportation, distribution or storage of gas, oil, coal, electricity or water, or any of said natural or artificial persons operating any public utility, whose property, except where it fronts on water or where there are entrances for railway cars, vehicles, persons or things, is surrounded by a fence or wall, or a fence or wall and buildings, may post around her or his or its property at each gate, entrance, dock or railway entrance and every 100 feet of waterfront a sign reading "No Entry Without Permission." Whoever without permission of such owner shall willfully enter upon premises so posted shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

876.44. Questioning and detaining suspected persons.

Any peace officer or any other person employed as a person who watches or guards or in a supervisory capacity on premises posted as provided in § 876.43 may stop any person found on any premises to which entry without permission is forbidden by § 876.43 and may detain the person for the purpose of demanding, and may demand, of the person, his or her name, address and business in such place. If said peace officer or employee has reason to believe from the answers of the person so interrogated that such person has no right to be in such place, said peace officer shall forthwith release such person or he or she may arrest such person without a warrant on the charge of violating the provisions of § 876.43; and said employee shall forthwith release such person or turn him or her over to a peace officer, who may arrest the person without a warrant on the charge of violating the provisions of § 876.43.

876.52. Public mutilation of flag.

Whoever publicly mutilates, defaces, or tramples upon or burns with intent to insult any flag, standard, colors, or ensign of the United States or of Florida shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

CHAPTER 877
MISCELLANEOUS CRIMES

877.03. Breach of the peace; disorderly conduct.

Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

877.08. Coin-operated vending machines and parking meters; defined; prohibited acts, penalties.

(1) A "coin-operated vending machine" or "parking meter," for the purposes of this act, is defined to be any machine, contrivance, or device that is adapted for use in such a way that, as the result of the insertion of any piece of money, coin, or other object, the machine, contrivance, parking meter, or device is caused to operate or may be operated and by reason of such operation the user may become entitled to receive any food, drink, telephone or telegraph service, insurance protection, parking privilege or any other personal property, service, protection, right or privilege of any kind or nature whatsoever.

(2) Whoever maliciously or mischievously molests, opens, breaks, injures, damages, or inserts any part of her or his body or any instrument into any coin-operated vending machine or parking meter of another, shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(3) Whoever molests, opens, breaks, injures, damages, or inserts any part of her or his body or any instrument into any coin-operated vending machine or parking meter of another with intent to commit larceny is guilty of a misdemeanor of the second de-

gree, punishable as provided in § 775.082 or § 775.083.

(4) Whoever violates subsection (3) a second or subsequent time commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

877.111. Inhalation, ingestion, possession, sale, purchase, or transfer of harmful chemical substances; penalties.

(1) It is unlawful for any person to inhale or ingest, or to possess with intent to breathe, inhale, or drink, any compound, liquid, or chemical containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, ethylene glycol monomethyl ether acetate, cyclohexanone, nitrous oxide, diethyl ether, alkyl nitrites (butyl nitrite), or any similar substance for the purpose of inducing a condition of intoxication or which distorts or disturbs the auditory, visual, or mental processes. This section does not apply to the possession and use of these substances as part of the care or treatment of a disease or injury by a practitioner licensed under chapter 458, chapter 459, part I of chapter 464, or chapter 466 or to beverages controlled by the provisions of chapter 561, chapter 562, chapter 563, chapter 564, or chapter 565.

(2) It is unlawful for any person to possess, buy, sell, or otherwise transfer any chemical substance specified in subsection (1) for the purpose of inducing or aiding any other person to violate the provisions of subsection (1).

(3) Except as provided in subsection (4) with respect to nitrous oxide, any person who violates subsection (1) or subsection (2) commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(4) Any person who knowingly distributes, sells, purchases, transfers, or possesses more than 16 grams of nitrous oxide commits a felony of the third degree which shall be known as unlawful distribution of nitrous oxide, punishable as provided in § 775.082, § 775.083, or § 775.084. For purposes of this subsection, in addition to proving by any other means that nitrous oxide was knowingly possessed, distributed, sold, purchased, or transferred, proof that any person discharged, or aided another in discharging, nitrous oxide to inflate a balloon or any other object suitable for subsequent inhalation creates an inference of the person's knowledge that the nitrous oxide's use was for an unlawful purpose. This subsection does not apply to the possession and use of nitrous oxide as part of the care and treatment of a disease or injury by a practitioner licensed under chapter 458, chapter 459, chapter 464, chapter 466, or chapter 474; as a food-processing propellant; as a semiconductor oxidizer; as an analytical chemistry oxidizer in atomic absorption spectrometry; in the production of chemicals used to inflate airbags; as an oxidizer for chemical production, combustion, or jet propulsion; or as a motor vehicle induction additive when mixed with sulphur dioxide.

(5) Any person who violates any of the provisions of this section may, in the discretion of the trial judge, be required to participate in a substance abuse services program approved or regulated by the Department of Children and Family Services pursuant to the provisions of chapter 397, provided the director of the program approves the placement of the defendant in the program. Such required participation may be imposed in addition to, or in lieu of, any penalty or probation otherwise prescribed by law. However, the total time of such penalty, probation, and program participation shall not exceed the maximum length of sentence possible for the offense.

877.13. Educational institutions or school boards; penalty for disruption.

(1) It is unlawful for any person:

(a) Knowingly to disrupt or interfere with the lawful administration or functions of any educational institution, school board, or activity on school board property in this state.

(b) Knowingly to advise, counsel, or instruct any school pupil or school employee to disrupt any school or school board function, activity on school board property, or classroom.

(c) Knowingly to interfere with the attendance of any other school pupil or school employee in a school or classroom.

(d) To conspire to riot or to engage in any school campus or school function disruption or disturbance which interferes with the educational processes or with the orderly conduct of a school campus, school, or school board function or activity on school board property.

(2) This section shall apply to all educational institutions, school boards, and functions or activities on school board property; however, nothing herein shall deny public employees the opportunity to exercise their rights pursuant to part II of chapter 447.

(3) Any person who violates the provisions of this section is guilty of a misdemeanor of

the second degree, punishable as provided in § 775.082 or § 775.083.

877.15. Failure to control or report dangerous fire.

Any person who knows, or has reasonable grounds to believe, that a fire is endangering the life or property of another, and who fails to take reasonable measures to put out or control the fire when the person can do so without substantial risk to himself or herself, or who fails to give a prompt fire alarm, is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, if:

(1) The person knows that he or she is under an official, contractual, or other legal duty to control or combat the fire; or

(2) The fire was started lawfully by the person or with his or her assent and was started on property in his or her custody or control.

877.18. Identification card or document purporting to contain applicant's age or date of birth; penalties for failure to comply with requirements for sale or issuance.

(1) It is unlawful for any person, except a governmental agency or instrumentality, to sell or issue, or to offer to sell or issue, in this state any identification card or document purporting to contain the age or date of birth of the person in whose name it was issued, unless:

(a) Prior to selling or issuing such card or document, the person has first obtained from the applicant and retains for a period of 3 years from the date of sale:

1. An authenticated or certified copy of proof of age as provided in § 1003.21(4); and

2. A notarized affidavit from the applicant attesting to the applicant's age and that the proof-of-age document required by subparagraph 1. is for such applicant.

(b) Prior to offering to sell such cards in this state, the person has included in any offer for sale of identification cards or documents that such cards cannot be sold or issued without the applicants' first submitting the documents required by paragraph (a).

(c) The identification card or document contains the business name and street address of the person selling or issuing such card or document.

(2) For the purposes of this section, the term "offer to sell" includes every inducement, solicitation, attempt, or printed or media advertisement to encourage a person to purchase an identification card.

(3) All records required to be maintained by this section shall be available for inspection without warrant upon reasonable demand by any law enforcement officer, including, but not limited to, a state attorney investigator or an investigator for the Division of Alcoholic Beverages and Tobacco.

(4) A person who violates the provisions of this section is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. The failure to produce the documents required by subsection (1), upon lawful request therefor, is prima facie evidence of a violation of this section.

(5) The state attorney for any county in which a violation of this section occurs or the Attorney General may enjoin any sale or offer for sale in violation of this section by temporary and permanent injunction by application to any court of competent jurisdiction.

CHAPTER 893
DRUG ABUSE PREVENTION AND CONTROL

893.02. Definitions.

The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a person or animal.

(2) "Analog" or "chemical analog" means a structural derivative of a parent compound that is a controlled substance.

(3) "Cannabis" means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

(4) "Controlled substance" means any substance named or described in Schedules I-V of § 893.03. Laws controlling the manufacture, distribution, preparation, dispensing, or administration of such substances are drug abuse laws.

(5) "Cultivating" means the preparation of any soil or hydroponic medium for the planting of a controlled substance or the tending and care or harvesting of a controlled substance.

(6) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled

substance, whether or not there is an agency relationship.

(7) "Dispense" means the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer thereof or to one who represents that it is his or her intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user.

(8) "Distribute" means to deliver, other than by administering or dispensing, a controlled substance.

(9) "Distributor" means a person who distributes.

(10) "Department" means the Department of Health.

(11) "Homologue" means a chemical compound in a series in which each compound differs by one or more alkyl functional groups on an alkyl side chain.

(12) "Hospital" means an institution for the care and treatment of the sick and injured, licensed pursuant to the provisions of chapter 395 or owned or operated by the state or Federal Government.

(13) "Laboratory" means a laboratory approved by the Drug Enforcement Administration as proper to be entrusted with the custody of controlled substances for scientific, medical, or instructional purposes or to aid law enforcement officers and prosecuting attorneys in the enforcement of this chapter.

(14) "Listed chemical" means any precursor chemical or essential chemical named or described in § 893.033.

(15) (a) "Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.

2. A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.

(b) "Manufacturer" means and includes every person who prepares, derives, produces, compounds, or repackages any drug as defined by the Florida Drug and Cosmetic Act. However, this definition does not apply to manufacturers of patent or proprietary preparations as defined in the Florida Pharmacy Act. Pharmacies, and pharmacists employed thereby, are specifically excluded from this definition.

(16) "Mixture" means any physical combination of two or more substances.

(17) "Patient" means an individual to whom a controlled substance is lawfully dispensed or administered pursuant to the provisions of this chapter.

(18) "Pharmacist" means a person who is licensed pursuant to chapter 465 to practice the profession of pharmacy in this state.

(19) "Possession" includes temporary possession for the purpose of verification or testing, irrespective of dominion or control.

(20) "Potential for abuse" means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being:

(a) Used in amounts that create a hazard to the user's health or the safety of the community;

(b) Diverted from legal channels and distributed through illegal channels; or

(c) Taken on the user's own initiative rather than on the basis of professional medical advice.

Proof of potential for abuse can be based upon a showing that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or occasional instances.

(21) "Practitioner" means a physician licensed pursuant to chapter 458, a dentist licensed pursuant to chapter 466, a veterinarian licensed pursuant to chapter 474, an osteopathic physician licensed pursuant to chapter 459, a naturopath licensed pursuant to chapter 462, a certified optometrist licensed pursuant to chapter 463, or a podiatric physician licensed pursuant to chapter 461, provided such practitioner holds a valid federal controlled substance registry number.

(22) "Prescription" means and includes an order for drugs or medicinal supplies written, signed, or transmitted by word of mouth, telephone, telegram, or other means of com-

munication by a duly licensed practitioner licensed by the laws of the state to prescribe such drugs or medicinal supplies, issued in good faith and in the course of professional practice, intended to be filled, compounded, or dispensed by another person licensed by the laws of the state to do so, and meeting the requirements of § 893.04. The term also includes an order for drugs or medicinal supplies so transmitted or written by a physician, dentist, veterinarian, or other practitioner licensed to practice in a state other than Florida, but only if the pharmacist called upon to fill such an order determines, in the exercise of his or her professional judgment, that the order was issued pursuant to a valid patient-physician relationship, that it is authentic, and that the drugs or medicinal supplies so ordered are considered necessary for the continuation of treatment of a chronic or recurrent illness. However, if the physician writing the prescription is not known to the pharmacist, the pharmacist shall obtain proof to a reasonable certainty of the validity of said prescription. A prescription order for a controlled substance shall not be issued on the same prescription blank with another prescription order for a controlled substance which is named or described in a different schedule, nor shall any prescription order for a controlled substance be issued on the same prescription blank as a prescription order for a medicinal drug, as defined in § 465.003(8), which does not fall within the definition of a controlled substance as defined in this act.

(23) "Wholesaler" means any person who acts as a jobber, wholesale merchant, or broker, or an agent thereof, who sells or distributes for resale any drug as defined by the Florida Drug and Cosmetic Act. However, this definition does not apply to persons who sell only patent or proprietary preparations as defined in the Florida Pharmacy Act. Pharmacies, and pharmacists employed thereby, are specifically excluded from this definition.

893.03. Standards and schedules.

The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, or trade name designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. § 1308.22, styled "Excluded Substances"; 21 C.F.R. § 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. § 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. § 1308.34, styled "Exempt Anabolic Steroid Products."

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

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetyl-alpha-methylfentanyl.
2. Acetylmethadol.
3. Allylprodine.
4. Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
5. Alphamethadol.
6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).
7. Alpha-methylthiofentanyl.
8. Alphameprodine.
9. Benzethidine.
10. Benzylfentanyl.
11. Betacetylmethadol.
12. Beta-hydroxyfentanyl.
13. Beta-hydroxy-3-methylfentanyl.
14. Betameprodine.
15. Betamethadol.
16. Betaprodine.
17. Clonitazene.
18. Dextromoramide.
19. Diampromide.
20. Diethylthiambutene.
21. Difenoxin.
22. Dimenoxadol.
23. Dimepheptanol.
24. Dimethylthiambutene.
25. Dioxaphetyl butyrate.
26. Dipipanone.
27. Ethylmethylthiambutene.
28. Etonitazene.
29. Etoxeridine.
30. Flunitrazepam.
31. Furethidine.
32. Hydroxypethidine.
33. Ketobemidone.
34. Levomoramide.
35. Levophenacylmorphan.

36. 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
37. 3-Methylfentanyl (N- [3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
38. 3-Methylthiofentanyl.
39. Morpheridine.
40. Noracymethadol.
41. Norlevorphanol.
42. Normethadone.
43. Norpipanone.
44. Para-Fluorofentanyl.
45. Phenadoxone.
46. Phenampromide.
47. Phenomorphan.
48. Phenoperidine.
49. 1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).
50. Piritramide.
51. Proheptazine.
52. Properidine.
53. Propiram.
54. Racemoramide.
55. Thenylfentanyl.
56. Thiofentanyl.
57. Tilidine.
58. Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following substances, their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
1. Acetorphine.
2. Acetyldihydrocodeine.
3. Benzylmorphine.
4. Codeine methylbromide.
5. Codeine-N-Oxide.
6. Cyprenorphine.
7. Desomorphine.
8. Dihydromorphine.
9. Drotebanol.
10. Etorphine (except hydrochloride salt).
11. Heroin.
12. Hydromorphinol.
13. Methyldesorphine.
14. Methyldihydromorphine.
15. Monoacetylmorphine.
16. Morphine methylbromide.
17. Morphine methylsulfonate.
18. Morphine-N-Oxide.
19. Myrophine.
20. Nicocodine.
21. Nicomorphine.
22. Normorphine.
23. Pholcodine.
24. Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of their salts, isomers, including optical, positional, or geometric isomers, and salts of isomers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
1. Alpha-ethyltryptamine.
2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-methylaminorex).
3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
4. 4-Bromo-2,5-dimethoxyamphetamine.
5. 4-Bromo-2,5-dimethoxyphenethylamine.
6. Bufotenine.
7. Cannabis.
8. Cathinone.
9. Diethyltryptamine.
10. 2,5-Dimethoxyamphetamine.
11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
12. Dimethyltryptamine.
13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine analog of phencyclidine).
14. N-Ethyl-3-piperidyl benzilate.
15. N-ethylamphetamine.
16. Fenethylline.
17. N-Hydroxy-3,4-methylenedioxyamphetamine.
18. Ibogaine.
19. Lysergic acid diethylamide (LSD).
20. Mescaline.
21. Methcathinone.
22. 5-Methoxy-3,4-methylenedioxyamphetamine.
23. 4-methoxyamphetamine.
24. 4-methoxymethamphetamine.
25. 4-Methyl-2,5-dimethoxyamphetamine.
26. 3,4-Methylenedioxy-N-ethylamphetamine.
27. 3,4-Methylenedioxyamphetamine.
28. N-Methyl-3-piperidyl benzilate.
29. N,N-dimethylamphetamine.
30. Parahexyl.
31. Peyote.
32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine analog of phencyclidine).
33. Psilocybin.
34. Psilocyn.
35. Salvia divinorum, except for any drug product approved by the United States Food and Drug Administration which contains Salvia divinorum or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, es-

ters, ethers, and salts is possible within the specific chemical designation.

36. Salvinorin A, except for any drug product approved by the United States Food and Drug Administration which contains Salvinorin A or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

37. Tetrahydrocannabinols.

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

39. 3,4,5-Trimethoxyamphetamine.

40. 3,4-Methylenedioxymethcathinone.

41. 3,4-Methylenedioxypyrovalerone (MDPV).

42. Methylmethcathinone.

43. Methoxymethcathinone.

44. Fluoromethcathinone.

45. Methylethcathinone.

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

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

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

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

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

51. BZP (Benzylpiperazine).

52. Fluorophenylpiperazine.

53. Methylphenylpiperazine.

54. Chlorophenylpiperazine.

55. Methoxyphenylpiperazine.

56. DBZP (1,4-dibenzylpiperazine).

57. TFMPP (3-Trifluoromethylphenylpiperazine).

58. MBDB (Methylbenzodioxolylbutanamine).

59. 5-Hydroxy-alpha-methyltryptamine.

60. 5-Hydroxy-N-methyltryptamine.

61. 5-Methoxy-N-methyl-N-isopropyltryptamine.

62. 5-Methoxy-alpha-methyltryptamine.

63. Methyltryptamine.

64. 5-Methoxy-N,N-dimethyltryptamine.

65. 5-Methyl-N,N-dimethyltryptamine.

66. Tyramine (4-Hydroxyphenethylamine).

67. 5-Methoxy-N,N-Diisopropyltryptamine.

68. DiPT (N,N-Diisopropyltryptamine).

69. DPT (N,N-Dipropyltryptamine).

70. 4-Hydroxy-N,N-diisopropyltryptamine.

71. N,N-Diallyl-5-Methoxytryptamine.

72. DOI (4-Iodo-2,5-dimethoxyamphetamine).

73. DOC (4-Chloro-2,5-dimethoxyamphetamine).

74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).

75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).

76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).

77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).

78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).

79. 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine).

80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).

81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).

82. Ethcathinone.

83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).

84. Naphyrone (naphthylpyrovalerone).

85. N-N-Dimethyl-3,4-methylenedioxycathinone.

86. N-N-Diethyl-3,4-methylenedioxycathinone.

87. 3,4-methylenedioxy-propiophenone.

88. 2-Bromo-3,4-Methylenedioxypropiophenone.

89. 3,4-methylenedioxy-propiophenone-2-oxime.

90. N-Acetyl-3,4-methylenedioxycathinone.

91. N-Acetyl-N-Methyl-3,4-Methylenedioxycathinone.

92. N-Acetyl-N-Ethyl-3,4-Methylenedioxycathinone.

93. Bromomethcathinone.

94. Buphedrone (alpha-methylamino-butyrophenone).

95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).

96. Dimethylcathinone.

97. Dimethylmethcathinone.

98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).

99. (MDPPP) 3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone.

100. (MDPBP) 3,4-Methylenedioxy-alpha-pyrrolidinobutiophenone.

101. Methoxy-alpha-pyrrolidinopropiophenone (MOPPP).

102. Methyl-alpha-pyrrolidinohexiophenone (MPHP).

103. Benocyclidine (BCP) or benzothiophenylcyclohexylpiperidine (BTCP).
104. Fluoromethylaminobutyrophenone (F-MABP).
105. Methoxypyrrolidinobutyrophenone (MeO-PBP).
106. Ethyl-pyrrolidinobutyrophenone (Et-PBP).
107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).
108. Methylethylaminobutyrophenone (Me-EABP).
109. Methylamino-butyrophenone (MABP).
110. Pyrrolidinopropiophenone (PPP).
111. Pyrrolidinobutiophenone (PBP).
112. Pyrrolidinovalerophenone (PVP).
113. Methyl-alpha-pyrrolidinopropiophenone (MPPP).
114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).
115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-naphthalenylmethanone).
116. JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-yl)methanone).
117. JWH-020 (1-heptyl-3-(1-naphthoyl) indole).
118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-yl)methanone).
119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone).
120. JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole).
121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)).
122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-indole).
123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).
124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-yl)ethanone).
125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone).
126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone).
127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-yl)ethanone).
128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).
129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).
130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).
131. HU-308 ([(1R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl] methanol).
132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1- methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione).
133. CB-13 (Naphthalen-1-yl-(4-pentyloxynaphthalen-1-yl)methanone).
134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-undecanamide).
135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-undecanamide).
136. CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).
137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-iodophenyl)methanone).
138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(naphthalen-1-yl)methanone).
139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-yl)methanone).
140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenylethanone).
141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl) pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).
142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl) pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).
143. Pentedrone (2-(methylamino)-1-phenyl-1-pentanone).
144. Fluoroamphetamine.
145. Fluoromethamphetamine.
146. Methoxetamine.
147. Methiopropamine.
148. 4-Methylbuphedrone (2-Methylamino-1-(4-methylphenyl)butan-1-one).
149. APB ((2-aminopropyl)benzofuran).
150. APDB ((2-aminopropyl)-2,3-dihydrobenzofuran).
151. UR-144 ((1-pentyl-1H-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl)methanone).
152. XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone).
153. (1-(5-chloropentyl)-1H-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl)methanone.
154. AKB48 (1-pentyl-N-tricyclo[3.3.1.13,7]dec-1-yl-1H-indazole-3-carboxamide).
155. AM-2233((2-iodophenyl)[1-[(1-methyl-2-piperidinyl)methyl]-1H-indol-3-yl]-methanone).
156. STS-135 (1-(5-fluoropentyl)-N-tricyclo[3.3.1.13,7]dec-1-yl-1H-indole-3-carboxamide).
157. URB-597 ((3'-(aminocarbonyl) [1,1'-biphenyl]-3-yl)- cyclohexylcarbamate).

158. URB-602 ([1,1'-biphenyl]-3-yl-carbamic acid, cyclohexyl ester).
159. URB-754 (6-methyl-2-[(4-methylphenyl)amino]-1-benzoxazin-4-one).
160. 2C-D (2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).
161. 2C-H (2-(2,5-Dimethoxyphenyl)ethanamine).
162. 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine).
163. 2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine).
164. 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine).
165. 3,4-Methylenedioxymethamphetamine (MDMA).
166. PB-22 (1-pentyl-8-quinolinyl ester-1H-indole-3-carboxylic acid).
167. 5-Fluoro PB-22 (8-quinolinyl ester-1-(5-fluoropentyl)-1H-indole-3-carboxylic acid).
168. BB-22 (1-(cyclohexylmethyl)-8-quinolinyl ester-1H-indole-3-carboxylic acid).
169. 5-Fluoro AKB48 (N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide).

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including any of its salts, isomers, optical isomers, salts of their isomers, and salts of these optical isomers whenever the existence of such isomers and salts is possible within the specific chemical designation:

1. 1,4-Butanediol.
2. Gamma-butyrolactone (GBL).
3. Gamma-hydroxybutyric acid (GHB).
4. Methaqualone.
5. Mecloqualone.

(2) SCHEDULE II.—A substance in Schedule II has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence. The following substances are controlled in Schedule II:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis:

1. Opium and any salt, compound, derivative, or preparation of opium, except nalmefene or isoquinoline alkaloids of opium, including, but not limited to the following:

a. Raw opium.
b. Opium extracts.
c. Opium fluid extracts.
d. Powdered opium.
e. Granulated opium.
f. Tincture of opium.
g. Codeine.
h. Ethylmorphine.
i. Etorphine hydrochloride.
j. Hydrocodone.
k. Hydromorphone.
l. Levo-alphacetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
m. Metopon (methyldihydromorphinone).
n. Morphine.
o. Oxycodone.
p. Oxymorphone.
q. Thebaine.

2. Any salt, compound, derivative, or preparation of a substance which is chemically equivalent to or identical with any of the substances referred to in subparagraph 1., except that these substances shall not include the isoquinoline alkaloids of opium.

3. Any part of the plant of the species Papaver somniferum, L.

4. Cocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Alfentanil.
2. Alphaprodine.
3. Anileridine.
4. Bezitramide.
5. Bulk propoxyphene (nondosage forms).
6. Carfentanil.
7. Dihydrocodeine.
8. Diphenoxylate.
9. Fentanyl.
10. Isomethadone.
11. Levomethorphan.
12. Levorphanol.
13. Metazocine.
14. Methadone.
15. Methadone-Intermediate,4-cyano-2-dimethylamino-4,4-diphenylbutane.

16. Moramide-Intermediate,2-methyl-3-morpholoino-1,1-diphenylpropane-carboxylic acid.
17. Nabilone.
18. Pethidine (meperidine).
19. Pethidine-Intermediate-A,4-cyano-1-methyl-4-phenylpiperidine.
20. Pethidine-Intermediate-B,ethyl-4-phenylpiperidine-4-carboxylate.
21. Pethidine-Intermediate-C,1-methyl-4- phenylpiperidine-4-carboxylic acid.
22. Phenazocine.
23. Phencyclidine.
24. 1-Phenylcyclohexylamine.
25. Piminodine.
26. 1-Piperidinocyclohexanecarbonitrile.
27. Racemethorphan.
28. Racemorphan.
29. Sufentanil.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, optical isomers, salts of their isomers, and salts of their optical isomers:
1. Amobarbital.
2. Amphetamine.
3. Glutethimide.
4. Methamphetamine.
5. Methylphenidate.
6. Pentobarbital.
7. Phenmetrazine.
8. Phenylacetone.
9. Secobarbital.

(3) SCHEDULE III.—A substance in Schedule III has a potential for abuse less than the substances contained in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. The following substances are controlled in Schedule III:

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant or stimulant effect on the nervous system:

1. Any substance which contains any quantity of a derivative of barbituric acid, including thiobarbituric acid, or any salt of a derivative of barbituric acid or thiobarbituric acid, including, but not limited to, butabarbital and butalbital.
2. Benzphetamine.
3. Chlorhexadol.
4. Chlorphentermine.
5. Clortermine.
6. Lysergic acid.
7. Lysergic acid amide.
8. Methyprylon.
9. Phendimetrazine.
10. Sulfondiethylmethane.
11. Sulfonethylmethane.
12. Sulfonmethane.
13. Tiletamine and zolazepam or any salt thereof.

(b) Nalorphine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following controlled substances or any salts thereof:

1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.
3. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients that are not controlled substances.
5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

For purposes of charging a person with a violation of § 893.135 involving any controlled substance described in subparagraph 3. or subparagraph 4., the controlled sub-

stance is a Schedule III controlled substance pursuant to this paragraph but the weight of the controlled substance per milliliters or per dosage unit is not relevant to the charging of a violation of § 893.135. The weight of the controlled substance shall be determined pursuant to § 893.135(6).

(d) Anabolic steroids.

1. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth and includes:

a. Androsterone.
b. Androsterone acetate.
c. Boldenone.
d. Boldenone acetate.
e. Boldenone benzoate.
f. Boldenone undecylenate.
g. Chlorotestosterone (4-chlortestosterone).
h. Clostebol.
i. Dehydrochlormethyltestosterone.
j. Dihydrotestosterone (4-dihydrotestosterone).
k. Drostanolone.
l. Ethylestrenol.
m. Fluoxymesterone.
n. Formebulone (formebolone).
o. Mesterolone.
p. Methandienone.
q. Methandranone.
r. Methandriol.
s. Methandrostenolone.
t. Methenolone.
u. Methyltestosterone.
v. Mibolerone.
w. Nandrolone.
x. Norethandrolone.
y. Nortestosterone.
z. Nortestosterone decanoate.
aa. Nortestosterone phenylpropionate.
bb. Nortestosterone propionate.
cc. Oxandrolone.
dd. Oxymesterone.
ee. Oxymetholone.
ff. Stanolone.
gg. Stanozolol.
hh. Testolactone.
ii. Testosterone.
jj. Testosterone acetate.
kk. Testosterone benzoate.
ll. Testosterone cypionate.
mm. Testosterone decanoate.
nn. Testosterone enanthate.
oo. Testosterone isocaproate.
pp. Testosterone oleate.
qq. Testosterone phenylpropionate.
rr. Testosterone propionate.
ss. Testosterone undecanoate.
tt. Trenbolone.
uu. Trenbolone acetate.
vv. Any salt, ester, or isomer of a drug or substance described or listed in this subparagraph if that salt, ester, or isomer promotes muscle growth.

2. The term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the United States Secretary of Health and Human Services for such administration. However, any person who prescribes, dispenses, or distributes such a steroid for human use is considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph.

(e) Ketamine, including any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(f) Dronabinol (synthetic THC) in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration.

(g) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under § 505 of the Federal Food, Drug, and Cosmetic Act.

(4) SCHEDULE IV.—A substance in Schedule IV has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule III. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, are controlled in Schedule IV:

(a) Alprazolam.
(b) Barbital.
(c) Bromazepam.
(d) Camazepam.
(e) Cathine.
(f) Chloral betaine.
(g) Chloral hydrate.

(h) Chlordiazepoxide.
(i) Clobazam.
(j) Clonazepam.
(k) Clorazepate.
(l) Clotiazepam.
(m) Cloxazolam.
(n) Delorazepam.
(o) Propoxyphene (dosage forms).
(p) Diazepam.
(q) Diethylpropion.
(r) Estazolam.
(s) Ethchlorvynol.
(t) Ethinamate.
(u) Ethyl loflazepate.
(v) Fencamfamin.
(w) Fenfluramine.
(x) Fenproporex.
(y) Fludiazepam.
(z) Flurazepam.
(aa) Halazepam.
(bb) Haloxazolam.
(cc) Ketazolam.
(dd) Loprazolam.
(ee) Lorazepam.
(ff) Lormetazepam.
(gg) Mazindol.
(hh) Mebutamate.
(ii) Medazepam.
(jj) Mefenorex.
(kk) Meprobamate.
(ll) Methohexital.
(mm) Methylphenobarbital.
(nn) Midazolam.
(oo) Nimetazepam.
(pp) Nitrazepam.
(qq) Nordiazepam.
(rr) Oxazepam.
(ss) Oxazolam.
(tt) Paraldehyde.
(uu) Pemoline.
(vv) Pentazocine.
(ww) Phenobarbital.
(xx) Phentermine.
(yy) Pinazepam.
(zz) Pipradrol.
(aaa) Prazepam.
(bbb) Propylhexedrine, excluding any patent or proprietary preparation containing propylhexedrine, unless otherwise provided by federal law.
(ccc) Quazepam.
(ddd) Tetrazepam.
(eee) SPA[(-)-1 dimethylamino-1, 2 diphenylethane].
(fff) Temazepam.
(ggg) Triazolam.
(hhh) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
(iii) Butorphanol tartrate.
(jjj) Carisoprodol.

(5) SCHEDULE V.—A substance, compound, mixture, or preparation of a substance in Schedule V has a low potential for abuse relative to the substances in Schedule IV and has a currently accepted medical use in treatment in the United States, and abuse of such compound, mixture, or preparation may lead to limited physical or psychological dependence relative to the substances in Schedule IV.

(a) Substances controlled in Schedule V include any compound, mixture, or preparation containing any of the following limited quantities of controlled substances, which shall include one or more active medicinal ingredients which are not controlled substances in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the controlled substance alone:

1. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

2. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

3. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

4. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

5. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts: Buprenorphine.

(c) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

893.033. Listed chemicals.

The chemicals listed in this section are included by whatever official, common, usual, chemical, or trade name designated.

(1) PRECURSOR CHEMICALS.—The term "listed precursor chemical" means a chemical that may be used in manufacturing a controlled substance in violation of this chapter and is critical to the creation of the controlled substance, and such term includes any salt, optical isomer, or salt of an optical isomer, whenever the existence of such

salt, optical isomer, or salt of optical isomer is possible within the specific chemical designation. The following are "listed precursor chemicals":

(a) Anthranilic acid.
(b) Benzaldehyde.
(c) Benzyl cyanide.
(d) Chloroephedrine.
(e) Chloropseudoephedrine.
(f) Ephedrine.
(g) Ergonovine.
(h) Ergotamine.
(i) Hydriodic acid.
(j) Ethylamine.
(k) Isosafrole.
(l) Methylamine.
(m) 3, 4-Methylenedioxyphenyl-2-propanone.
(n) N-acetylanthranilic acid.
(o) N-ethylephedrine.
(p) N-ethylpseudoephedrine.
(q) N-methylephedrine.
(r) N-methylpseudoephedrine.
(s) Nitroethane.
(t) Norpseudoephedrine.
(u) Phenylacetic acid.
(v) Phenylpropanolamine.
(w) Piperidine.
(x) Piperonal.
(y) Propionic anhydride.
(z) Pseudoephedrine.
(aa) Safrole.

(2) ESSENTIAL CHEMICALS.—The term "listed essential chemical" means a chemical that may be used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of this chapter. The following are "listed essential chemicals":

(a) Acetic anhydride.
(b) Acetone.
(c) Anhydrous ammonia.
(d) Benzyl chloride.
(e) 2-Butanone.
(f) Ethyl ether.
(g) Hydrochloric gas.
(h) Hydriodic acid.
(i) Iodine.
(j) Potassium permanganate.
(k) Toluene.

893.04. Pharmacist and practitioner.

(1) A pharmacist, in good faith and in the course of professional practice only, may dispense controlled substances upon a written or oral prescription of a practitioner, under the following conditions:

(a) Oral prescriptions must be promptly reduced to writing by the pharmacist or recorded electronically if permitted by federal law.

(b) The written prescription must be dated and signed by the prescribing practitioner on the day when issued.

(c) There shall appear on the face of the prescription or written record thereof for the controlled substance the following information:

1. The full name and address of the person for whom, or the owner of the animal for which, the controlled substance is dispensed.

2. The full name and address of the prescribing practitioner and the practitioner's federal controlled substance registry number shall be printed thereon.

3. If the prescription is for an animal, the species of animal for which the controlled substance is prescribed.

4. The name of the controlled substance prescribed and the strength, quantity, and directions for use thereof.

5. The number of the prescription, as recorded in the prescription files of the pharmacy in which it is filled.

6. The initials of the pharmacist filling the prescription and the date filled.

(d) The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of 2 years.

(e) Affixed to the original container in which a controlled substance is delivered upon a prescription or authorized refill thereof, as hereinafter provided, there shall be a label bearing the following information:

1. The name and address of the pharmacy from which such controlled substance was dispensed.

2. The date on which the prescription for such controlled substance was filled.

3. The number of such prescription, as recorded in the prescription files of the pharmacy in which it is filled.

4. The name of the prescribing practitioner.

5. The name of the patient for whom, or of the owner and species of the animal for which, the controlled substance is prescribed.

6. The directions for the use of the controlled substance prescribed in the prescription.

7. A clear, concise warning that it is a crime to transfer the controlled substance to any person other than the patient for whom prescribed.

(f) A prescription for a controlled substance listed in Schedule II may be dispensed only upon a written prescription of a practitioner, except that in an emergency situa-

tion, as defined by regulation of the Department of Health, such controlled substance may be dispensed upon oral prescription but is limited to a 72-hour supply. A prescription for a controlled substance listed in Schedule II may not be refilled.

(g) A prescription for a controlled substance listed in Schedule III, Schedule IV, or Schedule V may not be filled or refilled more than five times within a period of 6 months after the date on which the prescription was written unless the prescription is renewed by a practitioner.

(2) (a) A pharmacist may not dispense a controlled substance listed in Schedule II, Schedule III, or Schedule IV to any patient or patient's agent without first determining, in the exercise of her or his professional judgment, that the order is valid. The pharmacist may dispense the controlled substance, in the exercise of her or his professional judgment, when the pharmacist or pharmacist's agent has obtained satisfactory patient information from the patient or the patient's agent.

(b) Any pharmacist who dispenses by mail a controlled substance listed in Schedule II, Schedule III, or Schedule IV is exempt from the requirement to obtain suitable identification for the prescription dispensed by mail if the pharmacist has obtained the patient's identification through the patient's prescription benefit plan.

(c) Any controlled substance listed in Schedule III or Schedule IV may be dispensed by a pharmacist upon an oral prescription if, before filling the prescription, the pharmacist reduces it to writing or records the prescription electronically if permitted by federal law. Such prescriptions must contain the date of the oral authorization.

(d) Each written prescription prescribed by a practitioner in this state for a controlled substance listed in Schedule II, Schedule III, or Schedule IV must include both a written and a numerical notation of the quantity of the controlled substance prescribed on the face of the prescription and a notation of the date, with the abbreviated month written out on the face of the prescription. A pharmacist may, upon verification by the prescriber, document any information required by this paragraph. If the prescriber is not available to verify a prescription, the pharmacist may dispense the controlled substance but may insist that the person to whom the controlled substance is dispensed provide valid photographic identification. If a prescription includes a numerical notation of the quantity of the controlled substance or date, but does not include the quantity or date written out in textual format, the pharmacist may dispense the controlled substance without verification by the prescriber of the quantity or date if the pharmacy previously dispensed another prescription for the person to whom the prescription was written.

(e) A pharmacist may not dispense more than a 30-day supply of a controlled substance listed in Schedule III upon an oral prescription issued in this state.

(f) A pharmacist may not knowingly fill a prescription that has been forged for a controlled substance listed in Schedule II, Schedule III, or Schedule IV.

(3) Notwithstanding subsection (1), a pharmacist may dispense a one-time emergency refill of up to a 72-hour supply of the prescribed medication for any medicinal drug other than a medicinal drug listed in Schedule II, in compliance with the provisions of § 465.0275.

(4) The legal owner of any stock of controlled substances in a pharmacy, upon discontinuance of dealing in controlled substances, may sell said stock to a manufacturer, wholesaler, or pharmacy. Such controlled substances may be sold only upon an order form, when such an order form is required for sale by the drug abuse laws of the United States or this state, or regulations pursuant thereto.

893.05. Practitioners and persons administering controlled substances in their absence.

(1) A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance, or the practitioner may cause the same to be administered by a licensed nurse or an intern practitioner under his or her direction and supervision only. A veterinarian may so prescribe, administer, dispense, mix, or prepare a controlled substance for use on animals only, and may cause it to be administered by an assistant or orderly under the veterinarian's direction and supervision only. A certified optometrist licensed under chapter 463 may not administer or prescribe a controlled substance listed in Schedule I or Schedule II of § 893.03.

(2) When any controlled substance is dispensed by a practitioner, there shall be affixed to the original container in which the controlled substance is delivered a label on which appears:

(a) The date of delivery.

(b) The directions for use of such controlled substance.

(c) The name and address of such practitioner.

(d) The name of the patient and, if such controlled substance is prescribed for an animal, a statement describing the species of the animal.

(e) A clear, concise warning that it is a crime to transfer the controlled substance to any person other than the patient for whom prescribed.

(3) Any person who obtains from a practitioner or the practitioner's agent, or pursuant to prescription, any controlled substance for administration to a patient during the absence of such practitioner shall return to such practitioner any unused portion of such controlled substance when it is no longer required by the patient.

893.06. Distribution of controlled substances; order forms; labeling and packaging requirements.

(1) Controlled substances in Schedules I and II shall be distributed by a duly licensed manufacturer, distributor, or wholesaler to a duly licensed manufacturer, wholesaler, distributor, practitioner, pharmacy, as defined in chapter 465, hospital, or laboratory only pursuant to an order form. It shall be deemed a compliance with this subsection if the parties to the transaction have complied with federal law respecting the use of order forms.

(2) Possession or control of controlled substances obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty.

(3) A person in charge of a hospital or laboratory or in the employ of this state or of any other state, or of any political subdivision thereof, and a master or other proper officer of a ship or aircraft, who obtains controlled substances under the provisions of this section or otherwise, shall not administer, dispense, or otherwise use such controlled substances within this state, except within the scope of her or his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this chapter.

(4) It shall be unlawful to distribute a controlled substance in a commercial container unless such container bears a label showing the name and address of the manufacturer, the quantity, kind, and form of controlled substance contained therein, and the identifying symbol for such substance, as required by federal law. No person except a pharmacist, for the purpose of dispensing a prescription, or a practitioner, for the purpose of dispensing a controlled substance to a patient, shall alter, deface, or remove any labels so affixed.

893.07. Records.

(1) Every person who engages in the manufacture, compounding, mixing, cultivating, growing, or by any other process producing or preparing, or in the dispensing, importation, or, as a wholesaler, distribution, of controlled substances shall:

(a) On January 1, 1974, or as soon thereafter as any person first engages in such activity, and every second year thereafter, make a complete and accurate record of all stocks of controlled substances on hand. The inventory may be prepared on the regular physical inventory date which is nearest to, and does not vary by more than 6 months from, the biennial date that would otherwise apply. As additional substances are designated for control under this chapter, they shall be inventoried as provided for in this subsection.

(b) On and after January 1, 1974, maintain, on a current basis, a complete and accurate record of each substance manufactured, received, sold, delivered, or otherwise disposed of by him or her, except that this subsection shall not require the maintenance of a perpetual inventory.

Compliance with the provisions of federal law pertaining to the keeping of records of controlled substances shall be deemed a compliance with the requirements of this subsection.

(2) The record of controlled substances received shall in every case show:

(a) The date of receipt.

(b) The name and address of the person from whom received.

(c) The kind and quantity of controlled substances received.

(3) The record of all controlled substances sold, administered, dispensed, or otherwise disposed of shall show:

(a) The date of selling, administering, or dispensing.

(b) The correct name and address of the person to whom or for whose use, or the owner and species of animal for which, sold, administered, or dispensed.

(c) The kind and quantity of controlled substances sold, administered, or dispensed.

(4) Every inventory or record required by this chapter, including prescription records, shall be maintained:

(a) Separately from all other records of the registrant, or

(b) Alternatively, in the case of Schedule III, IV, or V controlled substances, in such form that information required by this chapter is readily retrievable from the ordinary business records of the registrant.

In either case, the records described in this subsection shall be kept and made available for a period of at least 2 years for inspection and copying by law enforcement officers whose duty it is to enforce the laws of this state relating to controlled substances. Law enforcement officers are not required to obtain a subpoena, court order, or search warrant in order to obtain access to or copies of such records.

(5) Each person described in subsection (1) shall:

(a) Maintain a record which shall contain a detailed list of controlled substances lost, destroyed, or stolen, if any; the kind and quantity of such controlled substances; and the date of the discovering of such loss, destruction, or theft.

(b) In the event of the discovery of the theft or significant loss of controlled substances, report such theft or significant loss to the sheriff of that county within 24 hours after discovery. A person who fails to report a theft or significant loss of a substance listed in § 893.03(3), (4), or (5) within 24 hours after discovery as required in this paragraph commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. A person who fails to report a theft or significant loss of a substance listed in § 893.03(2) within 24 hours after discovery as required in this paragraph commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

893.08. Exceptions.

(1) The following may be distributed at retail without a prescription, but only by a registered pharmacist:

(a) Any compound, mixture, or preparation described in Schedule V.

(b) Any compound, mixture, or preparation containing any depressant or stimulant substance described in § 893.03(2)(a) or (c) except any amphetamine drug or sympathomimetic amine drug or compound designated as a Schedule II controlled substance pursuant to this chapter; in § 893.03(3)(a); or in Schedule IV, if:

1. The compound, mixture, or preparation contains one or more active medicinal ingredients not having depressant or stimulant effect on the central nervous system, and

2. Such ingredients are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the controlled substances which do have a depressant or stimulant effect on the central nervous system.

(2) No compound, mixture, or preparation may be dispensed under subsection (1) unless such substance may, under the Federal Food, Drug, and Cosmetic Act, be lawfully sold at retail without a prescription.

(3) The exemptions authorized by this section shall be subject to the following conditions:

(a) The compounds, mixtures, and preparations referred to in subsection (1) may be dispensed to persons under age 18 only on prescription. A bound volume must be maintained as a record of sale at retail of excepted compounds, mixtures, and preparations, and the pharmacist must require suitable identification from every unknown purchaser.

(b) Such compounds, mixtures, and preparations shall be sold by the pharmacist in good faith as a medicine and not for the purpose of evading the provisions of this chapter. The pharmacist may, in his or her discretion, withhold sale to any person whom the pharmacist reasonably believes is attempting to purchase excepted compounds, mixtures, or preparations for the purpose of abuse.

(c) The total quantity of controlled substance listed in Schedule V which may be sold to any one purchaser within a given 48-hour period shall not exceed 120 milligrams of codeine, 60 milligrams dihydrocodeine, 30 milligrams of ethyl morphine, or 240 milligrams of opium.

(d) Nothing in this section shall be construed to limit the kind and quantity of any controlled substance that may be prescribed, administered, or dispensed to any person, or for the use of any person or animal, when it is prescribed, administered, or dispensed in compliance with the general provisions of this chapter.

(4) The dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan) shall not be deemed to be included in any schedule by reason of enactment of this chapter.

893.09. Enforcement.

(1) The Department of Law Enforcement, all state agencies which regulate professions or institutions affected by the provisions of this chapter, and all peace officers of the state shall enforce all provisions of this chapter except those specifically delegated, and shall cooperate with all agencies charged with the

enforcement of the laws of the United States, this state, and all other states relating to controlled substances.

(2) Any agency authorized to enforce this chapter shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this chapter. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law.

(3) All law enforcement officers whose duty it is to enforce this chapter shall have authority to administer oaths in connection with their official duties, and any person making a material false statement under oath before such law enforcement officers shall be deemed guilty of perjury and subject to the same punishment as prescribed for perjury.

(4) It shall be unlawful and punishable as provided in chapter 843 for any person to interfere with any such law enforcement officer in the performance of the officer's official duties. It shall also be unlawful for any person falsely to represent himself or herself to be authorized to enforce the drug abuse laws of this state, the United States, or any other state.

(5) No civil or criminal liability shall be imposed by virtue of this chapter upon any person whose duty it is to enforce the provisions of this chapter, by reason of his or her being lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.

893.10. Burden of proof; photograph or video recording of evidence.

(1) It is not necessary for the state to negative any exemption or exception set forth in this chapter in any indictment, information, or other pleading or in any trial, hearing, or other proceeding under this chapter, and the burden of going forward with the evidence with respect to any exemption or exception is upon the person claiming its benefit.

(2) In the prosecution of an offense involving the manufacture of a controlled substance, a photograph or video recording of the manufacturing equipment used in committing the offense, including, but not limited to, grow lights, growing trays, and chemical fertilizers, may be introduced as competent evidence of the existence and use of the equipment and is admissible in the prosecution of the offense to the same extent as if the property were introduced as evidence.

(3) After a law enforcement agency documents the manufacturing equipment by photography or video recording, the manufacturing equipment may be destroyed on site and left in disrepair. The law enforcement agency destroying the equipment is immune from civil liability for the destruction of the equipment. The destruction of the equipment must be recorded by the supervising law enforcement officer in the manner described in § 893.12(1)(a), and records must be maintained for 24 months.

893.105. Testing and destruction of seized substances.

(1) Any controlled substance or listed chemical seized as evidence may be sample tested and weighed by the seizing agency after the seizure. Any such sample and the analysis thereof shall be admissible into evidence in any civil or criminal action for the purpose of proving the nature, composition, and weight of the substance seized. In addition, the seizing agency may photograph or videotape, for use at trial, the controlled substance or listed chemical seized.

(2) Controlled substances or listed chemicals that are not retained for sample testing as provided in subsection (1) may be destroyed pursuant to a court order issued in accordance with § 893.12.

893.12. Contraband; seizure, forfeiture, sale.

(1) All substances controlled by this chapter and all listed chemicals, which substances or chemicals are handled, delivered, possessed, or distributed contrary to any provisions of this chapter, and all such controlled substances or listed chemicals the lawful possession of which is not established or the title to which cannot be ascertained, are declared to be contraband, are subject to seizure and confiscation by any person whose duty it is to enforce the provisions of the chapter, and shall be disposed of as follows:

(a) Except as in this section otherwise provided, the court having jurisdiction shall order such controlled substances or listed chemicals forfeited and destroyed. A record of the place where said controlled substances or listed chemicals were seized, of the kinds and quantities of controlled substances or listed chemicals destroyed, and of the time, place, and manner of destruction shall be kept, and a return under oath reporting said destruction shall be made to the court by the officer who destroys them.

(b) Upon written application by the Department of Health, the court by whom the forfeiture of such controlled substances or listed chemicals has been decreed may order the delivery of any of them to said depart-

ment for distribution or destruction as hereinafter provided.

(c) Upon application by any hospital or laboratory within the state not operated for private gain, the department may, in its discretion, deliver any controlled substances or listed chemicals that have come into its custody by authority of this section to the applicant for medical use. The department may from time to time deliver excess stocks of such controlled substances or listed chemicals to the United States Drug Enforcement Administration or destroy same.

(d) The department shall keep a full and complete record of all controlled substances or listed chemicals received and of all controlled substances or listed chemicals disposed of, showing:

1. The exact kinds, quantities, and forms of such controlled substances or listed chemicals;

2. The persons from whom received and to whom delivered;

3. By whose authority received, delivered, and destroyed; and

4. The dates of the receipt, disposal, or destruction,

which record shall be open to inspection by all persons charged with the enforcement of federal and state drug abuse laws.

(2) (a) Any vessel, vehicle, aircraft, or drug paraphernalia as defined in § 893.145 which has been or is being used in violation of any provision of this chapter or in, upon, or by means of which any violation of this chapter has taken or is taking place may be seized and forfeited as provided by the Florida Contraband Forfeiture Act.

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

(c) All moneys, negotiable instruments, securities, and other things of value furnished or intended to be furnished by any person in exchange for a controlled substance described in § 893.03(1) or (2) or a listed chemical in violation of any provision of this chapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of this chapter or which are acquired with proceeds obtained in violation of any provision of this chapter may be seized and forfeited as provided by the Florida Contraband Forfeiture Act, except that no property shall be forfeited under this paragraph to the extent of an interest of an owner or lienholder by reason of any act or omission established by that owner or lienholder to have been committed or omitted without the knowledge or consent of that owner or lienholder.

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

(e) If any of the property described in this subsection:

1. Cannot be located;

2. Has been transferred to, sold to, or deposited with, a third party;

3. Has been placed beyond the jurisdiction of the court;

4. Has been substantially diminished in value by any act or omission of the defendant; or

5. Has been commingled with any property which cannot be divided without difficulty,

the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this subsection.

(3) Any law enforcement agency is empowered to authorize or designate officers, agents, or other persons to carry out the seizure provisions of this section. It shall be the duty of any officer, agent, or other person so authorized or designated, or authorized by law, whenever she or he shall discover any vessel, vehicle, aircraft, real property or interest in real property, money, negotiable instrument, security, book, record, or research which has been or is being used or intended to be used, or which is acquired with proceeds obtained, in violation of any of the provisions of this chapter, or in, upon, or by means of which any violation of this chapter has taken

or is taking place, to seize such vessel, vehicle, aircraft, real property or interest in real property, money, negotiable instrument, security, book, record, or research and place it in the custody of such person as may be authorized or designated for that purpose by the respective law enforcement agency pursuant to these provisions.

(4) The rights of any bona fide holder of a duly recorded mortgage or duly recorded vendor's privilege on the property seized under this chapter shall not be affected by the seizure.

893.13. Prohibited acts; penalties.

(1) (a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. Any person who violates this provision with respect to:

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

2. A controlled substance named or described in § 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) commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

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

(b) Except as provided in this chapter, it is unlawful to sell or deliver in excess of 10 grams of any substance named or described in § 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a child care facility as defined in § 402.302 or a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight, or at any time in, on, or within 1,000 feet of real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility. For the purposes of this paragraph, the term "community center" means a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public. Any person who violates this paragraph with respect to:

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

2. A controlled substance named or described in § 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) commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

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

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

(d) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private college, university, or other postsecondary educational institution. Any person who violates this paragraph with respect to:

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

2. A controlled substance named or described in § 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) commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

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

(e) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet of a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in § 812.171. Any person who violates this paragraph with respect to:

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

2. A controlled substance named or described in § 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) commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

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

(f) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public housing facility at any time. For purposes of this section, the term "real property comprising a public housing facility" means real property, as defined in § 421.03(12), of a public corporation created as a housing authority pursuant to part I of chapter 421. Any person who violates this paragraph with respect to:

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

2. A controlled substance named or described in § 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) commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

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

(g) Except as authorized by this chapter, it is unlawful for any person to manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in § 893.033 in violation of § 893.149 and with intent to manufacture methamphetamine or phencyclidine. If any person violates this paragraph and:

1. The commission or attempted commission of the crime occurs in a structure or conveyance where any child under 16 years of age is present, the person commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 5 calendar years.

2. The commission of the crime causes any child under 16 years of age to suffer great bodily harm, the person commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 10 calendar years.

(h) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in chapter 429. Any person who violates this paragraph with respect to:

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

2. A controlled substance named or described in § 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) commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) (a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to purchase, or possess with intent to purchase, a controlled substance. Any person who violates this provision with respect to:

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

2. A controlled substance named or described in § 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) commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

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

(b) Except as provided in this chapter, it is unlawful to purchase in excess of 10 grams of any substance named or described in § 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Any person who delivers, without consideration, not more than 20 grams of cannabis, as defined in this chapter, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. For the purposes of this paragraph, "cannabis" does not include the resin extracted from the plants of the genus Cannabis or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

(4) Except as authorized by this chapter, it is unlawful for any person 18 years of age or older to deliver any controlled substance to a person under the age of 18 years, or to use or hire a person under the age of 18 years as an agent or employee in the sale or delivery of such a substance, or to use such person to assist in avoiding detection or apprehension for a violation of this chapter. Any person who violates this provision with respect to:

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

(b) A controlled substance named or described in § 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) commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

Imposition of sentence may not be suspended or deferred, nor shall the person so convicted be placed on probation.

(5) It is unlawful for any person to bring into this state any controlled substance unless the possession of such controlled substance is authorized by this chapter or unless such person is licensed to do so by the appropriate federal agency. Any person who violates this provision with respect to:

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

(b) A controlled substance named or described in § 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) commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) A controlled substance named or described in § 893.03(5) commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(6) (a) It is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. Any person who violates this provision commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) If the offense is the possession of not more than 20 grams of cannabis, as defined in this chapter, or 3 grams or less of a controlled substance described in § 893.03(1)(c)46.-50., 114.-142., 151.-159., or 166.-169., the person commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. For the purposes of this subsection, "cannabis" does not include the resin extracted from the plants of the genus Cannabis, or any compound manufacture, salt, derivative, mixture, or preparation of such resin, and a controlled substance described in § 893.03(1)(c)46.-50., 114.-142., 151.-159., or 166.-169., does not include the substance in a powdered form.

(c) Except as provided in this chapter, it is unlawful to possess in excess of 10 grams of any substance named or described in § 893.03(1)(a) or (1)(b), or any combination thereof, or any mixture containing any such substance. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(d) Notwithstanding any provision to the contrary of the laws of this state relating to arrest, a law enforcement officer may arrest without warrant any person who the officer has probable cause to believe is violating the provisions of this chapter relating to possession of cannabis.

(7) (a) A person may not:

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

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

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

4. Distribute a controlled substance named or described in § 893.03(1) or (2) except pursuant to an order form as required by § 893.06.

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

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

7. Possess a prescription form which has not been completed and signed by the practitioner whose name appears printed thereon, unless the person is that practitioner, is an agent or employee of that practitioner, is a pharmacist, or is a supplier of prescription forms who is authorized by that practitioner to possess those forms.

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

9. Acquire or obtain, or attempt to acquire or obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

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

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

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

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

(b) A health care practitioner, with the intent to provide a controlled substance or combination of controlled substances that are not medically necessary to his or her patient or an amount of controlled substances that is not medically necessary for his or her patient, may not provide a controlled substance or a prescription for a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact. For purposes of this paragraph, a material fact includes whether the patient has an existing prescription for a controlled substance issued for the same period of time by another practitioner or as described in subparagraph (a)8.

(c) Any person who violates the provisions of subparagraphs (a)1.-7. commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083; except that, upon a second or subsequent violation, the person commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(d) Any person who violates the provisions of subparagraphs (a)8.-12. commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(e) A person or health care practitioner who violates the provisions of subparagraph (a)13. or paragraph (b) commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, if any controlled substance that is the subject of the offense is listed in Schedule II, Schedule III, or Schedule IV.

(8) (a) Notwithstanding subsection (9), a prescribing practitioner may not:

1. Knowingly assist a patient, other person, or the owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in

or related to the practice of the prescribing practitioner's professional practice;

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

3. Knowingly write a prescription for a controlled substance for a fictitious person; or

4. Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing such prescription is to provide a monetary benefit to, or obtain a monetary benefit for, the prescribing practitioner.

(b) If the prescribing practitioner wrote a prescription or multiple prescriptions for a controlled substance for the patient, other person, or animal for which there was no medical necessity, or which was in excess of what was medically necessary to treat the patient, other person, or animal, that fact does not give rise to any presumption that the prescribing practitioner violated subparagraph (a)1., but may be considered with other competent evidence in determining whether the prescribing practitioner knowingly assisted a patient, other person, or the owner of an animal to obtain a controlled substance in violation of subparagraph (a)1.

(c) A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(d) Notwithstanding paragraph (c), if a prescribing practitioner has violated paragraph (a) and received $1,000 or more in payment for writing one or more prescriptions or, in the case of a prescription written for a controlled substance described in § 893.135, has written one or more prescriptions for a quantity of a controlled substance which, individually or in the aggregate, meets the threshold for the offense of trafficking in a controlled substance under § 893.15, the violation is reclassified as a felony of the second degree and ranked in level 4 of the Criminal Punishment Code.

(9) The provisions of subsections (1)-(8) are not applicable to the delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

(a) Pharmacists.

(b) Practitioners.

(c) Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

(d) Hospitals that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

(e) Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

(f) Common carriers.

(g) Manufacturers, wholesalers, and distributors.

(h) Law enforcement officers for bona fide law enforcement purposes in the course of an active criminal investigation.

(10) If a person violates any provision of this chapter and the violation results in a serious injury to a state or local law enforcement officer as defined in § 943.10, firefighter as defined in § 633.102, emergency medical technician as defined in § 401.23, paramedic as defined in § 401.23, employee of a public utility or an electric utility as defined in § 366.02, animal control officer as defined in § 828.27, volunteer firefighter engaged by state or local government, law enforcement officer employed by the Federal Government, or any other local, state, or Federal Government employee injured during the course and scope of his or her employment, the person commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. If the injury sustained results in death or great bodily harm, the person commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

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

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

(a) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of 25 pounds of cannabis, or 300 or more cannabis plants, commits a felony of the first degree, which felony shall be known as "trafficking in cannabis," punishable as provided

in § 775.082, § 775.083, or § 775.084. If the quantity of cannabis involved:

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

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

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

For the purpose of this paragraph, a plant, including, but not limited to, a seedling or cutting, is a "cannabis plant" if it has some readily observable evidence of root formation, such as root hairs. To determine if a piece or part of a cannabis plant severed from the cannabis plant is itself a cannabis plant, the severed piece or part must have some readily observable evidence of root formation, such as root hairs. Callous tissue is not readily observable evidence of root formation. The viability and sex of a plant and the fact that the plant may or may not be a dead harvested plant are not relevant in determining if the plant is a "cannabis plant" or in the charging of an offense under this paragraph. Upon conviction, the court shall impose the longest term of imprisonment provided for in this paragraph.

(b) 1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in § 893.03(2)(a)4., or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as "trafficking in cocaine," punishable as provided in § 775.082, § 775.083, or § 775.084. If the quantity involved:

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

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

c. Is 400 grams or more, but less than 150 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 150 kilograms or more of cocaine, as described in § 893.03(2)(a)4., commits the first degree felony of trafficking in cocaine. A person who has been convicted of the first degree felony of trafficking in cocaine under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under § 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

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

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

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

3. Any person who knowingly brings into this state 300 kilograms or more of cocaine, as described in § 893.03(2)(a)4., and who knows that the probable result of such importation would be the death of any person, commits capital importation of cocaine, a capital felony punishable as provided in §§ 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(c) 1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in § 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but

less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in § 775.082, § 775.083, or § 775.084. If the quantity involved:

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

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

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

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in § 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under § 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

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

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

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

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

(d) 1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of phencyclidine or of any mixture containing phencyclidine, as described in § 893.03(2)(b), commits a felony of the first degree, which felony shall be known as "trafficking in phencyclidine," punishable as provided in § 775.082, § 775.083, or § 775.084. If the quantity involved:

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

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

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

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

(e) 1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 200 grams or more of methaqualone or of any mixture containing methaqualone, as described in § 893.03(1)(d), commits a felony of the first

degree, which felony shall be known as "trafficking in methaqualone," punishable as provided in § 775.082, § 775.083, or § 775.084. If the quantity involved:

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

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

c. Is 25 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

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

(f) 1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine, as described in § 893.03(2)(c)2., or methamphetamine, as described in § 893.03(2)(c)4., or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine, commits a felony of the first degree, which felony shall be known as "trafficking in amphetamine," punishable as provided in § 775.082, § 775.083, or § 775.084. If the quantity involved:

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

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

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

2. Any person who knowingly manufactures or brings into this state 400 grams or more of amphetamine, as described in § 893.03(2)(c)2., or methamphetamine, as described in § 893.03(2)(c)4., or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment used in the manufacture of amphetamine or methamphetamine, and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of amphetamine, a capital felony punishable as provided in §§ 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(g) 1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of flunitrazepam or any mixture containing flunitrazepam as described in § 893.03(1)(a) commits a felony of the first degree, which felony shall be known as "trafficking in flunitrazepam," punishable as provided in § 775.082, § 775.083, or § 775.084. If the quantity involved:

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

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

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

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in § 893.03(1)(a) commits the first degree felony of trafficking in flunitrazepam. A person who has been convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life im-

prisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under § 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

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

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

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

(h) 1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of gamma-hydroxybutyric acid (GHB), as described in § 893.03(1)(d), or any mixture containing gamma-hydroxybutyric acid (GHB), commits a felony of the first degree, which felony shall be known as "trafficking in gamma-hydroxybutyric acid (GHB)," punishable as provided in § 775.082, § 775.083, or § 775.084. If the quantity involved:

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

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

c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

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

(i) 1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of gamma-butyrolactone (GBL), as described in § 893.03(1)(d), or any mixture containing gamma-butyrolactone (GBL), commits a felony of the first degree, which felony shall be known as "trafficking in gamma-butyrolactone (GBL)," punishable as provided in § 775.082, § 775.083, or § 775.084. If the quantity involved:

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

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

c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

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

(j) 1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of 1,4-Butanediol as described in § 893.03(1)(d), or of any mixture containing 1,4-Butanediol, commits a felony of the first degree, which felony shall be known as "trafficking in 1,4-Butanediol," punishable as provided in § 775.082, § 775.083, or § 775.084. If the quantity involved:

a. Is 1 kilogram or more, but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprison-

ment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

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

c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $500,000.

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

(k) 1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 10 grams or more of any of the following substances described in § 893.03(1)(c):

a. 3,4-Methylenedioxymethamphetamine (MDMA);

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

c. 4-Bromo-2,5-dimethoxyphenethylamine;

d. 2,5-Dimethoxyamphetamine;

e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);

f. N-ethylamphetamine;

g. N-Hydroxy-3,4-methylenedioxyamphetamine;

h. 5-Methoxy-3,4-methylenedioxyamphetamine;

i. 4-methoxyamphetamine;

j. 4-methoxymethamphetamine;

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

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

m. 3,4-Methylenedioxyamphetamine;

n. N,N-dimethylamphetamine; or

o. 3,4,5-Trimethoxyamphetamine,

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

2. If the quantity involved:

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

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

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

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

a. 3,4-Methylenedioxymethamphetamine (MDMA);

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

c. 4-Bromo-2,5-dimethoxyphenethylamine;

d. 2,5-Dimethoxyamphetamine;

e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);

f. N-ethylamphetamine;

g. N-Hydroxy-3,4-methylenedioxyamphetamine;

h. 5-Methoxy-3,4-methylenedioxyamphetamine;

i. 4-methoxyamphetamine;

j. 4-methoxymethamphetamine;

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

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

m. 3,4-Methylenedioxyamphetamine;

n. N,N-dimethylamphetamine; or

o. 3,4,5-Trimethoxyamphetamine,

individually or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-o., and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of Phenethylamines, a capital felony punishable as provided in §§ 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(l) 1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 gram or more of lysergic acid diethylamide (LSD) as described in § 893.03(1)(c), or of any mixture containing lysergic acid diethylamide

(LSD), commits a felony of the first degree, which felony shall be known as "trafficking in lysergic acid diethylamide (LSD)," punishable as provided in § 775.082, § 775.083, or § 775.084. If the quantity involved:

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

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

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

2. Any person who knowingly manufactures or brings into this state 7 grams or more of lysergic acid diethylamide (LSD) as described in § 893.03(1)(c), or any mixture containing lysergic acid diethylamide (LSD), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of lysergic acid diethylamide (LSD), a capital felony punishable as provided in §§ 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

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

(3) Notwithstanding the provisions of § 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section. A person sentenced to a mandatory minimum term of imprisonment under this section is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under § 947.149, prior to serving the mandatory minimum term of imprisonment.

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

(5) Any person who agrees, conspires, combines, or confederates with another person to commit any act prohibited by subsection (1) commits a felony of the first degree and is punishable as if he or she had actually committed such prohibited act. Nothing in this subsection shall be construed to prohibit separate convictions and sentences for a violation of this subsection and any violation of subsection (1).

(6) A mixture, as defined in § 893.02, containing any controlled substance described in this section includes, but is not limited to, a solution or a dosage unit, including but not limited to, a pill or tablet, containing a controlled substance. For the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance described in this section, the weight of the controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture. If there is more than one mixture containing the same controlled substance, the weight of the controlled substance is calculated by aggregating the total weight of each mixture.

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

893.1351. Ownership, lease, rental, or possession for trafficking in or manufacturing a controlled substance.

(1) A person may not own, lease, or rent any place, structure, or part thereof, trailer, or other conveyance with the knowledge

that the place, structure, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance, as provided in § 893.135; for the sale of a controlled substance, as provided in § 893.13; or for the manufacture of a controlled substance intended for sale or distribution to another. A person who violates this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) A person may not knowingly be in actual or constructive possession of any place, structure, or part thereof, trailer, or other conveyance with the knowledge that the place, structure, or part thereof, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance, as provided in § 893.135; for the sale of a controlled substance, as provided in § 893.13; or for the manufacture of a controlled substance intended for sale or distribution to another. A person who violates this subsection commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) A person who is in actual or constructive possession of a place, structure, trailer, or conveyance with the knowledge that the place, structure, trailer, or conveyance is being used to manufacture a controlled substance intended for sale or distribution to another and who knew or should have known that a minor is present or resides in the place, structure, trailer, or conveyance commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) For the purposes of this section, proof of the possession of 25 or more cannabis plants constitutes prima facie evidence that the cannabis is intended for sale or distribution.

893.145. "Drug paraphernalia" defined.

The term "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter or § 877.111. Drug paraphernalia is deemed to be contraband which shall be subject to civil forfeiture. The term includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.

(4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.

(8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.

(9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.

(10) Containers and other objects used, intended for use, or designed for use in storing, concealing, or transporting controlled substances.

(11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.

(b) Water pipes.

(c) Carburetion tubes and devices.

(d) Smoking and carburetion masks.

(e) Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.

(f) Miniature cocaine spoons, and cocaine vials.

(g) Chamber pipes.

(h) Carburetor pipes.

(i) Electric pipes.

(j) Air-driven pipes.

(k) Chillums.

(l) Bongs.

(m) Ice pipes or chillers.

(n) A cartridge or canister, which means a small metal device used to contain nitrous oxide.

(o) A charger, sometimes referred to as a "cracker," which means a small metal or plastic device that contains an interior pin that may be used to expel nitrous oxide from a cartridge or container.

(p) A charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister.

(q) A whip-it, which means a device that may be used to expel nitrous oxide.

(r) A tank.

(s) A balloon.

(t) A hose or tube.

(u) A 2-liter-type soda bottle.

(v) Duct tape.

893.146. Determination of paraphernalia.

In determining whether an object is drug paraphernalia, a court or other authority or jury shall consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use.

(2) The proximity of the object, in time and space, to a direct violation of this act.

(3) The proximity of the object to controlled substances.

(4) The existence of any residue of controlled substances on the object.

(5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.

(6) Instructions, oral or written, provided with the object concerning its use.

(7) Descriptive materials accompanying the object which explain or depict its use.

(8) Any advertising concerning its use.

(9) The manner in which the object is displayed for sale.

(10) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of or dealer in tobacco products.

(11) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.

(12) The existence and scope of legitimate uses for the object in the community.

(13) Expert testimony concerning its use.

893.147. Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia.

(1) USE OR POSSESSION OF DRUG PARAPHERNALIA.—It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia:

(a) To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter; or

(b) To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

Any person who violates this subsection is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) MANUFACTURE OR DELIVERY OF DRUG PARAPHERNALIA.—It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:

(a) To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this act; or

(b) To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act.

Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) DELIVERY OF DRUG PARAPHERNALIA TO A MINOR.—

(a) Any person 18 years of age or over who violates subsection (2) by delivering drug paraphernalia to a person under 18 years

of age is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) It is unlawful for any person to sell or otherwise deliver hypodermic syringes, needles, or other objects which may be used, are intended for use, or are designed for use in parenterally injecting substances into the human body to any person under 18 years of age, except that hypodermic syringes, needles, or other such objects may be lawfully dispensed to a person under 18 years of age by a licensed practitioner, parent, or legal guardian or by a pharmacist pursuant to a valid prescription for same. Any person who violates the provisions of this paragraph is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(4) TRANSPORTATION OF DRUG PARAPHERNALIA.—It is unlawful to use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia, knowing or under circumstances in which one reasonably should know that it will be used to transport:

(a) A controlled substance in violation of this chapter; or

(b) Contraband as defined in § 932.701(2)(a)1.

Any person who violates this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) ADVERTISEMENT OF DRUG PARAPHERNALIA.—It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(6) RETAIL SALE OF DRUG PARAPHERNALIA.—

(a) It is unlawful for a person to knowingly and willfully sell or offer for sale at retail any drug paraphernalia described in § 893.145(12)(a)-(c) or (g)-(m), other than a pipe that is primarily made of briar, meerschaum, clay, or corn cob.

(b) A person who violates paragraph (a) commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, and, upon a second or subsequent violation, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

893.149. Unlawful possession of listed chemical.

(1) It is unlawful for any person to knowingly or intentionally:

(a) Possess a listed chemical with the intent to unlawfully manufacture a controlled substance;

(b) Possess or distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to unlawfully manufacture a controlled substance.

(2) Any person who violates this section commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) This section does not apply to a public employee or private contractor authorized to clean up or dispose of hazardous waste or toxic substances resulting from the prohibited activities listed in § 893.13(1)(g).

(4) Any damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical, as defined in § 893.033, shall be the sole responsibility of the person or persons unlawfully possessing, storing, or tampering with the listed chemical. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the listed chemical, unless such damages arise out of the acts or omissions of the owner, installer, maintainer, designer, manufacturer, possessor, or seller which constitute negligent misconduct or failure to abide by the laws regarding the possession or storage of a listed chemical.

893.1495. Retail sale of ephedrine and related compounds.

(1) For purposes of this section, the term "ephedrine or related compounds" means ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers.

(2) A person may not knowingly obtain or deliver to an individual in any retail over-the-counter sale any nonprescription compound, mixture, or preparation containing ephedrine or related compounds in excess of the following amounts:

(a) In any single day, any number of packages that contain a total of 3.6 grams of ephedrine or related compounds;

(b) In any single retail, over-the-counter sale, three packages, regardless of weight, containing ephedrine or related compounds; or

(c) In any 30-day period, in any number of retail, over-the-counter sales, a total of 9 grams or more of ephedrine or related compounds.

(3) A person may not knowingly display and offer for retail sale any nonprescription compound, mixture, or preparation containing ephedrine or related compounds other than behind a checkout counter where the public is not permitted or other such location that is not otherwise accessible to the general public.

(4) A person who is the owner or primary operator of a retail outlet where any nonprescription compound, mixture, or preparation containing ephedrine or related compounds is available for sale may not knowingly allow an employee to engage in the retail sale of such compound, mixture, or preparation unless the employee has completed an employee training program that shall include, at a minimum, basic instruction on state and federal regulations relating to the sale and distribution of such compounds, mixtures, or preparations.

(5) (a) Any person purchasing, receiving, or otherwise acquiring any nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine or related compounds must:

1. Be at least 18 years of age.

2. Produce a government-issued photo identification showing his or her name, date of birth, address, and photo identification number or an alternative form of identification acceptable under federal regulation 8 C.F.R. § 274a.2(b)(1)(v)(A) and (B).

3. Sign his or her name on a record of the purchase, either on paper or on an electronic signature capture device.

(b) The Department of Law Enforcement shall approve an electronic recordkeeping system for the purpose of recording and monitoring the real-time purchase of products containing ephedrine or related compounds and for the purpose of monitoring this information in order to prevent or investigate illegal purchases of these products. The approved electronic recordkeeping system shall be provided to a pharmacy or retailer without any additional cost or expense. A pharmacy or retailer may request an exemption from electronic reporting from the Department of Law Enforcement if the pharmacy or retailer lacks the technology to access the electronic recordkeeping system and such pharmacy or retailer maintains a sales volume of less than 72 grams of ephedrine or related compounds in a 30-day period. The electronic recordkeeping system shall record the following:

1. The date and time of the transaction.

2. The name, date of birth, address, and photo identification number of the purchaser, as well as the type of identification and the government of issuance.

3. The number of packages purchased, the total grams per package, and the name of the compound, mixture, or preparation containing ephedrine or related compounds.

4. The signature of the purchaser, or a unique number relating the transaction to a paper signature maintained at the retail premises.

(c) The electronic recordkeeping system shall provide for:

1. Real-time tracking of nonprescription over-the-counter sales under this section.

2. The blocking of nonprescription over-the-counter sales in excess of those allowed by the laws of this state or federal law.

(6) A nonprescription compound, mixture, or preparation containing any quantity of ephedrine or related compounds may not be sold over the counter unless reported to an electronic recordkeeping system approved by the Department of Law Enforcement. This subsection does not apply if the pharmacy or retailer has received an exemption from the Department of Law Enforcement under paragraph (5)(b).

(7) Prior to completing a transaction, a pharmacy or retailer distributing products containing ephedrine or related compounds to consumers in this state shall submit all required data into an electronic recordkeeping system approved by the Department of Law Enforcement at the point of sale or through an interface with the electronic recordkeeping system, unless granted an exemption by the Department of Law Enforcement pursuant to paragraph (5)(b).

(8) The data submitted to the electronic recordkeeping system must be retained within the system for no less than 2 years following the date of entry.

(9) The requirements of this section relating to the marketing, sale, or distribution of products containing ephedrine or related compounds supersede any local ordinance or regulation passed by a county, municipality, or other local governmental authority.

(10) This section does not apply to:

(a) Licensed manufacturers manufacturing and lawfully distributing products in the channels of commerce.

(b) Wholesalers lawfully distributing products in the channels of commerce.

(c) Health care facilities licensed under chapter 395.

(d) Licensed long-term care facilities.

(e) Government-operated health departments.

(f) Physicians' offices.

(g) Publicly operated prisons, jails, or juvenile correctional facilities or private adult or juvenile correctional facilities under contract with the state.

(h) Public or private educational institutions maintaining health care programs.

(i) Government-operated or industry-operated medical facilities serving employees of the government or industry operating them.

(11) Any individual who violates subsection (2), subsection (3), or subsection (4) commits:

(a) For a first offense, a misdemeanor of the second degree, punishable as provided in § 775.083.

(b) For a second offense, a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(c) For a third or subsequent offense, a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(12) Information contained within the electronic recordkeeping system shall be disclosed in a manner authorized by state or federal law. Any retailer or entity that collects information on behalf of a retailer as required by the Combat Methamphetamine Epidemic Act of 2005 and this section may not access or use that information, except for law enforcement purposes pursuant to state or federal law or to facilitate a product recall for public health and safety.

(13) A person who sells any product containing ephedrine or related compounds who in good faith releases information under this section to federal, state, or local law enforcement officers, or any person acting on behalf of such an officer, is immune from civil liability for the release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

(14) The Department of Law Enforcement shall contract or enter into a memorandum of understanding, as applicable, with a private third-party administrator to implement the electronic recordkeeping system required by this section.

(15) The Department of Law Enforcement shall adopt rules necessary to implement this section.

893.20. Continuing criminal enterprise.

(1) Any person who commits three or more felonies under this chapter in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.

(2) A person who commits the offense of engaging in a continuing criminal enterprise is guilty of a life felony, punishable pursuant to the Criminal Punishment Code and by a fine of $500,000.

(3) Notwithstanding the provisions of § 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence may not be suspended, deferred, or withheld.

(4) This section does not prohibit separate convictions and sentences for violation of this section and for felony violations of this chapter.

(5) This section must be interpreted in concert with its federal analog, 21 U.S.C. § 848.

CHAPTER 895
OFFENSES CONCERNING RACKETEERING AND ILLEGAL DEBTS

895.02. Definitions.

As used in §§ 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

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

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Section 403.727(3)(b), relating to environmental control.

4. Section 409.920 or § 409.9201, relating to Medicaid fraud.

5. Section 414.39, relating to public assistance fraud.

6. Section 440.105 or § 440.106, relating to workers' compensation.

7. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.

8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

9. Section 499.0051, relating to crimes involving contraband and adulterated drugs.

10. Part IV of chapter 501, relating to telemarketing.

11. Chapter 517, relating to sale of securities and investor protection.

12. Section 550.235 or § 550.3551, relating to dogracing and horseracing.

13. Chapter 550, relating to jai alai frontons.

14. Section 551.109, relating to slot machine gaming.

15. Chapter 552, relating to the manufacture, distribution, and use of explosives.

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

17. Chapter 562, relating to beverage law enforcement.

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

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

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

21. Section 721.08, § 721.09, or § 721.13, relating to real estate timeshare plans.

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

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

24. Chapter 782, relating to homicide.

25. Chapter 784, relating to assault and battery.

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

27. Chapter 790, relating to weapons and firearms.

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

29. Section 796.03, § 796.035, § 796.04, § 796.05, or § 796.07, relating to prostitution and sex trafficking.

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

31. Chapter 810, relating to burglary and trespass.

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

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

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

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

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

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

38. Chapter 831, relating to forgery and counterfeiting.

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

40. Section 836.05, relating to extortion.

41. Chapter 837, relating to perjury.

42. Chapter 838, relating to bribery and misuse of public office.

43. Chapter 843, relating to obstruction of justice.

44. Section 847.011, § 847.012, § 847.013, § 847.06, or § 847.07, relating to obscene literature and profanity.

45. Chapter 849, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

46. Chapter 874, relating to criminal gangs.

47. Chapter 893, relating to drug abuse prevention and control.

48. Chapter 896, relating to offenses related to financial transactions.

49. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

50. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

(b) Any conduct defined as "racketeering activity" under 18 U.S.C. § 1961(1).

(2) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforce-

able in this state in whole or in part because the debt was incurred or contracted:

(a) In violation of any one of the following provisions of law:

1. Section 550.235 or § 550.3551, relating to dogracing and horseracing.

2. Chapter 550, relating to jai alai frontons.

3. Section 551.109, relating to slot machine gaming.

4. Chapter 687, relating to interest and usury.

5. Section 849.09, § 849.14, § 849.15, § 849.23, or § 849.25, relating to gambling.

(b) In gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

(3) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang, as defined in § 874.03, constitutes an enterprise.

(4) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.

(5) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(6) "RICO lien notice" means the notice described in § 895.05(12) or in § 895.07.

(7) "Investigative agency" means the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney.

(8) "Beneficial interest" means any of the following:

(a) The interest of a person as a beneficiary under a trust established pursuant to § 689.07 or § 689.071 in which the trustee for the trust holds legal or record title to real property;

(b) The interest of a person as a beneficiary under any other trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or

(c) The interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person.

The term "beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or a limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located.

(9) "Real property" means any real property or any interest in such real property, including, but not limited to, any lease of or mortgage upon such real property.

(10) "Trustee" means any of the following:

(a) Any person acting as trustee pursuant to a trust established under § 689.07 or § 689.071 in which the trustee holds legal or record title to real property.

(b) Any person who holds legal or record title to real property in which any other person has a beneficial interest.

(c) Any successor trustee or trustees to any or all of the foregoing persons.

However, the term "trustee" does not include any person appointed or acting as a personal representative as defined in § 731.201 or appointed or acting as a trustee of any testamentary trust or as a trustee of any indenture of trust under which any bonds have been or are to be issued.

(11) "Criminal proceeding" means any criminal proceeding commenced by an investigative agency under § 895.03 or any other provision of the Florida RICO Act.

(12) "Civil proceeding" means any civil proceeding commenced by an investigative agency under § 895.05 or any other provision of the Florida RICO Act.

CHAPTER 896
OFFENSES RELATED TO FINANCIAL TRANSACTIONS

896.101. Florida Money Laundering Act; definitions; penalties; injunctions; seizure warrants; immunity.

(1) This section may be cited as the "Florida Money Laundering Act."

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

(a) "Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state or federal law, regardless of whether or not such activity is specified in paragraph (g).

(b) "Conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

(c) "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safety deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(d) "Financial transaction" means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects commerce, or a transaction involving the transfer of title to any real property, vehicle, vessel, or aircraft, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, commerce in any way or degree.

(e) "Monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

(f) "Financial institution" means a financial institution as defined in 31 U.S.C. § 5312 which institution is located in this state.

(g) "Specified unlawful activity" means any "racketeering activity" as defined in § 895.02.

(h) "Knowing" means that a person knew; or, with respect to any transaction or transportation involving more than $10,000 in U.S. currency or foreign equivalent, should have known after reasonable inquiry, unless the person has a duty to file a federal currency transaction report, IRS Form 8300, or a like report under state law and has complied with that reporting requirement in accordance with law.

(i) "Petitioner" means any local, county, state, or federal law enforcement agency; the Attorney General; any state attorney; or the statewide prosecutor.

(3) It is unlawful for a person:

(a) Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, to conduct or attempt to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity:

1. With the intent to promote the carrying on of specified unlawful activity; or

2. Knowing that the transaction is designed in whole or in part:

a. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

b. To avoid a transaction reporting requirement or money transmitters' registration requirement under state law.

(b) To transport or attempt to transport a monetary instrument or funds:

1. With the intent to promote the carrying on of specified unlawful activity; or

2. Knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part:

a. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

b. To avoid a transaction reporting requirement or money transmitters' registration requirement under state law.

(c) To conduct or attempt to conduct a financial transaction which involves property or proceeds which an investigative or law enforcement officer, or someone acting under such officer's direction, represents as being derived from, or as being used to conduct or facilitate, specified unlawful activity, when the person's conduct or attempted conduct is undertaken with the intent:

1. To promote the carrying on of specified unlawful activity; or

2. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds or property believed to be the proceeds of specified unlawful activity; or

3. To avoid a transaction reporting requirement under state law.

(d) For the purposes of this subsection, "investigative or law enforcement officer" means any officer of the State of Florida or political subdivision thereof, of the United States, or of any other state or political subdivision thereof, who is empowered by law to conduct, on behalf of the government, investigations of, or to make arrests for, offenses enumerated in this subsection or similar federal offenses.

(4) It does not constitute a defense to a prosecution for any violation of this chapter that:

(a) Any stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed.

(b) A facility or an opportunity to engage in conduct in violation of this act was provided.

(c) A law enforcement officer, or person acting under direction of a law enforcement officer, solicited a person predisposed to engage in conduct in violation of any provision of this chapter to commit a violation of this chapter in order to gain evidence against that person, provided such solicitation would not induce an ordinary law-abiding person to violate this chapter.

This subsection does not preclude the defense of entrapment.

(5) A person who violates this section, if the violation involves:

(a) Financial transactions exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Financial transactions totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) Financial transactions totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(6) In addition to the penalties authorized by § 775.082, § 775.083, or § 775.084, a person who has been found guilty of or who has pleaded guilty or nolo contendere to having violated this section may be sentenced to pay a fine not exceeding $250,000 or twice the value of the financial transactions, whichever is greater, except that for a second or subsequent violation of this section, the fine may be up to $500,000 or quintuple the value of the financial transactions, whichever is greater.

(7) A person who violates this section is also liable for a civil penalty of not more than the value of the financial transactions involved or $25,000, whichever is greater.

(8) [Intentionally omitted.]

(9) (a) The petitioner may request issuance of a warrant authorizing the seizure of property, monetary instruments, or funds subject to civil forfeiture in the same manner as provided for search warrants in chapter 933.

(b) [Intentionally omitted.]

(10) [Intentionally omitted.]

(11) In any prosecution brought pursuant to this chapter, the common law corpus delicti rule does not apply. The defendant's confession or admission is admissible during trial without the state's having to prove the corpus delicti if the court finds in a hearing conducted outside the presence of the jury that the defendant's confession or admission is trustworthy. Before the court admits the defendant's confession or admission, the state must prove by a preponderance of the evidence that there is sufficient corroborating evidence that tends to establish the trustworthiness of the statement by the defendant. Hearsay evidence is admissible during the presentation of evidence at the hearing. In making its determination, the court may consider all relevant corroborating evidence, including the defendant's statements.

896.104. Structuring transactions to evade reporting or registration requirements prohibited.

(1) DEFINITIONS.—For purposes of this section, the terms "structure" or "structuring" mean that a person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading currency transaction reporting requirements provided by state or federal law. "In any manner" includes, but is not limited to, the breaking down of a single sum of currency exceeding $10,000 into smaller sums, including sums at or below $10,000, or the conduct of a transaction, or series of currency transactions, at or below $10,000. The transaction or transactions need not exceed the $10,000 reporting threshold at any single financial institution on any single day in order to meet the definition of "structure" or "structuring" provided in this subsection.

(2) DOMESTIC COIN AND CURRENCY TRANSACTIONS.—A person may not, for the purpose of evading the reporting and

registration requirements of chapter 560, chapter 655, or this chapter, or 31 U.S.C. § 5313(a) or § 5325, or any rules or regulations adopted under those chapters and sections, when some portion of the activity by that person occurs in this state:

(a) Cause or attempt to cause a person or financial institution in this state to fail to file an applicable report or registration required under those chapters and sections or any rule or regulation adopted under any of those chapters and sections;

(b) Cause or attempt to cause a person or financial institution in this state to file an applicable report required under those chapters and sections or any rule or regulation adopted under those chapters and sections which contains a material omission or misstatement of fact; or

(c) Structure or assist in structuring, or attempt to structure or assist in structuring, any financial transaction with or involving one or more financial institutions in this state.

(3) INTERNATIONAL MONETARY INSTRUMENT TRANSACTIONS.—A person may not, for the purpose of evading the reporting or registration requirements of chapter 560, chapter 655, or this chapter, or 31 U.S.C. § 5316, when some portion of the activity by that person occurs in this state:

(a) Fail to file an applicable registration or report required by those chapters and sections, or cause or attempt to cause a person to fail to file such a report;

(b) File or cause or attempt to cause a person to file an applicable registration or report required under those chapters and sections which contains a material omission or misstatement of fact; or

(c) Structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of currency or monetary instruments or funds to, from, or through financial institutions in this state.

(4) CRIMINAL PENALTIES.—

(a) A person who violates this section, if the violation involves:

1. Financial transactions exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

2. Financial transactions totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

3. Financial transactions totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) In addition to the penalties authorized by § 775.082, § 775.083, or § 775.084, a person who has been found guilty of or who has pleaded guilty or nolo contendere to having violated this section may be sentenced to pay a fine not exceeding $250,000 or twice the value of the financial transactions, whichever is greater, except that for a second or subsequent violation of this section, the fine may be up to $500,000 or quintuple the value of the financial transactions, whichever is greater.

(c) A person who violates this section is also liable for a civil penalty of not more than the value of the financial transactions involved or $25,000, whichever is greater.

(5) INFERENCE.—Proof that a person engaged for monetary consideration in the business of a money transmitter, as defined in § 560.103, and who is transporting more than $10,000 in currency, or the foreign equivalent, without being licensed as a money transmitter or designated as an authorized vendor under chapter 560, gives rise to an inference that the transportation was done with knowledge of the licensure requirements of chapter 560 and the reporting requirements of this chapter.

(6) CONSTRUCTION.—This section may not be construed to require any new or additional reporting requirements on any entity obligated to file reports under state or federal law.

896.105. Penalty provisions not applicable to law enforcement.

The penalty provisions of this chapter, including those directed at reporting violations or the conduct or attempted conduct of unlawful financial transactions, the unlawful transportation or attempted transportation of monetary instruments, and the concealment of unlawful proceeds or their ownership are not applicable to law enforcement officers who engage in aspects of such activity for bona fide authorized undercover law enforcement purposes in the course of or in relation to an active criminal investigation, active criminal intelligence gathering, or active prosecution.

896.106. Fugitive disentitlement.

A person may not use the resources of the courts of this state in furtherance of a claim in any related civil forfeiture action

or a claim in a third-party proceeding in any related forfeiture action if that person purposely leaves the jurisdiction of this state or the United States; declines to enter or reenter this state to submit to its jurisdiction; or otherwise evades the jurisdiction of the court in which a criminal case is pending against the person.

CHAPTER 901
ARRESTS

901.36. Prohibition against giving false name or false identification by person arrested or lawfully detained; penalties; court orders.

(1) It is unlawful for a person who has been arrested or lawfully detained by a law enforcement officer to give a false name, or otherwise falsely identify himself or herself in any way, to the law enforcement officer or any county jail personnel. Except as provided in subsection (2), any person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) A person who violates subsection (1), if such violation results in another person being adversely affected by the unlawful use of his or her name or other identification, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) (a) In sentencing a person for violation of this section, a court may order restitution.

(b) The sentencing court may issue such orders as are necessary to correct any public record because it contains a false name or other false identification information given in violation of this section.

(c) Upon application to the court, a person adversely affected by the unlawful use of his or her name or other identification in violation of this section may obtain from the court orders necessary to correct any public record, as described in paragraph (b).

CHAPTER 914
WITNESSES; CRIMINAL PROCEEDINGS

914.22. Tampering with or harassing a witness, victim, or informant; penalties.

(1) A person who knowingly uses intimidation or physical force, or threatens another person, or attempts to do so, or engages in misleading conduct toward another person, or offers pecuniary benefit or gain to another person, with intent to cause or induce any person to:

(a) Withhold testimony, or withhold a record, document, or other object, from an official investigation or official proceeding;

(b) Alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official investigation or official proceeding;

(c) Evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official investigation or an official proceeding;

(d) Be absent from an official proceeding to which such person has been summoned by legal process;

(e) Hinder, delay, or prevent the communication to a law enforcement officer or judge of information relating to the commission or possible commission of an offense or a violation of a condition of probation, parole, or release pending a judicial proceeding; or

(f) Testify untruthfully in an official investigation or an official proceeding,

commits the crime of tampering with a witness, victim, or informant.

(2) Tampering with a witness, victim, or informant is a:

(a) Felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a misdemeanor.

(b) Felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a third degree felony.

(c) Felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a second degree felony.

(d) Felony of the first degree, punishable by a term of years not exceeding life or as provided in § 775.082, § 775.083, or § 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a first degree felony or a first degree felony punishable by a term of years not exceeding life.

(e) Life felony, punishable as provided in § 775.082, § 775.083, or § 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a life or capital felony.

(f) Felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, where the offense level of the affected official investigation or official proceeding is indeterminable or where the affected official investigation or official proceeding involves a noncriminal investigation or proceeding.

(3) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from:

(a) Attending or testifying in an official proceeding or cooperating in an official investigation;

(b) Reporting to a law enforcement officer or judge the commission or possible commission of an offense or a violation of a condition of probation, parole, or release pending a judicial proceeding;

(c) Arresting or seeking the arrest of another person in connection with an offense; or

(d) Causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or from assisting in such prosecution or proceeding;

or attempts to do so, commits the crime of harassing a witness, victim, or informant.

(4) Harassing a witness, victim, or informant is a:

(a) Misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, where the official investigation or official proceeding affected involves the investigation or prosecution of a misdemeanor.

(b) Felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a third degree felony.

(c) Felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a second degree felony.

(d) Felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a first degree felony.

(e) Felony of the first degree, punishable by a term of years not exceeding life or as provided in § 775.082, § 775.083, or § 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a felony of the first degree punishable by a term of years not exceeding life or a prosecution of a life or capital felony.

(f) Felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084, where the offense level of the affected official investigation or official proceeding is indeterminable or where the affected official investigation or official proceeding involves a noncriminal investigation or proceeding.

(5) For the purposes of this section:

(a) An official proceeding need not be pending or about to be instituted at the time of the offense; and

(b) The testimony or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(6) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance:

(a) That the official proceeding before a judge, court, grand jury, or government agency is before a judge or court of the state, a state or local grand jury, or a state agency; or

(b) That the judge is a judge of the state or that the law enforcement officer is an officer or employee of the state or a person authorized to act for or on behalf of the state or serving the state as an adviser or consultant.

914.23. Retaliating against a witness, victim, or informant.

A person who knowingly engages in any conduct that causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for:

(1) The attendance of a witness or party at an official proceeding, or for any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(2) Any information relating to the commission or possible commission of an offense or a violation of a condition of probation, parole, or release pending a judicial proceeding given by a person to a law enforcement officer;

or attempts to do so, is guilty of a criminal offense. If the conduct results in bodily injury, such person is guilty of a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Otherwise, such person is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

914.24. Civil action to restrain harassment of a victim or witness.

(1) (a) A circuit court, upon application of the state attorney, shall issue a temporary restraining order prohibiting the harassment of a victim or witness in a criminal case if the court finds, from specific facts shown by affidavit or by verified complaint, that there are reasonable grounds to believe that harassment of an identified victim or witness in a criminal case exists or that such order is necessary to prevent and restrain an offense under § 914.22, other than an offense consisting of misleading conduct, or to prevent and restrain an offense under § 914.23.

(b) 1. A temporary restraining order may be issued under this section without written or oral notice to the adverse party or such party's attorney in a civil action under this section if the court finds, upon written certification of facts by the state attorney, that such notice should not be required and that there is a reasonable probability that the state will prevail on the merits. The temporary restraining order shall set forth the reasons for the issuance of such order, be specific in terms, and describe in reasonable detail, and not by reference to the complaint or other document, the act or acts being restrained.

2. A temporary restraining order issued without notice under this section shall be endorsed with the date and hour of issuance and be filed forthwith in the office of the clerk of the court issuing the order.

3. A temporary restraining order issued under this section shall expire at such time as the court directs, not to exceed 10 days from issuance. The court, for good cause shown before expiration of such order, may extend the expiration date of the order for up to 10 days or for a longer period agreed to by the adverse party.

4. When a temporary restraining order is issued without notice, the motion for a protective order shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and, if the state attorney does not proceed with the application for a protective order when such motion comes on for hearing, the court shall dissolve the temporary restraining order.

5. If, on 2 days' notice to the state attorney or on such shorter notice as the court may prescribe, the adverse party appears and moves to dissolve or modify the temporary restraining order, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(2) (a) A circuit court, upon motion of the state attorney, shall issue a protective order prohibiting the harassment of a victim or witness in a criminal case if the court, after a hearing, finds by a preponderance of the evidence that harassment of an identified victim or witness in a criminal case exists or that such order is necessary to prevent and restrain an offense under § 914.22, other than an offense consisting of misleading conduct, or to prevent and restrain an offense under § 914.23.

(b) At the hearing referred to in paragraph (a), any adverse party named in the complaint has the right to present evidence and cross-examine witnesses.

(c) A protective order shall set forth the reasons for the issuance of such order, be specific in terms, and describe in reasonable detail, and not by reference to the complaint or other document, the act or acts being restrained.

(d) The court shall set the duration of the protective order for such period as it determines is necessary to prevent the harassment of the victim or witness but in no case shall the duration be set for a period in excess of 3 years from the date of the issuance of the order. The state attorney may, at any time within 90 days before the expiration of such order, apply for a new protective order under this section.

(3) As used in this section, the term:

(a) "Harassment" means a course of conduct directed at a specific person that:

1. Causes substantial emotional distress in such person; and

2. Serves no legitimate purpose.

(b) "Course of conduct" means a series of acts over a period of time, however short, indicating a continuity of purpose.

(4) Nothing in this section precludes a court from entering any other order or remedy which may be appropriate in the circumstances.

CHAPTER 918
CONDUCT OF TRIAL

918.13. Tampering with or fabricating physical evidence.

(1) No person, knowing that a criminal trial or proceeding or an investigation by a duly constituted prosecuting authority, law enforcement agency, grand jury or legislative committee of this state is pending or is about to be instituted, shall:

(a) Alter, destroy, conceal, or remove any record, document, or thing with the purpose

to impair its verity or availability in such proceeding or investigation; or

(b) Make, present, or use any record, document, or thing, knowing it to be false.

(2) Any person who violates any provision of this section shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

918.16. Sex offenses; testimony of person under age 16 or who has an intellectual disability; testimony of victim; courtroom cleared; exceptions.

(1) Except as provided in subsection (2), in the trial of any case, civil or criminal, if any person under the age of 16 or any person with an intellectual disability as defined in § 393.063 is testifying concerning any sex offense, the court shall clear the courtroom of all persons except parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, court reporters, and, at the request of the victim, victim or witness advocates designated by the state attorney's office.

(2) If the victim of a sex offense is testifying concerning that offense in any civil or criminal trial, the court shall clear the courtroom of all persons upon the request of the victim, regardless of the victim's age or mental capacity, except that parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, court reporters, and, at the request of the victim, victim or witness advocates designated by the state attorney may remain in the courtroom.

CHAPTER 934
SECURITY OF COMMUNICATIONS; SURVEILLANCE

934.03. Interception and disclosure of wire, oral, or electronic communications prohibited.

(1) Except as otherwise specifically provided in this chapter, any person who:

(a) Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;

(b) Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

1. Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

2. Such device transmits communications by radio or interferes with the transmission of such communication;

(c) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(d) Intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

(e) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication intercepted by means authorized by subparagraph (2)(a)2., paragraph (2)(b), paragraph (2)(c), § 934.07, or § 934.09 when that person knows or has reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, has obtained or received the information in connection with a criminal investigation, and intends to improperly obstruct, impede, or interfere with a duly authorized criminal investigation;

shall be punished as provided in subsection (4).

(2) (a) 1. It is lawful under §§ 934.03-934.09 for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

2. Notwithstanding any other law, a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person, may provide information, facilities, or

technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if such provider, or an officer, employee, or agent thereof, or landlord, custodian, or other person, has been provided with:

a. A court order directing such assistance signed by the authorizing judge; or

b. A certification in writing by a person specified in § 934.09(7) that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required.

3. A provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person may not disclose the existence of any interception or the device used to accomplish the interception with respect to which the person has been furnished an order under §§ 934.03-934.09, except as may otherwise be required by legal process and then only after prior notice to the Governor, the Attorney General, the statewide prosecutor, or a state attorney, as may be appropriate. Any such disclosure renders such person liable for the civil damages provided under § 934.10, and such person may be prosecuted under § 934.43. An action may not be brought against any provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person for providing information, facilities, or assistance in accordance with the terms of a court order under §§ 934.03-934.09.

(b) It is lawful under §§ 934.03-934.09 for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his or her employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of 47 U.S.C. ch. 5, to intercept a wire, oral, or electronic communication transmitted by radio or to disclose or use the information thereby obtained.

(c) It is lawful under §§ 934.03-934.09 for an investigative or law enforcement officer or a person acting under the direction of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.

(d) It is lawful under §§ 934.03-934.09 for a person to intercept a wire, oral, or electronic communication when all of the parties to the communication have given prior consent to such interception.

(e) It is unlawful to intercept any wire, oral, or electronic communication for the purpose of committing any criminal act.

(f) It is lawful under §§ 934.03-934.09 for an employee of a telephone company to intercept a wire communication for the sole purpose of tracing the origin of such communication when the interception is requested by the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature. The individual conducting the interception shall notify local police authorities within 48 hours after the time of the interception.

(g) It is lawful under §§ 934.03-934.09 for an employee of:

1. An ambulance service licensed pursuant to § 401.25, a fire station employing firefighters as defined by § 633.102, a public utility, a law enforcement agency as defined by § 934.02(10), or any other entity with published emergency telephone numbers;

2. An agency operating an emergency telephone number "911" system established pursuant to § 365.171; or

3. The central abuse hotline operated pursuant to § 39.201

to intercept and record incoming wire communications; however, such employee may intercept and record incoming wire communications on designated "911" telephone numbers and published nonemergency telephone numbers staffed by trained dispatchers at public safety answering points only. It is also lawful for such employee to intercept and record outgoing wire communications to the numbers from which such incoming wire communications were placed when necessary to obtain information required to provide the emergency services being requested. For the purpose of this paragraph, the term "public utility" has the same meaning as provided in § 366.02 and includes a person, partnership, association, or corporation now or hereafter owning or operating equipment or facilities in the state for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

(h) It shall not be unlawful under §§ 934.03-934.09 for any person:

1. To intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public.

2. To intercept any radio communication which is transmitted:

a. By any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

b. By any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including any police or fire communications system, readily accessible to the general public;

c. By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

d. By any marine or aeronautical communications system.

3. To engage in any conduct which:

a. Is prohibited by § 633 of the Communications Act of 1934; or

b. Is excepted from the application of § 705(a) of the Communications Act of 1934 by § 705(b) of that act.

4. To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station of consumer electronic equipment to the extent necessary to identify the source of such interference.

5. To intercept, if such person is another user of the same frequency, any radio communication that is not scrambled or encrypted made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system.

6. To intercept a satellite transmission that is not scrambled or encrypted and that is transmitted:

a. To a broadcasting station for purposes of retransmission to the general public; or

b. As an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls, when such interception is not for the purposes of direct or indirect commercial advantage or private financial gain.

7. To intercept and privately view a private satellite video communication that is not scrambled or encrypted or to intercept a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted, if such interception is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

(i) It shall not be unlawful under §§ 934.03-934.09:

1. To use a pen register or a trap and trace device as authorized under §§ 934.31-934.34 or under federal law; or

2. For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of such service.

(j) It is not unlawful under §§ 934.03-934.09 for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser which are transmitted to, through, or from a protected computer if:

1. The owner or operator of the protected computer authorizes the interception of the communications of the computer trespasser;

2. The person acting under color of law is lawfully engaged in an investigation;

3. The person acting under color of law has reasonable grounds to believe that the contents of the communications of the computer trespasser will be relevant to the investigation; and

4. The interception does not acquire communications other than those transmitted to, through, or from the computer trespasser.

(3) (a) Except as provided in paragraph (b), a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication:

1. As otherwise authorized in paragraph (2)(a) or § 934.08;

2. With the lawful consent of the originator or any addressee or intended recipient of such communication;

3. To a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

4. Which were inadvertently obtained by the service provider and which appear to

pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

(4) (a) Except as provided in paragraph (b), whoever violates subsection (1) is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, § 775.084, or § 934.41.

(b) If the offense is a first offense under paragraph (a) and is not for any tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) was committed is a radio communication that is not scrambled, encrypted, or transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication, then:

1. If the communication is not the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication, or a paging service communication, and the conduct is not that described in subparagraph (2)(h)7., the person committing the offense is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

2. If the communication is the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication, or a paging service communication, the person committing the offense is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

934.215. Unlawful use of a two-way communications device.

Any person who uses a two-way communications device, including, but not limited to, a portable two-way wireless communications device, to facilitate or further the commission of any felony offense commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

934.43. Criminal disclosure of subpoena, order, or authorization.

(1) Any person having knowledge of a warrant, subpoena, application, order, or other authorization which has been issued or obtained pursuant to the action of an investigative or law enforcement officer as authorized by this chapter, who:

(a) With intent to obstruct, impede, or prevent an investigation, criminal prosecution, or civil, regulatory, or forfeiture action on behalf of the State of Florida or a political subdivision thereof; or

(b) With intent to obstruct, impede, or prevent the obtaining by an investigative or law enforcement officer of the information or materials sought pursuant to such warrant, subpoena, application, order, or authorization

gives notice or attempts to give notice of the investigation, criminal prosecution, or civil, regulatory, or forfeiture action, warrant, subpoena, application, order, or other authorization to any person commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, § 775.084, or § 934.41.

(2) This section does not prevent disclosure of the existence of the warrant, subpoena, application, order, or other authorization as otherwise provided under this chapter.

934.50. Searches and seizure using a drone.

(1) SHORT TITLE.—This act may be cited as the "Freedom from Unwarranted Surveillance Act."

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

(a) "Drone" means a powered, aerial vehicle that:

1. Does not carry a human operator;

2. Uses aerodynamic forces to provide vehicle lift;

3. Can fly autonomously or be piloted remotely;

4. Can be expendable or recoverable; and

5. Can carry a lethal or nonlethal payload.

(b) "Law enforcement agency" means a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

(3) PROHIBITED USE OF DRONES.—A law enforcement agency may not use a drone to gather evidence or other information.

(4) EXCEPTIONS.—This act does not prohibit the use of a drone:

(a) To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk.

(b) If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a drone.

(c) If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.

(5) REMEDIES FOR VIOLATION.—An aggrieved party may initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of this act.

(6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or collected in violation of this act is not admissible as evidence in a criminal prosecution in any court of law in this state.

CHAPTER 937
MISSING PERSON INVESTIGATIONS

937.0201. Definitions.

As used in this chapter, the term:

(1) "Department" means the Department of Law Enforcement.

(2) "Missing adult" means a person 18 years of age or older whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency.

(3) "Missing child" means a person younger than 18 years of age whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency.

(4) "Missing endangered person" means:

(a) A missing child;

(b) A missing adult younger than 26 years of age;

(c) A missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity; or

(d) A missing adult who meets the criteria for activation of the Silver Alert Plan of the Department of Law Enforcement.

(5) "Missing endangered person report" means a report prepared on a form prescribed by the department by rule for use by the public and law enforcement agencies in reporting information to the Missing Endangered Persons Information Clearinghouse about a missing endangered person.

937.021. Missing child and missing adult reports.

(1) Law enforcement agencies in this state shall adopt written policies that specify the procedures to be used to investigate reports of missing children and missing adults. The policies must ensure that cases involving missing children and adults are investigated promptly using appropriate resources. The policies must include:

(a) Requirements for accepting missing child and missing adult reports;

(b) Procedures for initiating, maintaining, closing, or referring a missing child or missing adult investigation; and

(c) Standards for maintaining and clearing computer data of information concerning a missing child or missing adult which is stored in the Florida Crime Information Center and the National Crime Information Center. The standards must require, at a minimum, a monthly review of each case and a determination of whether the case should be maintained in the database.

(2) An entry concerning a missing child or missing adult may not be removed from the Florida Crime Information Center or the National Crime Information Center databases based solely on the age of the missing child or missing adult.

(3) A report that a child or adult is missing must be accepted by and filed with the law enforcement agency having jurisdiction in the county or municipality in which the child or adult was last seen. The filing and acceptance of the report imposes the duties specified in this section upon the law enforcement agency receiving the report. This subsection does not preclude a law enforcement agency from accepting a missing child or missing adult report when agency jurisdiction cannot be determined.

(4) (a) Upon the filing of a police report that a child is missing by the parent or guardian, the Department of Children and Family Services, a community-based care provider, or a sheriff's office providing investigative services for the department, the law enforcement agency receiving the report shall immediately inform all on-duty law enforcement officers of the missing child report, communicate the report to every other law enforcement agency having jurisdiction in the county, and within 2 hours after receipt of the report, transmit the report for inclusion within the Florida Crime Information

Center and the National Crime Information Center databases. A law enforcement agency may not require a reporter to present an order that a child be taken into custody or any other such order before accepting a report that a child is missing.

(b) Upon the filing of a credible police report that an adult is missing, the law enforcement agency receiving the report shall, within 2 hours after receipt of the report, transmit the report for inclusion within the Florida Crime Information Center and the National Crime Information Center databases.

(5) (a) Upon receiving a request to record, report, transmit, display, or release Amber Alert or Missing Child Alert information from the law enforcement agency having jurisdiction over the missing child, the Department of Law Enforcement as the state Amber Alert coordinator, any state or local law enforcement agency, and the personnel of these agencies; any radio or television network, broadcaster, or other media representative; any dealer of communications services as defined in § 202.11; or any agency, employee, individual, or entity is immune from civil liability for damages for complying in good faith with the request and is presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing Amber Alert or Missing Child Alert information pertaining to the child.

(b) Upon receiving a request to record, report, transmit, display, or release information and photographs pertaining to a missing adult or missing child from the law enforcement agency having jurisdiction over the missing adult or missing child, the department, a state or local law enforcement agency, and the personnel of these agencies; any radio or television network, broadcaster, or other media representative; any dealer of communications services as defined in § 202.11; or any agency, employee, individual, or person is immune from civil liability for damages for complying in good faith with the request to provide information and is presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing information or photographs pertaining to the missing adult or missing child.

(c) Upon receiving a request to record, report, transmit, display, or release Silver Alert information from the law enforcement agency having jurisdiction over the missing adult, the Department of Law Enforcement as the state Silver Alert coordinator, any state or local law enforcement agency, and the personnel of these agencies; any radio or television network, broadcaster, or other media representative; any dealer of communications services as defined in § 202.11; or any agency, employee, individual, or entity is immune from civil liability for damages for complying in good faith with the request and is presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing Silver Alert information pertaining to the missing adult.

(d) The presumption of good faith is not overcome if a technical or clerical error is made by any agency, employee, individual, or entity acting at the request of the local law enforcement agency having jurisdiction, or if the Amber Alert, Missing Child Alert, missing child information, missing adult information, or Silver Alert information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect.

(e) Neither this subsection nor any other provision of law creates a duty of the agency, employee, individual, or entity to record, report, transmit, display, or release the Amber Alert, Missing Child Alert, missing child information, missing adult information, or Silver Alert information received from the local law enforcement agency having jurisdiction. The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity receiving the information.

(6) If a missing child or missing adult is not located within 90 days after the missing child or missing adult report is filed, the law enforcement agency that accepted the report shall attempt to obtain a biological specimen for DNA analysis from the missing child or missing adult or from appropriate family members in addition to obtaining necessary documentation. This subsection does not prevent a law enforcement agency from attempting to obtain information or approved biological specimens for DNA analysis before the expiration of the 90-day period.

(7) The department shall adopt rules specific to cases involving missing children and missing adults which will:

(a) Identify biological specimens that are approved by the department for DNA analysis.

(b) Identify the documentation necessary for the department to use the biological specimens for DNA analysis.

(c) Establish procedures for the collection of biological specimens by law enforcement agencies.

(d) Establish procedures for forwarding biological specimens by law enforcement agencies to the department.

(8) Subsections (6) and (7) are contingent upon the availability of federal funding for the submission and processing of approved biological specimens for DNA analysis.

937.022. Missing Endangered Persons Information Clearinghouse.

(1) There is created a Missing Endangered Persons Information Clearinghouse within the department to serve as a central repository of information regarding missing endangered persons. Such information shall be collected and disseminated to assist in the location of missing endangered persons.

(2) The clearinghouse shall be supervised by a director who shall be employed upon the recommendation of the executive director. The executive director shall establish services deemed appropriate by the department to aid in the location of missing endangered persons.

(3) The clearinghouse shall:

(a) Establish a system of intrastate communication of information relating to missing endangered persons.

(b) Provide a centralized file for the exchange of information on missing endangered persons.

1. Every state, county, or municipal law enforcement agency shall submit to the clearinghouse information concerning missing endangered persons.

2. Any person having knowledge may submit a missing endangered person report to the clearinghouse concerning a child or adult younger than 26 years of age whose whereabouts is unknown, regardless of the circumstances, subsequent to reporting such child or adult missing to the appropriate law enforcement agency within the county in which the child or adult became missing, and subsequent to entry by the law enforcement agency of the child or person into the Florida Crime Information Center and the National Crime Information Center databases. The missing endangered person report shall be included in the clearinghouse database.

3. Only the law enforcement agency having jurisdiction over the case may submit a missing endangered person report to the clearinghouse involving a missing adult age 26 years or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity.

4. Only the law enforcement agency having jurisdiction over the case may make a request to the clearinghouse for the activation of a state Silver Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation of the Silver Alert Plan.

(c) Collect, process, maintain, and disseminate information on missing endangered persons and strive to maintain or disseminate only accurate and complete information.

(4) The person responsible for notifying the clearinghouse or a law enforcement agency about a missing endangered person shall immediately notify the clearinghouse or the agency of any child or adult whose location has been determined.

(5) The law enforcement agency having jurisdiction over a case involving a missing endangered person shall, upon locating the child or adult, immediately purge information about the case from the Florida Crime Information Center or the National Crime Information Center databases and notify the clearinghouse.

937.028. Fingerprints; missing persons.

(1) If fingerprints have been taken for the purpose of identifying a child, in the event that child becomes missing, the state agency, public or private organization, or other person who took such fingerprints shall not release the fingerprints to any law enforcement agency or other person for any purpose other than the identification of a missing child. Such records and data are exempt from § 119.07(1).

(2) Fingerprints of children taken and retained by any state agency other than the Department of Law Enforcement, any public or private organization, or other person, excluding the parent or legal custodian of the child, shall be destroyed when the child attains 18 years of age. Fingerprints of persons, including children, who are reported missing that have been entered into the automated biometric identification system maintained by the Department of Law Enforcement may be retained until the department is notified that the missing person has been recovered.

CHAPTER 944
STATE CORRECTIONAL SYSTEM

944.40. Escapes; penalty.

Any prisoner confined in any prison, jail, private correctional facility, road camp, or other penal institution, whether operated by the state, a county, or a municipality, or operated under a contract with the state, a county, or a municipality, working upon

the public roads, or being transported to or from a place of confinement who escapes or attempts to escape from such confinement commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. The punishment of imprisonment imposed under this section shall run consecutive to any former sentence imposed upon any prisoner.

944.47. Introduction, removal, or possession of certain articles unlawful; penalty.

(1) (a) Except through regular channels as authorized by the officer in charge of the correctional institution, it is unlawful to introduce into or upon the grounds of any state correctional institution, or to take or attempt to take or send or attempt to send therefrom, any of the following articles which are hereby declared to be contraband for the purposes of this section, to wit:

1. Any written or recorded communication or any currency or coin given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.

2. Any article of food or clothing given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.

3. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.

4. Any controlled substance as defined in § 893.02(4) or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.

5. Any firearm or weapon of any kind or any explosive substance.

6. Any cellular telephone or other portable communication device 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. As used in this subparagraph, the term "portable communication device" means 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. Excluded from this definition is any device having communication capabilities which has been approved or issued by the department for investigative or institutional security purposes or for conducting other state business.

(b) It is unlawful to transmit or attempt to transmit to, or cause or attempt to cause to be transmitted to or received by, any inmate of any state correctional institution any article or thing declared by this subsection to be contraband, at any place which is outside the grounds of such institution, except through regular channels as authorized by the officer in charge of such correctional institution.

(c) It is unlawful for any inmate of any state correctional institution or any person while upon the grounds of any state correctional institution to be in actual or constructive possession of any article or thing declared by this section to be contraband, except as authorized by the officer in charge of such correctional institution.

(2) A person who violates any provision of this section as it pertains to an article of contraband described in subparagraph (1)(a)1., subparagraph (1)(a)2., or subparagraph (1)(a)6. commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. In all other cases, a violation of a provision of this section constitutes a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

CHAPTER 951
COUNTY AND MUNICIPAL PRISONERS

951.22. County detention facilities; contraband articles.

(1) It is unlawful, except through regular channels as duly authorized by the sheriff or officer in charge, to introduce into or possess upon the grounds of any county detention facility as defined in § 951.23 or to give to or receive from any inmate of any such facility wherever said inmate is located at the time or to take or to attempt to take or send therefrom any of the following articles which are hereby declared to be contraband for the purposes of this act, to wit: Any written or recorded communication; any currency or coin; any article of food or clothing; any tobacco products as defined in § 210.25(11); any cigarette as defined in § 210.01(1); any

cigar; any intoxicating beverage or beverage which causes or may cause an intoxicating effect; any narcotic, hypnotic, or excitative drug or drug of any kind or nature, including nasal inhalators, sleeping pills, barbiturates, and controlled substances as defined in § 893.02(4); any firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon; and any 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.

(2) Whoever violates subsection (1) shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

951.221. Sexual misconduct between detention facility employees and inmates; penalties.

(1) Any employee of a county or municipal detention facility or of a private detention facility under contract with a county commission who engages in sexual misconduct, as defined in § 944.35(3)(b)1., with an inmate or an offender supervised by the facility without committing the crime of sexual battery commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. The consent of an inmate to any act of sexual misconduct may not be raised as a defense to prosecution under this section.

(2) Notwithstanding prosecution, any violation of this section, as determined by the administrator of the facility, constitutes sufficient cause for dismissal of the violator from employment, and such person may not again be employed in any capacity in connection with the correctional system.

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CHAPTER 316
STATE UNIFORM TRAFFIC CONTROL

316.003. Definitions.

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

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

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

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

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

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

(6) CROSSWALK.—

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

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

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

(8) DEPARTMENT.—The Department of Highway Safety and Motor Vehicles as defined in § 20.24. Any reference herein to Department of Transportation shall be construed as referring to the Department of Transportation, defined in § 20.23, or the appropriate division thereof.

(9) DIRECTOR.—The Director of the Division of the Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles.

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

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

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

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

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

(15) HOUSE TRAILER.—

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

(b) A trailer or a semitrailer the chassis and exterior shell of which is designed and constructed for use as a house trailer, as defined in paragraph (a), but which is used instead, permanently or temporarily, for the advertising, sales, display, or promotion of merchandise or services or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

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

(17) INTERSECTION.—

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

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

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

(19) LIMITED ACCESS FACILITY.—A street or highway especially designed for through traffic and over, from, or to which owners or occupants of abutting land or other persons have no right or easement, or only a limited right or easement, of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be parkways from which trucks, buses, and other commercial vehicles are excluded; or they may be freeways open to use by all customary forms of street and highway traffic.

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

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

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

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

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

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

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

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

(28) PEDESTRIAN.—Any person afoot.

(29) PERSON.—Any natural person, firm, copartnership, association, or corporation.

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

(31) POLE TRAILER.—Any vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members ca-

pable, generally, of sustaining themselves as beams between the supporting connections.

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

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

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

(35) RAILROAD.—A carrier of persons or property upon cars operated upon stationary rails.

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

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

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

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

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

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

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

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

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

(45) SCHOOL BUS.—Any motor vehicle that complies with the color and identification requirements of chapter 1006 and is used to transport children to or from public or private school or in connection with school activities, but not including buses operated by common carriers in urban transportation of school children. The term "school" includes all preelementary, elementary, secondary, and postsecondary schools.

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

(47) SIDEWALK.—That portion of a street between the curbline, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians.

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

mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

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

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

(51) STOP.—When required, complete cessation from movement.

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

(53) STREET OR HIGHWAY.—

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

(b) The entire width between the boundary lines of any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons, or any limited access road owned or controlled by a special district, whenever, by written agreement entered into under § 316.006(2)(b) or (3)(b), a county or municipality exercises traffic control jurisdiction over said way or place;

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Any carpool as defined in § 450.28(3).

(63) BICYCLE PATH.—Any road, path, or way that is open to bicycle travel, which road, path, or way is physically separated from motorized vehicular traffic by an open space or by a barrier and is located either within the highway right-of-way or within an independent right-of-way.

(64) CHIEF ADMINISTRATIVE OFFICER.—The head, or his or her designee, of any law enforcement agency which is authorized to enforce traffic laws.

(65) CHILD.—A child as defined in § 39.01, § 984.03, or § 985.03.

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

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

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

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

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

(67) COURT.—The court having jurisdiction over traffic offenses.

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

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

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

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

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

(73) TERMINAL.—Any location where:

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

(b) Commercial motor carriers maintain operating facilities.

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

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

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

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

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

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

(80) MAXI-CUBE VEHICLE.—A specialized combination vehicle consisting of a truck carrying a separable cargo-carrying unit combined with a semitrailer designed so that the separable cargo-carrying unit is to be loaded and unloaded through the semitrailer. The entire combination may not exceed 65 feet in length, and a single component of that combination may not exceed 34 feet in length.

(81) TANDEM AXLE.—Any two axles whose centers are more than 40 inches but not more than 96 inches apart and are individually attached to or articulated from, or both, a common attachment to the vehicle,

including a connecting mechanism designed to equalize the load between axles.

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

(83) ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE.—Any self-balancing, two-nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of 750 watts (1 horsepower), the maximum speed of which, on a paved level surface when powered solely by such a propulsion system while being ridden by an operator who weighs 170 pounds, is less than 20 miles per hour. Electric personal assistive mobility devices are not vehicles as defined in this section.

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

(85) VICTIM SERVICES PROGRAMS.—Any community-based organization whose primary purpose is to act as an advocate for the victims and survivors of traffic crashes and for their families. The victims services offered by these programs may include grief and crisis counseling, assistance with preparing victim compensation claims excluding third-party legal action, or connecting persons with other service providers, and providing emergency financial assistance.

(86) MOTOR CARRIER TRANSPORTATION CONTRACT.—

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

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

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

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

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

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

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

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

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

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

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

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

(f) Is equipped with:

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

2. A steering wheel used to maneuver the vehicle;

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

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

5. A windshield and an appropriate windshield wiper and washer system that are certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 205, "Glazing Materials" (49 C.F.R. § 571.205) and Federal Motor Vehicle Safety Standard No. 104, "Windshield Wiping and Washing Systems" (49 C.F.R. § 571.104); and

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

(89) SWAMP BUGGY.—A motorized off-road vehicle that is designed or modified to travel over swampy or varied terrain and that may use large tires or tracks operated

from an elevated platform. The term does not include any vehicle defined in chapter 261 or otherwise defined or classified in this chapter.

(90) AUTONOMOUS VEHICLE.—Any vehicle equipped with autonomous technology. The term "autonomous technology" means technology installed on a motor vehicle that has the capability to drive the vehicle on which the technology is installed without the active control or monitoring by a human operator. The term excludes a motor vehicle enabled with active safety systems or driver assistance systems, including, without limitation, a system to provide electronic blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane keep assistance, lane departure warning, or traffic jam and queuing assistant, unless any such system alone or in combination with other systems enables the vehicle on which the technology is installed to drive without the active control or monitoring by a human operator.

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

316.0075. Operator use of commercial mobile radio services and electronic communications devices.

Regulation of operator or passenger use of commercial mobile radio services and other electronic communications devices in a motor vehicle is expressly preempted to the state.

316.0076. Regulation and use of cameras.

Regulation of the use of cameras for enforcing the provisions of this chapter is expressly preempted to the state. The regulation of the use of cameras for enforcing the provisions of this chapter is not required to comply with provisions of chapter 493.

316.008. Powers of local authorities.

(1) The provisions of this chapter shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from:

(a) Regulating or prohibiting stopping, standing, or parking.

(b) Regulating traffic by means of police officers or official traffic control devices.

(c) Regulating or prohibiting processions or assemblages on the streets or highways, including all state or federal highways lying within their boundaries.

(d) Designating particular highways or roadways for use by traffic moving in one direction.

(e) Establishing speed limits for vehicles in public parks.

(f) Designating any street as a through street or designating any intersection as a stop or yield intersection.

(g) Restricting the use of streets.

(h) Regulating the operation of bicycles.

(i) Regulating or prohibiting the turning of vehicles or specified types of vehicles.

(j) Altering or establishing speed limits within the provisions of this chapter.

(k) Requiring written crash reports.

(l) Designating no-passing zones.

(m) Prohibiting or regulating the use of controlled access roadways by any class or kind of traffic.

(n) Prohibiting or regulating the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic.

(o) Designating hazardous railroad grade crossings in conformity to criteria promulgated by the Department of Transportation.

(p) Designating and regulating traffic on play streets.

(q) Prohibiting pedestrians from crossing a roadway in a business district or any designated highway except on a crosswalk.

(r) Regulating pedestrian crossings at unmarked crosswalks.

(s) Regulating persons upon skates, coasters, and other toy vehicles.

(t) Adopting and enforcing such temporary or experimental regulations as may be necessary to cover emergencies or special conditions.

(u) Enacting ordinances or erecting signs in the rights-of-way to control, regulate, or prohibit hitchhiking on streets or highways, including all state or federal highways lying within their boundaries.

(v) Regulating, restricting, or prohibiting traffic within the boundary of any airport owned by the state, a county, a municipality, or a political subdivision and enforcing viola-

tions under the provisions of this chapter and chapter 318.

(w) Regulating, restricting, or monitoring traffic by security devices or personnel on public streets and highways, whether by public or private parties and providing for the construction and maintenance of such streets and highways.

(2) The municipality, through its duly authorized officers, shall have nonexclusive jurisdiction over the prosecution, trial, adjudication, and punishment of violations of this chapter when a violation occurs within the municipality and the person so charged is charged by a municipal police officer. The disposition of such matters in the municipality shall be in accordance with the charter of that municipality. This subsection does not limit those counties which have the charter power to provide and regulate arterial, toll, and other roads, bridges, tunnels, and related facilities from the proper exercise of those powers pertaining to the consolidation and unification of a traffic court system within such counties.

(3) No local authority shall erect or maintain any official traffic control device at any location so as to regulate the traffic on any state road unless approval in writing has first been obtained from the Department of Transportation.

(4) A county or municipality may enact an ordinance providing a fine for the violation of § 316.1955 in excess of the fine specified by § 318.18(6), except that such a fine may not exceed $250. Any such ordinance may provide for the deposit of such fines in a separate county or municipal account to be used in the following manner:

(a) One-third to be used to defray expenses for the administration of this subsection.

(b) Two-thirds to be used to provide funds to improve accessibility and equal opportunity to qualified persons who have disabilities in the county or municipality and to provide funds to conduct public awareness programs in the county or municipality concerning persons who have disabilities.

(5) (a) A county or municipality may enact an ordinance providing a fine for the violation of § 316.1945(1)(b)2. or 5. in excess of the fine specified by § 318.18(2), except that such fine may not exceed the fine specified in § 318.18(2) by more than $3. However, such ordinance shall provide that the fines collected pursuant to this subsection in excess of the fines which would be collected pursuant to § 318.18(2) for such violations shall be used by the county or municipality for the purpose of funding a firefighter education program. The amount of the fines collected pursuant to this subsection in excess of the fines which would be collected pursuant to § 318.18(2) for such violations shall be reported on a monthly basis by the clerk of the court to the appropriate county or municipality.

(b) A county or municipality may enact an ordinance which dedicates a portion of any fine collected for a violation of such ordinance for the purpose of funding a firefighter education program, if such ordinance is limited to the regulation of parking within a firesafety zone.

(6) A county or municipality may enact an ordinance providing for the establishment of a "combat automobile theft" program, and may charge a fee for the administration of the program and the cost of the decal. Such a program shall include:

(a) Consent forms for motor vehicle owners who wish to enroll their vehicles.

(b) Decals indicating a vehicle's enrollment in the "combat automobile theft" program. The Department of Law Enforcement shall approve the color, design, and other specifications of the program decal.

(c) A consent form signed by a motor vehicle owner provides authorization for a law enforcement officer to stop the vehicle when it is being driven between the hours of 1 a.m. and 5 a.m., provided that a decal is conspicuously affixed to the bottom left corner of the back window of the vehicle to provide notice of its enrollment in the "combat automobile theft" program. The owner of the motor vehicle is responsible for removing the decal when terminating participation in the program, or when selling or otherwise transferring ownership of the vehicle. No civil liabilities will arise from the actions of a law enforcement officer when stopping a vehicle with a yellow decal evidencing enrollment in the program when the driver is not enrolled in the program provided that the stop is made in accordance with the requirements of the "combat automobile theft" program.

(7) A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. The ordinance must restrict such vehicles or devices to a maximum speed of 15 miles per hour in such areas.

(8) (a) A county or municipality may use traffic infraction detectors to enforce

§ 316.074(1) or § 316.075(1)(c)1. when a driver fails to stop at a traffic signal on streets and highways under its jurisdiction under § 316.0083. Only a municipality may install or authorize the installation of any such detectors within the incorporated area of the municipality. Only a county may install or authorize the installation of any such detectors within the unincorporated area of the county.

(b) Pursuant to paragraph (a), a municipality may install or, by contract or interlocal agreement, authorize the installation of any such detectors only within the incorporated area of the municipality, and a county may install or, by contract or interlocal agreement, authorize the installation of any such detectors only within the unincorporated area of the county. A county may authorize installation of any such detectors by interlocal agreement on roads under its jurisdiction.

(c) Pursuant to § 316.0083, a county or municipality may use traffic infraction detectors to enforce § 316.074(1) or § 316.075(1)(c)1. when a driver fails to stop at a traffic signal on state roads under the original jurisdiction of the Department of Transportation when permitted by the Department of Transportation.

316.0083. Mark Wandall Traffic Safety Program; administration; report.

(1) (a) For purposes of administering this section, the department, a county, or a municipality may authorize a traffic infraction enforcement officer under § 316.640 to issue a traffic citation for a violation of § 316.074(1) or § 316.075(1)(c)1. A notice of violation and a traffic citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at an intersection where right-hand turns are permissible. A notice of violation and a traffic citation may not be issued under this section if the driver of the vehicle came to a complete stop after crossing the stop line and before turning right if permissible at a red light, but failed to stop before crossing over the stop line or other point at which a stop is required. This paragraph does not prohibit a review of information from a traffic infraction detector by an authorized employee or agent of the department, a county, or a municipality before issuance of the traffic citation by the traffic infraction enforcement officer. This paragraph does not prohibit the department, a county, or a municipality from issuing notification as provided in paragraph (b) to the registered owner of the motor vehicle involved in the violation of § 316.074(1) or § 316.075(1)(c)1.

(b) 1. a. Within 30 days after a violation, notification must be sent to the registered owner of the motor vehicle involved in the violation specifying the remedies available under § 318.14 and that the violator must pay the penalty of $158 to the department, county, or municipality, or furnish an affidavit in accordance with paragraph (d), or request a hearing within 60 days following the date of the notification in order to avoid the issuance of a traffic citation. The notification must be sent by first-class mail. The mailing of the notice of violation constitutes notification.

b. Included with the notification to the registered owner of the motor vehicle involved in the infraction must be a notice that the owner has the right to review the photographic or electronic images or the streaming video evidence that constitutes a rebuttable presumption against the owner of the vehicle. The notice must state the time and place or Internet location where the evidence may be examined and observed.

c. Notwithstanding any other provision of law, a person who receives a notice of violation under this section may request a hearing within 60 days following the notification of violation or pay the penalty pursuant to the notice of violation, but a payment or fee may not be required before the hearing requested by the person. The notice of violation must be accompanied by, or direct the person to a website that provides, information on the person's right to request a hearing and on all court costs related thereto and a form to request a hearing. As used in this subsubparagraph, the term "person" includes a natural person, registered owner or coowner of a motor vehicle, or person identified on an affidavit as having care, custody, or control of the motor vehicle at the time of the violation.

d. If the registered owner or coowner of the motor vehicle, or the person designated as having care, custody, or control of the motor vehicle at the time of the violation, or an authorized representative of the owner, coowner, or designated person, initiates a proceeding to challenge the violation pursuant to this paragraph, such person waives any challenge or dispute as to the delivery of the notice of violation.

2. Penalties assessed and collected by the department, county, or municipality authorized to collect the funds provided for in this paragraph, less the amount retained by the county or municipality pursuant to subpara-

graph 3., shall be paid to the Department of Revenue weekly. Payment by the department, county, or municipality to the state shall be made by means of electronic funds transfers. In addition to the payment, summary detail of the penalties remitted shall be reported to the Department of Revenue.

3. Penalties to be assessed and collected by the department, county, or municipality are as follows:

a. One hundred fifty-eight dollars for a violation of § 316.074(1) or § 316.075(1)(c)1. when a driver failed to stop at a traffic signal if enforcement is by the department's traffic infraction enforcement officer. One hundred dollars shall be remitted to the Department of Revenue for deposit into the General Revenue Fund, $10 shall be remitted to the Department of Revenue for deposit into the Department of Health Emergency Medical Services Trust Fund, $3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund, and $45 shall be distributed to the municipality in which the violation occurred, or, if the violation occurred in an unincorporated area, to the county in which the violation occurred. Funds deposited into the Department of Health Emergency Medical Services Trust Fund under this sub-subparagraph shall be distributed as provided in § 395.4036(1). Proceeds of the infractions in the Brain and Spinal Cord Injury Trust Fund shall be distributed quarterly to the Miami Project to Cure Paralysis and used for brain and spinal cord research.

b. One hundred fifty-eight dollars for a violation of § 316.074(1) or § 316.075(1)(c)1. when a driver failed to stop at a traffic signal if enforcement is by a county or municipal traffic infraction enforcement officer. Seventy dollars shall be remitted by the county or municipality to the Department of Revenue for deposit into the General Revenue Fund, $10 shall be remitted to the Department of Revenue for deposit into the Department of Health Emergency Medical Services Trust Fund, $3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund, and $75 shall be retained by the county or municipality enforcing the ordinance enacted pursuant to this section. Funds deposited into the Department of Health Emergency Medical Services Trust Fund under this sub-subparagraph shall be distributed as provided in § 395.4036(1). Proceeds of the infractions in the Brain and Spinal Cord Injury Trust Fund shall be distributed quarterly to the Miami Project to Cure Paralysis and used for brain and spinal cord research.

4. An individual may not receive a commission from any revenue collected from violations detected through the use of a traffic infraction detector. A manufacturer or vendor may not receive a fee or remuneration based upon the number of violations detected through the use of a traffic infraction detector.

(c) 1. a. A traffic citation issued under this section shall be issued by mailing the traffic citation by certified mail to the address of the registered owner of the motor vehicle involved in the violation if payment has not been made within 60 days after notification under paragraph (b), if the registered owner has not requested a hearing as authorized under paragraph (b), or if the registered owner has not submitted an affidavit under this section.

b. Delivery of the traffic citation constitutes notification under this paragraph. If the registered owner or coowner of the motor vehicle, or the person designated as having care, custody, or control of the motor vehicle at the time of the violation, or a duly authorized representative of the owner, coowner, or designated person, initiates a proceeding to challenge the citation pursuant to this section, such person waives any challenge or dispute as to the delivery of the traffic citation.

c. In the case of joint ownership of a motor vehicle, the traffic citation shall be mailed to the first name appearing on the registration, unless the first name appearing on the registration is a business organization, in which case the second name appearing on the registration may be used.

2. Included with the notification to the registered owner of the motor vehicle involved in the infraction shall be a notice that the owner has the right to review, in person or remotely, the photographic or electronic images or the streaming video evidence that constitutes a rebuttable presumption against the owner of the vehicle. The notice must state the time and place or Internet location where the evidence may be examined and observed.

(d) 1. The owner of the motor vehicle involved in the violation is responsible and liable for paying the uniform traffic citation issued for a violation of § 316.074(1) or § 316.075(1)(c)1. when the driver failed to stop at a traffic signal, unless the owner can establish that:

a. The motor vehicle passed through the intersection in order to yield right-of-way to an emergency vehicle or as part of a funeral procession;

b. The motor vehicle passed through the intersection at the direction of a law enforcement officer;

c. The motor vehicle was, at the time of the violation, in the care, custody, or control of another person;

d. A uniform traffic citation was issued by a law enforcement officer to the driver of the motor vehicle for the alleged violation of § 316.074(1) or § 316.075(1)(c)1.; or

e. The motor vehicle's owner was deceased on or before the date that the uniform traffic citation was issued, as established by an affidavit submitted by the representative of the motor vehicle owner's estate or other designated person or family member.

2. In order to establish such facts, the owner of the motor vehicle shall, within 30 days after the date of issuance of the traffic citation, furnish to the appropriate governmental entity an affidavit setting forth detailed information supporting an exemption as provided in this paragraph.

a. An affidavit supporting an exemption under sub-subparagraph 1.c. must include the name, address, date of birth, and, if known, the driver license number of the person who leased, rented, or otherwise had care, custody, or control of the motor vehicle at the time of the alleged violation. If the vehicle was stolen at the time of the alleged offense, the affidavit must include the police report indicating that the vehicle was stolen.

b. If a traffic citation for a violation of § 316.074(1) or § 316.075(1)(c)1. was issued at the location of the violation by a law enforcement officer, the affidavit must include the serial number of the uniform traffic citation.

c. If the motor vehicle's owner to whom a traffic citation has been issued is deceased, the affidavit must include a certified copy of the owner's death certificate showing that the date of death occurred on or before the issuance of the uniform traffic citation and one of the following:

I. A bill of sale or other document showing that the deceased owner's motor vehicle was sold or transferred after his or her death, but on or before the date of the alleged violation.

II. Documentary proof that the registered license plate belonging to the deceased owner's vehicle was returned to the department or any branch office or authorized agent of the department, but on or before the date of the alleged violation.

III. A copy of a police report showing that the deceased owner's registered license plate or motor vehicle was stolen after the owner's death, but on or before the date of the alleged violation.

Upon receipt of the affidavit and documentation required under this sub-subparagraph, the governmental entity must dismiss the citation and provide proof of such dismissal to the person that submitted the affidavit.

3. Upon receipt of an affidavit, the person designated as having care, custody, or control of the motor vehicle at the time of the violation may be issued a notice of violation pursuant to paragraph (b) for a violation of § 316.074(1) or § 316.075(1)(c)1. when the driver failed to stop at a traffic signal. The affidavit is admissible in a proceeding pursuant to this section for the purpose of providing proof that the person identified in the affidavit was in actual care, custody, or control of the motor vehicle. The owner of a leased vehicle for which a traffic citation is issued for a violation of § 316.074(1) or § 316.075(1)(c)1. when the driver failed to stop at a traffic signal is not responsible for paying the traffic citation and is not required to submit an affidavit as specified in this subsection if the motor vehicle involved in the violation is registered in the name of the lessee of such motor vehicle.

4. Paragraphs (b) and (c) apply to the person identified on the affidavit, except that the notification under sub-subparagraph (b)1.a. must be sent to the person identified on the affidavit within 30 days after receipt of an affidavit.

5. The submission of a false affidavit is a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(e) The photographic or electronic images or streaming video attached to or referenced in the traffic citation is evidence that a violation of § 316.074(1) or § 316.075(1)(c)1. when the driver failed to stop at a traffic signal has occurred and is admissible in any proceeding to enforce this section and raises a rebuttable presumption that the motor vehicle named in the report or shown in the photographic or electronic images or streaming video evidence was used in violation of § 316.074(1) or § 316.075(1)(c)1. when the driver failed to stop at a traffic signal.

(2) A notice of violation and a traffic citation may not be issued for failure to stop at a red light if the driver is making a right-hand

turn in a careful and prudent manner at an intersection where right-hand turns are permissible.

(3) This section supplements the enforcement of § 316.074(1) or § 316.075(1)(c)1. by law enforcement officers when a driver fails to stop at a traffic signal and does not prohibit a law enforcement officer from issuing a traffic citation for a violation of § 316.074(1) or § 316.075(1)(c)1. when a driver fails to stop at a traffic signal in accordance with normal traffic enforcement techniques.

(4) (a) Each county or municipality that operates a traffic infraction detector shall submit a report by October 1, 2012, and annually thereafter, to the department which details the results of using the traffic infraction detector and the procedures for enforcement for the preceding state fiscal year. The information submitted by the counties and municipalities must include statistical data and information required by the department to complete the report required under paragraph (b).

(b) On or before December 31, 2012, and annually thereafter, the department shall provide a summary report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the use and operation of traffic infraction detectors under this section, along with the department's recommendations and any necessary legislation. The summary report must include a review of the information submitted to the department by the counties and municipalities and must describe the enhancement of the traffic safety and enforcement programs.

(5) Procedures for a hearing under this section are as follows:

(a) The department shall publish and make available electronically to each county and municipality a model Request for Hearing form to assist each local government administering this section.

(b) The charter county, noncharter county, or municipality electing to authorize traffic infraction enforcement officers to issue traffic citations under paragraph (1)(a) shall designate by resolution existing staff to serve as the clerk to the local hearing officer.

(c) Any person, herein referred to as the "petitioner," who elects to request a hearing under paragraph (1)(b) shall be scheduled for a hearing by the clerk to the local hearing officer to appear before a local hearing officer with notice to be sent by first-class mail. Upon receipt of the notice, the petitioner may reschedule the hearing once by submitting a written request to reschedule to the clerk to the local hearing officer, at least 5 calendar days before the day of the originally scheduled hearing. The petitioner may cancel his or her appearance before the local hearing officer by paying the penalty assessed under paragraph (1)(b), plus $50 in administrative costs, before the start of the hearing.

(d) All testimony at the hearing shall be under oath and shall be recorded. The local hearing officer shall take testimony from a traffic infraction enforcement officer and the petitioner, and may take testimony from others. The local hearing officer shall review the photographic or electronic images or the streaming video made available under subsubparagraph(1)(b)1.b. Formal rules of evidence do not apply, but due process shall be observed and govern the proceedings.

(e) At the conclusion of the hearing, the local hearing officer shall determine whether a violation under this section has occurred, in which case the hearing officer shall uphold or dismiss the violation. The local hearing officer shall issue a final administrative order including the determination and, if the notice of violation is upheld, require the petitioner to pay the penalty previously assessed under paragraph (1)(b), and may also require the petitioner to pay county or municipal costs, not to exceed $250. The final administrative order shall be mailed to the petitioner by first-class mail.

(f) An aggrieved party may appeal a final administrative order consistent with the process provided under § 162.11.

316.027. Crash involving death or personal injuries.

(1) (a) The driver of any vehicle involved in a crash occurring on public or private property that results in injury of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of § 316.062. Any person who willfully violates this paragraph commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) The driver of any vehicle involved in a crash occurring on public or private property that results in the death of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of § 316.062. A person who is arrested for a violation of this paragraph and who has previously been convicted of a viola-

tion of this section, § 316.061, § 316.191, or § 316.193, or a felony violation of § 322.34, shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903. Any person who willfully violates this paragraph commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Any person who willfully commits such a violation while driving under the influence as set forth in § 316.193(1) shall be sentenced to a mandatory minimum term of imprisonment of 2 years.

(c) Notwithstanding § 775.089(1)(a), if the driver of a vehicle violates paragraph (a) or paragraph (b), the court shall order the driver to make restitution to the victim for any damage or loss unless the court finds clear and compelling reasons not to order the restitution. Restitution may be monetary or nonmonetary restitution. The court shall make the payment of restitution a condition of probation in accordance with § 948.03. An order requiring the defendant to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund under chapter 960. Payment of an award by the Crimes Compensation Trust Fund creates an order of restitution to the Crimes Compensation Trust Fund unless specifically waived in accordance with § 775.089(1)(b).

(2) The department shall revoke the driver's license of the person so convicted.

(3) Every stop must be made without obstructing traffic more than is necessary, and, if a damaged vehicle is obstructing traffic, the driver of the vehicle must make every reasonable effort to move the vehicle or have it moved so as not to obstruct the regular flow of traffic. Any person who fails to comply with this subsection shall be cited for a nonmoving violation, punishable as provided in chapter 318.

(4) A person whose commission of a noncriminal traffic infraction or any violation of this chapter or § 1006.66 causes or results in the death of another person may, in addition to any other civil, criminal, or administrative penalty imposed, be required by the court to serve 120 community service hours in a trauma center or hospital that regularly receives victims of vehicle accidents, under the supervision of a registered nurse, an emergency room physician, or an emergency medical technician pursuant to a voluntary community service program operated by the trauma center or hospital.

(5) This section does not apply to crashes occurring during a motorsports event, as defined in § 549.10(1), or at a closed-course motorsport facility, as defined in § 549.09(1).

316.061. Crashes involving damage to vehicle or property.

(1) The driver of any vehicle involved in a crash resulting only in damage to a vehicle or other property which is driven or attended by any person shall immediately stop such vehicle at the scene of such crash or as close thereto as possible, and shall forthwith return to, and in every event shall remain at, the scene of the crash until he or she has fulfilled the requirements of § 316.062. A person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Notwithstanding any other provision of this section, $5 shall be added to a fine imposed pursuant to this section, which $5 shall be deposited in the Emergency Medical Services Trust Fund.

(2) Every stop must be made without obstructing traffic more than is necessary, and, if a damaged vehicle is obstructing traffic, the driver of such vehicle must make every reasonable effort to move the vehicle or have it moved so as not to block the regular flow of traffic. Any person failing to comply with this subsection shall be cited for a nonmoving violation, punishable as provided in chapter 318.

(3) Employees or authorized agents of the Department of Transportation, law enforcement with proper jurisdiction, or an expressway authority created pursuant to chapter 348, in the exercise, management, control, and maintenance of its highway system, may undertake the removal from the main traveled way of roads on its highway system of all vehicles incapacitated as a result of a motor vehicle crash and of debris caused thereby. Such removal is applicable when such a motor vehicle crash results only in damage to a vehicle or other property, and when such removal can be accomplished safely and will result in the improved safety or convenience of travel upon the road. The driver or any other person who has removed a motor vehicle from the main traveled way of the road as provided in this section shall not be considered liable or at fault regarding the cause of the accident solely by reason of moving the vehicle.

316.062. Duty to give information and render aid.

(1) The driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle or other property which is driven or attended by any person shall give his or her name, address, and the registration number of the vehicle he or she is driving, and shall upon request and if available exhibit his or her license or permit to drive, to any person injured in such crash or to the driver or occupant of or person attending any vehicle or other property damaged in the crash and shall give such information and, upon request, exhibit such license or permit to any police officer at the scene of the crash or who is investigating the crash and shall render to any person injured in the crash reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

(2) In the event none of the persons specified are in condition to receive the information to which they otherwise would be entitled under subsection (1), and no police officer is present, the driver of any vehicle involved in such crash, after fulfilling all other requirements of § 316.027 and subsection (1), insofar as possible on his or her part to be performed, shall forthwith report the crash to the nearest office of a duly authorized police authority and submit thereto the information specified in subsection (1).

(3) The statutory duty of a person to make a report or give information to a law enforcement officer making a written report relating to a crash shall not be construed as extending to information which would violate the privilege of such person against self-incrimination.

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

316.063. Duty upon damaging unattended vehicle or other property.

(1) The driver of any vehicle which collides with, or is involved in a crash with, any vehicle or other property which is unattended, resulting in any damage to such other vehicle or property, shall immediately stop and shall then and there either locate and notify the operator or owner of the vehicle or other property of the driver's name and address and the registration number of the vehicle he or she is driving, or shall attach securely in a conspicuous place in or on the vehicle or other property a written notice giving the driver's name and address and the registration number of the vehicle he or she is driving, and shall without unnecessary delay notify the nearest office of a duly authorized police authority. Any person who fails to comply with this subsection commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) Every such stop shall be made without obstructing traffic more than is necessary. If a damaged vehicle is obstructing traffic, the driver shall make every reasonable effort to move the vehicle or have it moved so as not to obstruct the regular flow of traffic. A violation of this subsection is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(3) The law enforcement officer at the scene of a crash required to be reported in accordance with the provisions of subsection (1) or the law enforcement officer receiving a report by a driver as required by subsection (1) shall, if part or any of the property damaged is a fence or other structure used to house or contain livestock, promptly make a reasonable effort to notify the owner, occupant, or agent of this damage.

316.064. When driver unable to report.

(1) A crash report is not required under this chapter from any person who is physically incapable of making a report during the period of such incapacity.

(2) Whenever the driver of a vehicle is physically incapable of making an immediate or a written report of a crash, as required in §§ 316.065 and 316.066, and there was another occupant in the vehicle at the time of the crash capable of making a report, such occupant shall make or cause to be made the report not made by the driver.

(3) Whenever the driver is physically incapable of making a written report of a crash as required in this chapter, then the owner of the vehicle involved in the crash shall, within 10 days after the crash, make such report not made by the driver.

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

316.065. Crashes; reports; penalties.

(1) The driver of a vehicle involved in a crash resulting in injury to or death of any persons or damage to any vehicle or other property in an apparent amount of at least $500 shall immediately by the quickest

means of communication give notice of the crash to the local police department, if such crash occurs within a municipality; otherwise, to the office of the county sheriff or the nearest office or station of the Florida Highway Patrol. A violation of this subsection is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(2) Every coroner or other official performing like functions, upon learning of the death of a person in his or her jurisdiction as the result of a traffic crash, shall immediately notify the nearest office or station of the department.

(3) Any person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been struck by a bullet, or any other person to whom is brought for the purpose of repair a motor vehicle showing such evidence, shall make a report, or cause a report to be made, to the nearest local police station or Florida Highway Patrol office within 24 hours after the motor vehicle is received and before any repairs are made to the vehicle. The report shall contain the year, license number, make, model, and color of the vehicle and the name and address of the owner or person in possession of the vehicle.

(4) Any person who knowingly repairs a motor vehicle without having made a report as required by subsection (3) is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. The owner and driver of a vehicle involved in a crash who makes a report thereof in accordance with subsection (1) is not liable under this section.

316.066. Written reports of crashes.

(1) (a) A Florida Traffic Crash Report, Long Form must be completed and submitted to the department within 10 days after an investigation is completed by the law enforcement officer who in the regular course of duty investigates a motor vehicle crash that:

1. Resulted in death of, personal injury to, or any indication of complaints of pain or discomfort by any of the parties or passengers involved in the crash;

2. Involved a violation of § 316.061(1) or § 316.193;

3. Rendered a vehicle inoperable to a degree that required a wrecker to remove it from the scene of the crash; or

4. Involved a commercial motor vehicle.

(b) The Florida Traffic Crash Report, Long Form must include:

1. The date, time, and location of the crash.

2. A description of the vehicles involved.

3. The names and addresses of the parties involved, including all drivers and passengers, and the identification of the vehicle in which each was a driver or a passenger.

4. The names and addresses of witnesses.

5. The name, badge number, and law enforcement agency of the officer investigating the crash.

6. The names of the insurance companies for the respective parties involved in the crash.

(c) In any crash for which a Florida Traffic Crash Report, Long Form is not required by this section and which occurs on the public roadways of this state, the law enforcement officer shall complete a short-form crash report or provide a driver exchange-of-information form, to be completed by all drivers and passengers involved in the crash, which requires the identification of each vehicle that the drivers and passengers were in. The short-form report must include:

1. The date, time, and location of the crash.

2. A description of the vehicles involved.

3. The names and addresses of the parties involved, including all drivers and passengers, and the identification of the vehicle in which each was a driver or a passenger.

4. The names and addresses of witnesses.

5. The name, badge number, and law enforcement agency of the officer investigating the crash.

6. The names of the insurance companies for the respective parties involved in the crash.

(d) Each party to the crash must provide the law enforcement officer with proof of insurance, which must be documented in the crash report. If a law enforcement officer submits a report on the crash, proof of insurance must be provided to the officer by each party involved in the crash. Any party who fails to provide the required information commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318, unless the officer determines that due to injuries or other special circumstances such insurance information cannot be provided immediately. If the person provides the law enforcement agency, within 24 hours after the crash, proof of insurance that was valid at the time of the crash, the law enforcement agency may void the citation.

(e) The driver of a vehicle that was in any manner involved in a crash resulting in dam-

age to a vehicle or other property which does not require a law enforcement report shall, within 10 days after the crash, submit a written report of the crash to the department. The report shall be submitted on a form approved by the department.

(f) Long-form and short-form crash reports prepared by law enforcement must be submitted to the department and may be maintained by the law enforcement officer's agency.

(2) (a) Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that are held by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes are confidential and exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution for a period of 60 days after the date the report is filed.

(b) Crash reports held by an agency under paragraph (a) may be made immediately available to the parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations, victim services programs, radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under §§ 50.011 and 50.031, and free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news. For the purposes of this section, the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes.

(c) Any local, state, or federal agency that is authorized to have access to crash reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties.

(d) As a condition precedent to accessing a crash report within 60 days after the date the report is filed, a person must present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access that information, and file a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt. In lieu of requiring the written sworn statement, an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers, but only when such contract states that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt, and only when a copy of such contract is furnished to the agency as proof of the vendor's claimed status.

(e) This subsection does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential and exempt information pursuant to this section.

(3) (a) Any driver failing to file the written report required under subsection (1) commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b) Any employee of a state or local agency in possession of information made confidential and exempt by this section who knowingly discloses such confidential and exempt information to a person not entitled to access such information under this section commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) Any person, knowing that he or she is not entitled to obtain information made confidential and exempt by this section, who obtains or attempts to obtain such information commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(d) Any person who knowingly uses confidential and exempt information in violation of a filed written sworn statement or contractual agreement required by this section commits a felony of the third degree, punish-

able as provided in § 775.082, § 775.083, or § 775.084.

(4) Except as specified in this subsection, each crash report made by a person involved in a crash and any statement made by such person to a law enforcement officer for the purpose of completing a crash report required by this section shall be without prejudice to the individual so reporting. Such report or statement may not be used as evidence in any trial, civil or criminal. However, subject to the applicable rules of evidence, a law enforcement officer at a criminal trial may testify as to any statement made to the officer by the person involved in the crash if that person's privilege against self-incrimination is not violated. The results of breath, urine, and blood tests administered as provided in § 316.1932 or § 316.1933 are not confidential and are admissible into evidence in accordance with the provisions of § 316.1934(2).

(5) A law enforcement officer, as defined in § 943.10(1), may enforce this section.

316.067. False reports.

Any person who gives information in oral, electronic, or written reports as required in this chapter, knowing or having reason to believe that such information is false, commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

316.068. Crash report forms.

(1) The department shall prepare and, upon request, supply to police departments, sheriffs, and other appropriate agencies or individuals forms for crash reports as required in this chapter, suitable with respect to the persons required to make such reports and the purposes to be served. The form must call for sufficiently detailed information to disclose, with reference to a vehicle crash, the cause and conditions then existing and the persons and vehicles involved. Every crash report form must call for the policy numbers of liability insurance and the names of carriers covering any vehicle involved in a crash required to be reported by this chapter.

(2) Every crash report required to be made in writing must be made on the appropriate form approved by the department and must contain all the information required therein, including:

(a) The date, time, and location of the crash;

(b) A description of the vehicles involved;

(c) The names and addresses of the parties involved;

(d) The names and addresses of all drivers and passengers in the vehicles involved;

(e) The names and addresses of witnesses;

(f) The name, badge number, and law enforcement agency of the officer investigating the crash; and

(g) The names of the insurance companies for the respective parties involved in the crash,

unless not available. The absence of information in such written crash reports regarding the existence of passengers in the vehicles involved in the crash constitutes a rebuttable presumption that no such passengers were involved in the reported crash. Notwithstanding any other provisions of this section, a crash report produced electronically by a law enforcement officer must, at a minimum, contain the same information as is called for on those forms approved by the department.

316.070. Exchange of information at scene of crash.

The law enforcement officer at the scene of a crash required to be reported in accordance with the provisions of § 316.066 shall instruct the driver of each vehicle involved in the crash to report the following to all other parties suffering injury or property damage as an apparent result of the crash:

(1) The name and address of the owner and the driver of the vehicle.

(2) The license number of the vehicle.

(3) The name of the liability carrier for the vehicle.

316.071. Disabled vehicles obstructing traffic.

Whenever a vehicle is disabled on any street or highway within the state or for any reason obstructs the regular flow of traffic, the driver shall move the vehicle so as not to obstruct the regular flow of traffic or, if he or she cannot move the vehicle alone, solicit help and move the vehicle so as not to obstruct the regular flow of traffic. Any person failing to comply with the provisions of this section shall be cited for a nonmoving violation, punishable as provided in chapter 318.

316.072. Obedience to and effect of traffic laws.

(1) PROVISIONS OF CHAPTER REFERRING TO VEHICLES UPON THE HIGHWAYS.—The provisions of this chapter shall apply to the operation of vehicles and bicycles and the movement of pedestrians upon all state-maintained highways, county-maintained highways, and municipal streets and alleys and wherever vehicles have the right to travel.

(2) REQUIRED OBEDIENCE TO TRAFFIC LAWS.—It is unlawful for any person to do any act forbidden, or to fail to perform any act required, in this chapter. It is unlawful for the owner, or any other person employing or otherwise directing the driver of any vehicle, to require or knowingly permit the operation of such vehicle upon a highway in any manner contrary to law. A violation of this subsection is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

(3) OBEDIENCE TO POLICE AND FIRE DEPARTMENT OFFICIALS.—It is unlawful and a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, for any person willfully to fail or refuse to comply with any lawful order or direction of any law enforcement officer, traffic crash investigation officer as described in § 316.640, traffic infraction enforcement officer as described in § 316.640, or member of the fire department at the scene of a fire, rescue operation, or other emergency. Notwithstanding the provisions of this subsection, certified emergency medical technicians or paramedics may respond to the scene of emergencies and may provide emergency medical treatment on the scene and provide transport of patients in the performance of their duties for an emergency medical services provider licensed under chapter 401 and in accordance with any local emergency medical response protocols.

(4) PUBLIC OFFICERS AND EMPLOYEES TO OBEY CHAPTER; EXCEPTIONS.—

(a) The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, town, district, or any other political subdivision of the state, subject to such specific exceptions as are set forth in this chapter.

(b) Unless specifically made applicable, the provisions of this chapter, except those contained in §§ 316.192, 316.1925, and 316.193, shall not apply to persons, teams, or motor vehicles and other equipment while actually engaged in work upon the surface of a highway, but shall apply to such persons and vehicles when traveling to or from such work.

(5) AUTHORIZED EMERGENCY VEHICLES.—

(a) 1. The driver of an authorized emergency vehicle, when responding to an emergency call, when in the pursuit of an actual or suspected violator of the law, or when responding to a fire alarm, but not upon returning from a fire;

2. A medical staff physician or technician of a medical facility licensed by the state when responding to an emergency in the line of duty in his or her privately owned vehicle, using red lights as authorized in § 316.2398; or

3. The driver of an authorized law enforcement vehicle, when conducting a nonemergency escort, to warn the public of an approaching motorcade;

may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of a vehicle specified in paragraph (a), except when otherwise directed by a police officer, may:

1. Park or stand, irrespective of the provisions of this chapter;

2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

3. Exceed the maximum speed limits so long as the driver does not endanger life or property;

4. Disregard regulations governing direction or movement or turning in specified directions, so long as the driver does not endanger life or property.

(c) The foregoing provisions shall not relieve the driver of a vehicle specified in paragraph (a) from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his or her reckless disregard for the safety of others.

316.073. Applicability to animals and animal-drawn vehicles.

Every person driving an animal-drawn vehicle upon a roadway is subject to the provisions of this chapter applicable to the driver of a vehicle, except those provisions of this chapter which by their nature can have no application. The provisions of this chapter applicable to pedestrians, with the exception of § 316.130(3), apply to any person riding or leading an animal upon a roadway or the shoulder thereof.

316.074. Obedience to and required traffic control devices.

(1) The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto, placed in accordance with the provisions of this chapter, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

(2) No person shall drive any vehicle from a roadway to another roadway to avoid obeying the indicated traffic control indicated by such traffic control device.

(3) No provision of this chapter for which official traffic control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic control devices are required, such section shall be effective even though no devices are erected or in place.

(4) Whenever official traffic control devices are placed in position approximately conforming to the requirements of this chapter, such devices shall be presumed to have been so placed by the official act or direction of lawful authority unless the contrary shall be established by competent evidence.

(5) Any official traffic control device placed pursuant to the provisions of this chapter and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this chapter unless the contrary shall be established by competent evidence.

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

316.0741. High-occupancy-vehicle lanes.

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

(a) "High-occupancy-vehicle lane" or "HOV lane" means a lane of a public roadway designated for use by vehicles in which there is more than one occupant unless otherwise authorized by federal law.

(b) "Hybrid vehicle" means a motor vehicle:

1. That draws propulsion energy from onboard sources of stored energy which are both an internal combustion or heat engine using combustible fuel and a rechargeable energy-storage system;

2. That, in the case of a passenger automobile or light truck, has received a certificate of conformity under the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and meets or exceeds the equivalent qualifying California standards for a low-emission vehicle; and

3. That, in the case of a tri-vehicle, is an inherently low-emission vehicle as provided in subsection (4).

(2) The number of persons who must be in a vehicle to qualify for legal use of the HOV lane and the hours during which the lane will serve as an HOV lane, if it is not designated as such on a full-time basis, must also be indicated on a traffic control device.

(3) Except as provided in subsection (4), a vehicle may not be driven in an HOV lane if the vehicle is occupied by fewer than the number of occupants indicated by a traffic control device. A driver who violates this section shall be cited for a moving violation, punishable as provided in chapter 318.

(4) (a) Notwithstanding any other provision of this section, an inherently low-emission vehicle (ILEV) that is certified and labeled in accordance with federal regulations may be driven in an HOV lane at any time, regardless of its occupancy. In addition, upon the state's receipt of written notice from the proper federal regulatory agency authorizing such use, a vehicle defined as a hybrid vehicle under this section may be driven in an HOV lane at any time, regardless of its occupancy.

(b) All eligible hybrid and all eligible other low-emission and energy-efficient vehicles driven in an HOV lane must comply with the minimum fuel economy standards in 23 U.S.C. § 166(f)(3)(B).

(c) Upon issuance of the applicable United States Environmental Protection Agency final rule pursuant to 23 U.S.C. § 166(e), relating to the eligibility of hybrid and other low-emission and energy-efficient vehicles for operation in an HOV lane, regardless of occupancy, the Department of Transportation shall review the rule and recommend to the Legislature any statutory changes necessary for compliance with the federal rule. The department shall provide its recommendations no later than 30 days following issuance of the final rule.

(5) The department shall issue a decal and registration certificate, to be renewed annually, reflecting the HOV lane designation on vehicles meeting the criteria in subsection (4) authorizing driving in an HOV lane at any time. The department may charge a fee for a decal, not to exceed the costs of designing, producing, and distributing each decal, or $5, whichever is less. The proceeds from sale of the decals shall be deposited in the Highway Safety Operating Trust Fund. The department may, for reasons of operation and management of HOV facilities, limit or discontinue issuance of decals for the use of HOV facilities by hybrid and low-emission and energy-efficient vehicles, regardless of occupancy, if it has been determined by the Department of Transportation that the fa-

cilities are degraded as defined by 23 U.S.C. § 166(d)(2).

(6) Vehicles having decals by virtue of compliance with the minimum fuel economy standards under 23 U.S.C. § 166(f)(3)(B), and which are registered for use in high-occupancy-vehicle toll lanes or express lanes in accordance with Department of Transportation rule, shall be allowed to use any HOV lanes redesignated as high-occupancy-vehicle toll lanes or express lanes without requiring payment of a toll.

(7) The department may adopt rules necessary to administer this section.

316.075. Traffic control signal devices.

(1) Except for automatic warning signal lights installed or to be installed at railroad crossings, whenever traffic, including municipal traffic, is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word legend, and the lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green indication.—

1. Vehicular traffic facing a circular green signal may proceed cautiously straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

2. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, as directed by the manual, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time, except the driver of any vehicle may U-turn, so as to proceed in the opposite direction unless such movement is prohibited by posted traffic control signs. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

3. Unless otherwise directed by a pedestrian control signal as provided in § 316.0755, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(b) Steady yellow indication.—

1. Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

2. Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian control signal as provided in § 316.0755, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall start to cross the roadway.

(c) Steady red indication.—

1. Vehicular traffic facing a steady red signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown; however:

a. The driver of a vehicle which is stopped at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection in obedience to a steady red signal may make a right turn, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection, except that municipal and county authorities may prohibit any such right turn against a steady red signal at any intersection, which prohibition shall be effective when a sign giving notice thereof is erected in a location visible to traffic approaching the intersection.

b. The driver of a vehicle on a one-way street that intersects another one-way street on which traffic moves to the left shall stop in obedience to a steady red signal, but may then make a left turn into the one-way street, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection, except that municipal and county authorities may prohibit any such left turn as described, which prohibition shall be effective when a sign giving notice thereof is attached to the traffic control signal device at the intersection.

2. a. The driver of a vehicle facing a steady red signal shall stop before entering the crosswalk and remain stopped to allow a pedestrian, with a permitted signal, to cross a roadway when the pedestrian is in the crosswalk or steps into the crosswalk and is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is

approaching so closely from the opposite half of the roadway as to be in danger.

b. Unless otherwise directed by a pedestrian control signal as provided in § 316.0755, pedestrians facing a steady red signal shall not enter the roadway.

(2) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(3) (a) No traffic control signal device shall be used which does not exhibit a yellow or "caution" light between the green or "go" signal and the red or "stop" signal.

(b) No traffic control signal device shall display other than the color red at the top of the vertical signal, nor shall it display other than the color red at the extreme left of the horizontal signal.

(4) A violation of this section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as either a pedestrian violation or, if the infraction resulted from the operation of a vehicle, as a moving violation.

316.076. Flashing signals.

(1) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

(a) Flashing red (stop signal).—When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(b) Flashing yellow (caution signal).—When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(2) This section does not apply at railroad-highway grade crossings. Conduct of drivers of vehicles approaching such crossings shall be governed by the rules as set forth in §§ 316.1575 and 316.159.

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

316.0765. Lane direction control signals.

When lane direction control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane or lanes over which a green signal is shown, but shall not enter or travel in any lane or lanes over which a red signal is shown. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

316.077. Display of unauthorized signs, signals or markings.

(1) No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic control device or any railroad sign or signal.

(2) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(3) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(4) Every such prohibited sign, signal or marking is declared to be a public nuisance and the authority having jurisdiction over the highway is empowered to remove the same or cause it to be removed without notice.

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

316.0775. Interference with official traffic control devices or railroad signs or signals.

(1) A person may not, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any official traffic control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof. A violation of this subsection is a criminal violation pursuant to § 318.17 and shall be punishable as set forth in § 806.13 related to criminal

mischief and graffiti, beginning on or after July 1, 2000.

(2) A person may not, without lawful authority, possess or use any traffic signal preemption device as defined under § 316.003. A person who violates this subsection commits a moving violation, punishable as provided in chapter 318, and shall have 4 points assessed against his or her driver's license as set forth in § 322.27.

316.078. Detour signs to be respected.

(1) It is unlawful to tear down or deface any detour sign or to break down or drive around any barricade erected for the purpose of closing any section of a public street or highway to traffic during the construction or repair thereof or to drive over such section of public street or highway until again thrown open to public traffic. However, such restriction shall not apply to the person in charge of the construction or repairs.

(2) A violation of this section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as:

(a) A nonmoving violation for tearing, breaking down, or defacing any detour sign.

(b) A moving violation for driving around any barricade erected for the purpose of closing any section of a public street or highway to traffic that is under construction or repair or driving over such section of public street or highway until open to public traffic.

316.079. Duty to yield to highway construction workers.

(1) Every driver of a vehicle shall yield the right-of-way to a pedestrian worker and flagperson engaged in maintenance or construction work on a highway whenever the driver is reasonably and lawfully notified of the presence of such worker by a flagperson and a warning sign or device.

(2) Every driver of a vehicle on public roadways shall yield the right-of-way to an escort vehicle or pedestrian flagperson that is engaged in the management of highway movements of an oversize vehicle permitted pursuant to § 316.550, provided the driver is reasonably and lawfully notified of the presence of such vehicle or flagperson.

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

316.081. Driving on right side of roadway; exceptions.

(1) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(c) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(d) Upon a roadway designated and signposted for one-way traffic.

(2) Upon all roadways, any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic or as close as practicable to the right-hand curb or edge of the roadway except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(3) On a road, street, or highway having two or more lanes allowing movement in the same direction, a driver may not continue to operate a motor vehicle at any speed which is more than 10 miles per hour slower than the posted speed limit in the furthermost left-hand lane if the driver knows or reasonably should know that he or she is being overtaken in that lane from the rear by a motor vehicle traveling at a higher rate of speed. This subsection does not apply to drivers operating a vehicle that is overtaking another vehicle proceeding in the same direction, or is preparing for a left turn at an intersection.

(4) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the centerline of the roadway, except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under paragraph (1)(b). However, this subsection shall not be construed as prohibiting the crossing of the centerline in making a

left turn into or from an alley, private road, or driveway.

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

316.0815. Duty to yield to public transit vehicles.

(1) The driver of a vehicle shall yield the right-of-way to a publicly owned transit bus traveling in the same direction which has signaled and is reentering the traffic flow from a specifically designated pullout bay.

(2) This section does not relieve the driver of a public transit bus from the duty to drive with due regard for the safety of all persons using the roadway.

316.082. Passing vehicles proceeding in opposite directions.

(1) Drivers of vehicles proceeding in opposite directions shall pass each other to the right.

(2) Upon roadways having width for not more than one line of traffic in each direction, each driver shall give to the other at least one-half of the main-traveled portion of the roadway, as nearly as possible.

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

316.0825. Vehicle approaching an animal.

Every person operating a motor vehicle shall use reasonable care when approaching or passing a person who is riding or leading an animal upon a roadway or the shoulder thereof, and shall not intentionally startle or injure such an animal. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

316.083. Overtaking and passing a vehicle.

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an appropriate signal as provided for in § 316.156, shall pass to the left thereof at a safe distance, and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle. The driver of a vehicle overtaking a bicycle or other nonmotorized vehicle must pass the bicycle or other nonmotorized vehicle at a safe distance of not less than 3 feet between the vehicle and the bicycle or other nonmotorized vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle, on audible signal or upon the visible blinking of the headlamps of the overtaking vehicle if such overtaking is being attempted at nighttime, and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

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

316.084. When overtaking on the right is permitted.

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

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

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

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

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

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

316.085. Limitations on overtaking, passing, changing lanes and changing course.

(1) No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless authorized by the provisions of this chapter and unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction of any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and, in the event the passing movement involves the use

of a lane authorized for vehicles approaching from the opposite direction, before coming within 200 feet of any approaching vehicle.

(2) No vehicle shall be driven from a direct course in any lane on any highway until the driver has determined that the vehicle is not being approached or passed by any other vehicle in the lane or on the side to which the driver desires to move and that the move can be completely made with safety and without interfering with the safe operation of any vehicle approaching from the same direction.

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

316.087. Further limitations on driving to left of center of roadway.

(1) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

(a) When approaching or upon the crest of a grade where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(b) Upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(c) When approaching within 100 feet of or traversing any intersection, except that this section shall not apply to any intersection on a state-maintained or county-maintained highway located outside city limits unless such intersection is marked by an official Department of Transportation or county road department traffic control device indicating an intersection either by symbol or by words and such marking is placed at least 100 feet before the intersection;

(d) When approaching within 100 feet of or traversing any railroad grade crossing;

(e) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct, or tunnel.

(2) The foregoing limitations shall not apply upon a one-way roadway, nor when an obstruction exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

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

316.0875. No-passing zones.

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

(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1), no driver shall at any time drive on the left side of the roadway with such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

(3) This section does not apply when an obstruction exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

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

316.088. One-way roadways and rotary traffic islands.

(1) The Department of Transportation and local authorities, with respect to highways under their respective jurisdictions, may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at such times as shall be indicated by official traffic control devices.

(2) Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction designated at such times as shall be indicated by official traffic control devices.

(3) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

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

316.089. Driving on roadways laned for traffic.

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent herewith, shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, when in preparation for making a left turn, or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic control devices.

(3) Official traffic control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway; and drivers of vehicles shall obey the directions of every such device.

(4) Official traffic control devices may be installed prohibiting the changing of lanes on sections of roadway, and drivers of vehicles shall obey the directions of every such device.

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

316.0895. Following too closely.

(1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon, and the condition of, the highway.

(2) It is unlawful for the driver of any motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer, when traveling upon a roadway outside of a business or residence district, to follow within 300 feet of another motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer. The provisions of this subsection shall not be construed to prevent overtaking and passing nor shall the same apply upon any lane specially designated for use by motor trucks or other slow-moving vehicles.

(3) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade, whether or not towing other vehicles, shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

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

316.090. Driving on divided highways.

(1) Whenever any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic control devices or police officers.

(2) No vehicle shall be driven over, across, or within any such dividing space, barrier, or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection as established, unless specifically authorized by public authority.

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

316.091. Limited access facilities; interstate highways; use restricted.

(1) No person shall drive a vehicle onto or from any limited access roadway except at such entrances and exits as are established by public authority.

(2) Except as provided herein, no person shall operate upon a limited access facility any bicycle, motor-driven cycle, animal-drawn vehicle, or any other vehicle which by its design or condition is incompatible with the safe and expedient movement of traffic.

(3) No person shall ride any animal upon any portion of a limited access facility.

(4) No person shall operate a bicycle or other human-powered vehicle on the roadway or along the shoulder of a limited access highway, including bridges, unless official signs and a designated, marked bicycle lane are present at the entrance of the section of highway indicating that such use is permitted pursuant to a pilot program of the Department of Transportation.

(5) The Department of Transportation and expressway authorities are authorized to designate use of shoulders of limited access facilities and interstate highways under their jurisdiction for such vehicular traffic determined to improve safety, reliability, and transportation system efficiency. Appropriate traffic signs or dynamic lane control signals shall be erected along those portions of the facility affected to give notice to the public of the action to be taken, clearly indicating when the shoulder is open to designated vehicular traffic. This section may not be deemed to authorize such designation in violation of any federal law or any covenant

established in a resolution or trust indenture relating to the issuance of turnpike bonds, expressway authority bonds, or other bonds.

(6) The Department of Transportation shall establish a 2-year pilot program, in three separate urban areas, in which it shall erect signs and designate marked bicycle lanes indicating highway approaches and bridge segments of limited access highways as open to use by operators of bicycles and other human-powered vehicles, under the following conditions:

(a) The limited access highway approaches and bridge segments chosen must cross a river, lake, bay, inlet, or surface water where no street or highway crossing the water body is available for use within 2 miles of the entrance to the limited access facility measured along the shortest public right-of-way.

(b) The Department of Transportation, with the concurrence of the Federal Highway Administration on the interstate facilities, shall establish the three highway approaches and bridge segments for the pilot project by October 1, 2012. In selecting the highway approaches and bridge segments, the Department of Transportation shall consider, without limitation, a minimum size of population in the urban area within 5 miles of the highway approach and bridge segment, the lack of bicycle access by other means, cost, safety, and operational impacts.

(c) The Department of Transportation shall begin the pilot program by erecting signs and designating marked bicycle lanes indicating highway approaches and bridge segments of limited access highways, as qualified by the conditions described in this subsection, as open to use by operators of bicycles and other human-powered vehicles no later than March 1, 2013.

(d) The Department of Transportation shall conduct the pilot program for a minimum of 2 years following the implementation date.

(e) The Department of Transportation shall submit a report of its findings and recommendations from the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives by September 1, 2015. The report shall include, at a minimum, bicycle crash data occurring in the designated segments of the pilot program, usage by operators of bicycles and other human-powered vehicles, enforcement issues, operational impacts, and the cost of the pilot program.

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

316.1001. Payment of toll on toll facilities required; penalties.

(1) A person may not use any toll facility without payment of tolls, except as provided in § 338.155. Failure to pay a prescribed toll is a noncriminal traffic infraction, punishable as a moving violation under chapter 318.

(2) (a) For the purpose of enforcing this section, any governmental entity, as defined in § 334.03, that owns or operates a toll facility may, by rule or ordinance, authorize a toll enforcement officer to issue a uniform traffic citation for a violation of this section. Toll enforcement officer means the designee of a governmental entity whose authority is to enforce the payment of tolls. The governmental entity may designate toll enforcement officers pursuant to § 316.640(1).

(b) A citation issued under this subsection may be issued by mailing the citation by first-class mail or by certified mail to the address of the registered owner of the motor vehicle involved in the violation. Mailing the citation to such address constitutes notification. In the case of joint ownership of a motor vehicle, the traffic citation must be mailed to the first name appearing on the registration, unless the first name appearing on the registration is a business organization, in which case the second name appearing on the registration may be used. A citation issued under this paragraph must be mailed to the registered owner of the motor vehicle involved in the violation within 14 days after the date of issuance of the citation. In addition to the citation, notification must be sent to the registered owner of the motor vehicle involved in the violation specifying remedies available under §§ 318.14(12) and 318.18(7).

(c) The owner of the motor vehicle involved in the violation is responsible and liable for payment of a citation issued for failure to pay a toll, unless the owner can establish the motor vehicle was, at the time of the violation, in the care, custody, or control of another person. In order to establish such facts, the owner of the motor vehicle is required, within 14 days after the date of issuance of the citation, to furnish to the appropriate governmental entity an affidavit setting forth:

1. The name, address, date of birth, and, if known, the driver license number of the person who leased, rented, or otherwise had the care, custody, or control of the motor vehicle at the time of the alleged violation; or

2. If stolen, the police report indicating that the vehicle was stolen at the time of the alleged violation.

Upon receipt of an affidavit the person designated as having care, custody, and control of the motor vehicle at the time of the violation may be issued a citation for failure to pay a required toll. The affidavit shall be admissible in a proceeding pursuant to this section for the purpose of providing that the person identified in the affidavit was in actual care, custody, or control of the motor vehicle. The owner of a leased vehicle for which a citation is issued for failure to pay a toll is not responsible for payment of the citation and is not required to submit an affidavit as specified in this subsection if the motor vehicle involved in the violation is registered in the name of the lessee of such motor vehicle.

(d) A written report of a toll enforcement officer to photographic evidence that a required toll was not paid is admissible in any proceeding to enforce this section and raises a rebuttable presumption that the motor vehicle named in the report or shown in the photographic evidence was used in violation of this section.

(3) The submission of a false affidavit is a misdemeanor of the second degree.

(4) Any governmental entity, including, without limitation, a clerk of court, may provide the department with data that is machine readable by the department's computer system, listing persons who have one or more outstanding violations of this section, with reference to the person's driver's license number or vehicle registration number in the case of a business entity. Pursuant to § 320.03(8), those persons may not be issued a license plate or revalidation sticker for any motor vehicle.

(5) Subsections (2)-(4) supplement the enforcement of this section by law enforcement officers, and this section does not prohibit a law enforcement officer from issuing a citation for a violation of this section in accordance with normal traffic enforcement techniques.

316.121. Vehicles approaching or entering intersections.

(1) The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway.

(2) When two vehicles enter an intersection from different highways at the same time the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(3) The driver of a vehicle about to enter or cross a state-maintained road or highway from a paved or unpaved road and not subject to control by an official traffic control device shall yield the right-of-way to all vehicles approaching on the state-maintained road or highway.

(4) The driver of a vehicle about to enter or cross a paved county-maintained or city-maintained road or highway from an unpaved road or highway and not subject to control by an official traffic control device shall yield the right-of-way to all vehicles approaching on said paved road or highway.

(5) The foregoing rules are modified at through highways and otherwise, as hereinafter stated.

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

316.122. Vehicle turning left.

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction, or vehicles lawfully passing on the left of the turning vehicle, which is within the intersection or so close thereto as to constitute an immediate hazard. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

316.123. Vehicle entering stop or yield intersection.

(1) The right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in § 316.006.

(2) (a) Except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, the driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when the driver is moving across or within the intersection.

(b) At a four-way stop intersection, the driver of the first vehicle to stop at the intersection shall be the first to proceed. If two

or more vehicles reach the four-way stop intersection at the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(3) The driver of a vehicle approaching a yield sign shall, in obedience to such sign, slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After slowing or stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection. If such a driver is involved in a collision with a pedestrian in a crosswalk or a vehicle in the intersection, after driving past a yield sign without stopping, the collision shall be deemed prima facie evidence of the driver's failure to yield the right-of-way.

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

316.1235. Vehicle approaching intersection in which traffic lights are inoperative.

The driver of a vehicle approaching an intersection in which the traffic lights are inoperative shall stop in the manner indicated in § 316.123(2) for approaching a stop intersection. In the event that only some of the traffic lights within an intersection are inoperative, the driver of a vehicle approaching an inoperative light shall stop in the above-prescribed manner. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

316.125. Vehicle entering highway from private road or driveway or emerging from alley, driveway or building.

(1) The driver of a vehicle about to enter or cross a highway from an alley, building, private road or driveway shall yield the right-of-way to all vehicles approaching on the highway to be entered which are so close thereto as to constitute an immediate hazard.

(2) The driver of a vehicle emerging from an alley, building, private road or driveway within a business or residence district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, road or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic thereon and shall yield to all vehicles and pedestrians which are so close thereto as to constitute an immediate hazard.

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

316.126. Operation of vehicles and actions of pedestrians on approach of authorized emergency vehicle.

(1) (a) Upon the immediate approach of an authorized emergency vehicle, while en route to meet an existing emergency, the driver of every other vehicle shall, when such emergency vehicle is giving audible signals by siren, exhaust whistle, or other adequate device, or visible signals by the use of displayed blue or red lights, yield the right-of-way to the emergency vehicle and shall immediately proceed to a position parallel to, and as close as reasonable to the closest edge of the curb of the roadway, clear of any intersection and shall stop and remain in position until the authorized emergency vehicle has passed, unless otherwise directed by any law enforcement officer.

(b) When an authorized emergency vehicle making use of any visual signals is parked or a wrecker displaying amber rotating or flashing lights is performing a recovery or loading on the roadside, the driver of every other vehicle, as soon as it is safe:

1. Shall vacate the lane closest to the emergency vehicle or wrecker when driving on an interstate highway or other highway with two or more lanes traveling in the direction of the emergency vehicle or wrecker, except when otherwise directed by a law enforcement officer. If such movement cannot be safely accomplished, the driver shall reduce speed as provided in subparagraph 2.

2. Shall slow to a speed that is 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater; or travel at 5 miles per hour when the posted speed limit is 20 miles per hour or less, when driving on a two-lane road, except when otherwise directed by a law enforcement officer.

(c) The Department of Highway Safety and Motor Vehicles shall provide an educational awareness campaign informing the motoring public about the Move Over Act. The department shall provide information about the Move Over Act in all newly printed

driver's license educational materials after July 1, 2002.

This section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(2) Every pedestrian using the road right-of-way shall yield the right-of-way until the authorized emergency vehicle has passed, unless otherwise directed by any police officer.

(3) Any authorized emergency vehicle, when en route to meet an existing emergency, shall warn all other vehicular traffic along the emergency route by an audible signal, siren, exhaust whistle, or other adequate device or by a visible signal by the use of displayed blue or red lights. While en route to such emergency, the emergency vehicle shall otherwise proceed in a manner consistent with the laws regulating vehicular traffic upon the highways of this state.

(4) Nothing herein contained shall diminish or enlarge any rules of evidence or liability in any case involving the operation of an emergency vehicle.

(5) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(6) A violation of this section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as either a moving violation for infractions of subsection (1) or subsection (3), or as a pedestrian violation for infractions of subsection (2).

316.130. Pedestrians; traffic regulations.

(1) A pedestrian shall obey the instructions of any official traffic control device specifically applicable to the pedestrian unless otherwise directed by a police officer.

(2) Pedestrians shall be subject to traffic control signals at intersections as provided in § 316.075, but at all other places pedestrians shall be accorded the privileges and be subject to the restrictions stated in this chapter.

(3) Where sidewalks are provided, no pedestrian shall, unless required by other circumstances, walk along and upon the portion of a roadway paved for vehicular traffic.

(4) Where sidewalks are not provided, any pedestrian walking along and upon a highway shall, when practicable, walk only on the shoulder on the left side of the roadway in relation to the pedestrian's direction of travel, facing traffic which may approach from the opposite direction.

(5) No person shall stand in the portion of a roadway paved for vehicular traffic for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle.

(6) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

(7) (a) The driver of a vehicle at an intersection that has a traffic control signal in place shall stop before entering the crosswalk and remain stopped to allow a pedestrian, with a permitted signal, to cross a roadway when the pedestrian is in the crosswalk or steps into the crosswalk and is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(b) The driver of a vehicle at any crosswalk where signage so indicates shall stop and remain stopped to allow a pedestrian to cross a roadway when the pedestrian is in the crosswalk or steps into the crosswalk and is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(c) When traffic control signals are not in place or in operation and there is no signage indicating otherwise, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(8) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(9) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(10) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(11) Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(12) No pedestrian shall, except in a marked crosswalk, cross a roadway at any other place than by a route at right angles to the curb or by the shortest route to the opposite curb.

(13) Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

(14) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic control devices, and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic control devices pertaining to such crossing movements.

(15) Notwithstanding other provisions of this chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human-powered vehicle and give warning when necessary and exercise proper precaution upon observing any child or any obviously confused or incapacitated person.

(16) No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate, or barrier after a bridge operation signal indication has been given. No pedestrian shall pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed.

(17) No pedestrian may jump or dive from a publicly owned bridge. Nothing in this provision requires the state or any political subdivision of the state to post signs notifying the public of this provision. The failure to post a sign may not be construed by any court to create liability on the part of the state or any of its political subdivisions for injuries sustained as a result of jumping or diving from a bridge in violation of this subsection.

(18) No pedestrian shall walk upon a limited access facility or a ramp connecting a limited access facility to any other street or highway; however, this subsection does not apply to maintenance personnel of any governmental subdivision.

(19) A violation of this section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as either a pedestrian violation or, if the infraction resulted from the operation of a vehicle, as a moving violation.

316.1301. Traffic regulations to assist blind persons.

(1) It is unlawful for any person, unless totally or partially blind or otherwise incapacitated, while on any public street or highway, to carry in a raised or extended position a cane or walking stick which is white in color or white tipped with red. A person who is convicted of a violation of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) Whenever a pedestrian is crossing, or attempting to cross, a public street or highway, guided by a dog guide or carrying in a raised or extended position a cane or walking stick which is white in color or white tipped with red, the driver of every vehicle approaching the intersection or place where the pedestrian is attempting to cross shall bring his or her vehicle to a full stop before arriving at such intersection or place of crossing and, before proceeding, shall take such precautions as may be necessary to avoid injuring such pedestrian. A person who is convicted of a violation of this subsection is guilty of a moving violation punishable as provided in chapter 318.

(3) Nothing contained in this section shall be construed to deprive any totally or partially blind or otherwise incapacitated person not carrying such a cane or walking stick, or not being guided by a dog, of the rights and privileges conferred by law upon pedestrians crossing streets or highways. The failure of any such person to carry a cane or walking stick or to be guided by a dog shall not be considered comparative negligence, nor shall such failure be admissible as evidence in the trial of any civil action with regard to negligence.

316.1303. Traffic regulations to assist mobility-impaired persons.

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

(2) A person who is mobility impaired and who is using a motorized wheelchair on a sidewalk may temporarily leave the side-

walk and use the roadway to avoid a potential conflict, if no alternative route exists. A law enforcement officer may issue only a verbal warning to such person.

(3) A person who is convicted of a violation of subsection (1) shall be punished as provided in § 318.18(3).

316.1305. Fishing from state road bridges.

(1) The Department of Transportation is authorized to investigate and determine whether it is detrimental to traffic safety or dangerous to human life for any person to fish from a state road bridge. When the Department of Transportation, after due investigation, determines that it is dangerous for persons to fish from such a bridge, it shall post appropriate signs on the bridge stating that fishing from the bridge is prohibited.

(2) Fishing from a bridge upon which the Department of Transportation has posted signs as provided in subsection (1) is a noncriminal traffic infraction, punishable as a pedestrian violation as provided in chapter 318.

(3) This section is cumulative and is not intended to repeal any special law making it unlawful to fish from any bridge.

316.1355. Driving through safety zone prohibited.

No vehicle shall at any time be driven through or within a safety zone. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

316.151. Required position and method of turning at intersections.

(1) The driver of a vehicle intending to turn at an intersection shall do so as follows:

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

(b) Left turn.—The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered. A person riding a bicycle and intending to turn left in accordance with this section is entitled to the full use of the lane from which the turn may legally be made. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(c) Left turn by bicycle.—In addition to the method of making a left turn described in paragraph (b), a person riding a bicycle and intending to turn left has the option of following the course described hereafter: The rider shall approach the turn as close as practicable to the right curb or edge of the roadway; after proceeding across the intersecting roadway, the turn shall be made as close as practicable to the curb or edge of the roadway on the far side of the intersection; and, before proceeding, the bicyclist shall comply with any official traffic control device or police officer regulating traffic on the highway along which the bicyclist intends to proceed.

(2) The state, county, and local authorities in their respective jurisdictions may cause official traffic control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection. When such devices are so placed, no driver of a vehicle may turn a vehicle at an intersection other than as directed and required by such devices.

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

316.1515. Limitations on turning around.

The driver of any vehicle shall not turn the vehicle so as to proceed in the opposite direction upon any street unless such movement can be made in safety and without interfering with other traffic and unless such movement is not prohibited by posted traffic control signs. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

316.152. Turning on curve or crest of grade prohibited.

No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near, the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 500 feet. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

316.154. Starting parked vehicle.

No person shall start a vehicle which is stopped, standing, or parked, unless and

until such movement can be made with reasonable safety. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

316.155. When signal required.

(1) No person may turn a vehicle from a direct course or move right or left upon a highway unless and until such movement can be made with reasonable safety, and then only after giving an appropriate signal in the manner hereinafter provided, in the event any other vehicle may be affected by the movement.

(2) A signal of intention to turn right or left must be given continuously during not less than the last 100 feet traveled by the vehicle before turning, except that such a signal by hand or arm need not be given continuously by a bicyclist if the hand is needed in the control or operation of the bicycle.

(3) No person may stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear, when there is opportunity to give such signal.

(4) The signals provided for in § 316.156 shall be used to indicate an intention to turn, to overtake, or to pass a vehicle and may not, except as provided in § 316.2397, be flashed on one side only on a parked or disabled vehicle or flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear.

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

316.156. Signals by hand and arm or signal lamps.

(1) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by signal lamps, except as otherwise provided in subsection (2).

(2) Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle and also to any combination of vehicles.

(3) A violation of this section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as either a moving violation for infractions of subsection (1) or as a nonmoving violation for infractions of subsection (2).

316.157. Method of giving hand and arm signals.

(1) All signals herein required to be given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

(a) Left turn.—Hand and arm extended horizontally.

(b) Right turn.—Hand and arm extended upward, except that a bicyclist may extend the right hand and arm horizontally to the right side of the bicycle.

(c) Stop or decrease speed.—Hand and arm extended downward.

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

316.1575. Obedience to traffic control devices at railroad-highway grade crossings.

(1) Any person walking or driving a vehicle and approaching a railroad-highway grade crossing under any of the circumstances stated in this section shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad and shall not proceed until he or she can do so safely. The foregoing requirements apply when:

(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(b) A crossing gate is lowered or a law enforcement officer or a human flagger gives or continues to give a signal of the approach or passage of a railroad train;

(c) An approaching railroad train emits an audible signal or the railroad train, by reason of its speed or nearness to the crossing, is an immediate hazard; or

(d) An approaching railroad train is plainly visible and is in hazardous proximity to the railroad-highway grade crossing, regardless of the type of traffic control devices installed at the crossing.

(2) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad-highway grade crossing while the gate or barrier is closed or is being opened or closed.

(3) A violation of this section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as either a pedestrian violation or, if the infraction resulted from the operation of a vehicle, as a moving violation.

316.1576. Insufficient clearance at a railroad-highway grade crossing.

(1) A person may not drive any vehicle through a railroad-highway grade crossing that does not have sufficient space to drive completely through the crossing without stopping.

(2) A person may not drive any vehicle through a railroad-highway grade crossing that does not have sufficient undercarriage clearance to drive completely through the crossing without stopping.

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

316.159. Certain vehicles to stop or slow at all railroad grade crossings.

(1) The driver of any motor vehicle carrying passengers for hire, excluding taxicabs, of any school bus carrying any school child, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of the railroad and, while so stopped, shall listen and look in both directions along the track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he or she can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any such vehicle shall cross only in a gear of the vehicle so that there will be no necessity for changing gears while traversing the crossing, and the driver shall not shift gears while crossing the track or tracks.

(2) No stop need be made at any such crossing where a police officer, a traffic control signal, or a sign directs traffic to proceed. However, any school bus carrying any school child shall be required to stop unless directed to proceed by a police officer.

(3) The driver of any commercial motor vehicle that is not required to stop under subsection (1) or subsection (2) shall slow the motor vehicle before crossing the tracks of any railroad grade crossing and check that the tracks are clear of an approaching train.

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

316.170. Moving heavy equipment at railroad grade crossings.

(1) No person shall operate or move any crawler-type tractor, steam shovel, derrick, or roller, or any equipment or structure having a normal operating speed of 10 or less miles per hour or a vertical body or load clearance of less than 1/2 inch per foot of the distance between any two adjacent axles or in any event of less than 9 inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(2) Notice of any such intended crossing shall be given to a station agent or other proper authority of the railroad, and a reasonable time shall be given to the railroad to provide proper protection at the crossing.

(3) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than 15 feet nor more than 50 feet from the nearest rail of the railroad and while so stopped shall listen and look in both directions along the track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(4) No such crossing shall be made when warning is being given by automatic signal or crossing gates or a flagger or otherwise of the immediate approach of a railroad train or car. If a flagger is provided by the railroad, movement over the crossing shall be under his or her direction.

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

316.171. Traffic control devices at railroad-highway grade crossings.

Every railroad company operating or leasing any track intersecting a public road at grade and upon which railroad trains are operated shall erect traffic control devices that are necessary to conform with the requirements of the uniform system of traffic control devices adopted pursuant to § 316.0745. This section does not require the railroad company to erect those devices, such as pavement markings and advance warning signs, which are the responsibility of the governmental entity having jurisdiction over or maintenance responsibility for the public road. Any change in the design of a traffic control device in the uniform system of traffic control devices applies only at new installations and at locations where replacements of existing devices are being made.

316.172. Traffic to stop for school bus.

(1) (a) Any person using, operating, or driving a vehicle on or over the roads or highways of this state shall, upon approaching

any school bus which displays a stop signal, bring such vehicle to a full stop while the bus is stopped, and the vehicle shall not pass the school bus until the signal has been withdrawn. A person who violates this section commits a moving violation, punishable as provided in chapter 318.

(b) Any person using, operating, or driving a vehicle that passes a school bus on the side that children enter and exit when the school bus displays a stop signal commits a moving violation, punishable as provided in chapter 318, and is subject to a mandatory hearing under the provisions of § 318.19.

(2) The driver of a vehicle upon a divided highway with an unpaved space of at least 5 feet, a raised median, or a physical barrier is not required to stop when traveling in the opposite direction of a school bus which is stopped in accordance with the provisions of this section.

(3) Every school bus shall stop as far to the right of the street as possible and shall display warning lights and stop signals as required by rules of the State Board of Education before discharging or loading passengers. When possible, a school bus shall not stop where the visibility is obscured for a distance of 200 feet either way from the bus.

316.183. Unlawful speed.

(1) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event, speed shall be controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance or object on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

(2) On all streets or highways, the maximum speed limits for all vehicles must be 30 miles per hour in business or residence districts, and 55 miles per hour at any time at all other locations. However, with respect to a residence district, a county or municipality may set a maximum speed limit of 20 or 25 miles per hour on local streets and highways after an investigation determines that such a limit is reasonable. It is not necessary to conduct a separate investigation for each residence district. The minimum speed limit on all highways that comprise a part of the National System of Interstate and Defense Highways and have not fewer than four lanes is 40 miles per hour, except that when the posted speed limit is 70 miles per hour, the minimum speed limit is 50 miles per hour.

(3) A school bus may not exceed the posted speed limits at any time.

(4) The driver of every vehicle shall, consistent with the requirements of subsection (1), drive at an appropriately reduced speed when:

(a) Approaching and crossing an intersection or railway grade crossing;

(b) Approaching and going around a curve;

(c) Approaching a hill crest;

(d) Traveling upon any narrow or winding roadway; and

(e) Any special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(5) No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law.

(6) No driver of a vehicle shall exceed the posted maximum speed limit in a work zone area.

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

316.185. Special hazards.

The fact that the speed of a vehicle is lower than the prescribed limits shall not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazards exist or may exist with respect to pedestrians or other traffic or by reason of weather or other roadway conditions, and speed shall be decreased as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the street in compliance with legal requirements and the duty of all persons to use due care. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

316.187. Establishment of state speed zones.

(1) Whenever the Department of Transportation determines, upon the basis of an engineering and traffic investigation, that any speed is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place, or upon any part of a highway outside of a municipality or upon any state roads, connecting links or extensions thereof within a municipality,

the Department of Transportation may determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at the intersection or other place or part of the highway.

(2) (a) The maximum allowable speed limit on limited access highways is 70 miles per hour.

(b) The maximum allowable speed limit on any other highway which is outside an urban area of 5,000 or more persons and which has at least four lanes divided by a median strip is 65 miles per hour.

(c) The Department of Transportation is authorized to set such maximum and minimum speed limits for travel over other roadways under its authority as it deems safe and advisable, not to exceed as a maximum limit 60 miles per hour.

(3) Violation of the speed limits established under this section must be cited as a moving violation, punishable as provided in chapter 318.

316.189. Establishment of municipal and county speed zones.

(1) MUNICIPAL SPEED.—The maximum speed within any municipality is 30 miles per hour. With respect to residence districts, a municipality may set a maximum speed limit of 20 or 25 miles per hour on local streets and highways after an investigation determines that such a limit is reasonable. It shall not be necessary to conduct a separate investigation for each residence district. A municipality may set speed zones altering the speed limit, both as to maximum, not to exceed 60 miles per hour, and minimum, after investigation determines such a change is reasonable and in conformity to criteria promulgated by the Department of Transportation, except that no changes shall be made on state highways or connecting links or extensions thereof, which shall be changed only by the Department of Transportation.

(2) SPEED ON COUNTY ROADS.—The maximum speed on any county-maintained road is:

(a) In any business or residence district, 30 miles per hour in the daytime or nighttime; provided that with respect to residence districts a county may set a maximum speed limit of 25 miles per hour after an investigation determines that such a limit is reasonable; and it shall not be necessary to conduct a separate investigation in each residence district.

(b) On any other part of a county road not a business or residence district, as set forth in § 316.183.

However, the board of county commissioners may set speed zones altering such speeds, both as to maximum and minimum, after investigation determines such a change is reasonable and in conformity to criteria promulgated by the Department of Transportation, except that no such speed zone shall permit a speed of more than 60 miles per hour.

(3) POSTING OF SPEED LIMITS.—All speed zones shall be posted with clearly legible signs. No change in speeds from 30 miles per hour or from those established in § 316.183 shall take effect until the zone is posted by the authority changing the speed pursuant to this section and § 316.187. All signs which limit or establish speed limits, maximum and minimum, shall be so placed and so painted as to be plainly visible and legible in daylight or in darkness when illuminated by headlights.

(4) PENALTY.—Violation of the speed limits established under this section must be cited as a moving violation, punishable as provided in chapter 318.

316.1895. Establishment of school speed zones, enforcement; designation.

(1) (a) The Department of Transportation, pursuant to the authority granted under § 316.0745, shall adopt a uniform system of traffic control devices and pedestrian control devices for use on the streets and highways in the state surrounding all schools, public and private.

(b) The Department of Transportation shall compile, publish, and transmit a manual containing all specifications and requirements with respect to the system of devices established pursuant to paragraph (a) to the governing body of each county and municipality in the state, and the Department of Transportation and each county and municipality in the state shall install and maintain such traffic and pedestrian control devices in conformity with such uniform system.

(2) Upon request from the appropriate local government, the Department of Transportation shall install and maintain such traffic and pedestrian control devices on state-maintained roads as prescribed in this section for all prekindergarten early-intervention schools that receive federal funding through the Headstart program.

(3) (a) A school zone located on a state-maintained primary or secondary road shall be maintained by the Department of Transportation. However, nothing herein shall

prohibit the Department of Transportation from entering into agreements with counties or municipalities whereby the local governmental entities would maintain specified school zones on state-maintained primary or secondary roads.

(b) The county shall have the responsibility to maintain a school zone located outside of any municipality and on a county road.

(c) A municipality shall have the responsibility to maintain a school zone located in a municipality.

(d) For the purposes of this section, the term "maintained" with respect to any school zone means the care and maintenance of all school zone signs, markers, traffic control devices, and pedestrian control devices.

(4) (a) A school zone maintained by a county shall be periodically inspected by the county sheriff's office or any other qualified agent to determine whether or not the school zone is being properly maintained.

(b) A school zone maintained by a municipality shall be periodically inspected by the municipal police department or any other qualified agent to determine whether or not the school zone is being properly maintained.

(5) A school zone speed limit may not be less than 15 miles per hour except by local regulation. No school zone speed limit shall be more than 20 miles per hour in an urbanized area, as defined in § 334.03. Such speed limit may be in force only during those times 30 minutes before, during, and 30 minutes after the periods of time when pupils are arriving at a regularly scheduled breakfast program or a regularly scheduled school session and leaving a regularly scheduled school session.

(6) Permanent signs designating school zones and school zone speed limits shall be uniform in size and color, and shall have the times during which the restrictive speed limit is enforced clearly designated thereon. Flashing beacons activated by a time clock, or other automatic device, or manually activated may be used as an alternative to posting the times during which the restrictive school speed limit is enforced. Beginning July 1, 2008, for any newly established school zone or any school zone in which the signing has been replaced, a sign stating "Speeding Fines Doubled" shall be installed within the school zone. The Department of Transportation shall establish adequate standards for the signs and flashing beacons.

(7) Portable signs designating school zones and school zone speed limits shall be uniform in size and color. Such signs shall be erected on the roadway only during those hours when pupils are arriving at and leaving regularly scheduled school sessions. The Department of Transportation shall establish adequate standards for the signs.

(8) Nothing herein shall prohibit the use of automatic traffic control devices for the control of vehicular and pedestrian traffic at school crossings.

(9) All flags, belts, apparel, and devices issued, supplied, or furnished to pupils or persons acting in the capacity of school safety patrols, special school police, or special police appointed to control and direct traffic at or near schools, when used during periods of darkness, shall be made at least in part with retroreflective materials so as to be visible at night at 300 feet to approaching motorists when viewed under lawful low-beam headlights.

(10) A person may not drive a vehicle on a roadway designated as a school zone at a speed greater than that posted in the school zone in accordance with this section. Violation of the speed limits established pursuant to this section must be cited as a moving violation, punishable as provided in chapter 318.

316.1905. Electrical, mechanical, or other speed calculating devices; power of arrest; evidence.

(1) Whenever any peace officer engaged in the enforcement of the motor vehicle laws of this state uses an electronic, electrical, mechanical, or other device used to determine the speed of a motor vehicle on any highway, road, street, or other public way, such device shall be of a type approved by the department and shall have been tested to determine that it is operating accurately. Tests for this purpose shall be made not less than once each 6 months, according to procedures and at regular intervals of time prescribed by the department.

(2) Any police officer, upon receiving information relayed to him or her from a fellow officer stationed on the ground or in the air operating such a device that a driver of a vehicle has violated the speed laws of this state, may arrest the driver for violation of said laws where reasonable and proper identification of the vehicle and the speed of same has been communicated to the arresting officer.

(3) (a) A witness otherwise qualified to testify shall be competent to give testimony against an accused violator of the motor vehicle laws of this state when such testimony is derived from the use of such an electronic,

electrical, mechanical, or other device used in the calculation of speed, upon showing that the speed calculating device which was used had been tested. However, the operator of any visual average speed computer device shall first be certified as a competent operator of such device by the department.

(b) Upon the production of a certificate, signed and witnessed, showing that such device was tested within the time period specified and that such device was working properly, a presumption is established to that effect unless the contrary shall be established by competent evidence.

(c) Any person accused pursuant to the provisions of this section shall be entitled to have the officer actually operating the device appear in court and testify upon oral or written motion.

316.1906. Radar speed-measuring devices; evidence, admissibility.

(1) DEFINITIONS.—

(a) "Audio Doppler" means a backup audible signal that translates the radar's Doppler shift into a tone which can be heard by the radar operator.

(b) "Audio warning tone" refers to an auxiliary radar device which alerts the operator, by means of an audible tone, to the presence of a speed registration above a preset level.

(c) "Automatic speed lock" refers to an auxiliary radar device which immediately holds any speed reading obtained above a preset level.

(d) "Officer" means any:

1. "Law enforcement officer" who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with the authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state;

2. "Part-time law enforcement officer" who is employed or appointed less than full time, as defined by an employing agency, with or without compensation; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state; or

3. "Auxiliary law enforcement officer" who is employed or appointed, with or without compensation; who aids or assists a full-time or part-time law enforcement officer; and who, while under the direct supervision of a full-time or part-time law enforcement officer, has the authority to arrest and perform law enforcement functions.

(e) "Radar" means law enforcement speed radar, any laser-based or microwave-based speed-measurement system employed by a law enforcement agency to detect the speed of motorists.

(2) Evidence of the speed of a vehicle measured by any radar speed-measuring device shall be inadmissible in any proceeding with respect to an alleged violation of provisions of law regulating the lawful speed of vehicles, unless such evidence of speed is obtained by an officer who:

(a) Has satisfactorily completed the radar training course established by the Criminal Justice Standards and Training Commission pursuant to § 943.17(1)(b).

(b) Has made an independent visual determination that the vehicle is operating in excess of the applicable speed limit.

(c) Has written a citation based on evidence obtained from radar when conditions permit the clear assignment of speed to a single vehicle.

(d) Is using radar which has no automatic speed locks and no audio alarms, unless disconnected or deactivated.

(e) Is operating radar with audio Doppler engaged.

(f) Is using a radar unit which meets the minimum design criteria for such units established by the Department of Highway Safety and Motor Vehicles.

316.191. Racing on highways.

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

(a) "Conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(b) "Drag race" means the operation of two or more motor vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more motor vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such motor vehicle or motor vehicles within a certain distance or time limit.

(c) "Race" means the use of one or more motor vehicles in competition, arising from a challenge to demonstrate superiority of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response, in which the competitor attempts to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given desti-

nation ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes. A race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers which, under the totality of the circumstances, can reasonably be interpreted as a challenge to race.

(d) "Spectator" means any person who is knowingly present at and views a drag race, when such presence is the result of an affirmative choice to attend or participate in the race. For purposes of determining whether or not an individual is a spectator, finders of fact shall consider the relationship between the racer and the individual, evidence of gambling or betting on the outcome of the race, and any other factor that would tend to show knowing attendance or participation.

(2) A person may not:

(a) Drive any motor vehicle, including any motorcycle, in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot;

(b) In any manner participate in, coordinate, facilitate, or collect moneys at any location for any such race, competition, contest, test, or exhibition;

(c) Knowingly ride as a passenger in any such race, competition, contest, test, or exhibition; or

(d) Purposefully cause the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.

(3) (a) Any person who violates subsection (2) commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Any person who violates subsection (2) shall pay a fine of not less than $500 and not more than $1,000, and the department shall revoke the driver license of a person so convicted for 1 year. A hearing may be requested pursuant to § 322.271.

(b) Any person who commits a second violation of subsection (2) within 5 years after the date of a prior violation that resulted in a conviction for a violation of subsection (2) commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, and shall pay a fine of not less than $1,000 and not more than $3,000. The department shall also revoke the driver license of that person for 2 years. A hearing may be requested pursuant to § 322.271.

(c) Any person who commits a third or subsequent violation of subsection (2) within 5 years after the date of a prior violation that resulted in a conviction for a violation of subsection (2) commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083, and shall pay a fine of not less than $2,000 and not more than $5,000. The department shall also revoke the driver license of that person for 4 years. A hearing may be requested pursuant to § 322.271.

(d) In any case charging a violation of subsection (2), the court shall be provided a copy of the driving record of the person charged and may obtain any records from any other source to determine if one or more prior convictions of the person for a violation of subsection (2) have occurred within 5 years prior to the charged offense.

(4) (a) A person may not be a spectator at any drag race prohibited under subsection (2).

(b) A person who violates paragraph (a) commits a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

(5) Whenever a law enforcement officer determines that a person was engaged in a drag race or race, as described in subsection (1), the officer may immediately arrest and take such person into custody. The court may enter an order of impoundment or immobilization as a condition of incarceration or probation. Within 7 business days after the date the court issues the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the motor vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the motor vehicle.

(a) Notwithstanding any provision of law to the contrary, the impounding agency shall release a motor vehicle under the conditions provided in § 316.193(6)(e), (f), (g), and (h), if the owner or agent presents a valid driver license at the time of pickup of the motor vehicle.

(b) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the motor vehicle or, if the motor vehicle is leased or rented, by the person leasing or renting the motor vehicle, unless the impoundment or immobilization order is dismissed. All provisions of § 713.78 shall apply.

(c) Any motor vehicle used in violation of subsection (2) may be impounded for a period of 30 business days if a law enforcement officer has arrested and taken a person into custody pursuant to this subsection and the person being arrested is the registered owner or coowner of the motor vehicle. If the arresting officer finds that the criteria of this paragraph are met, the officer may immediately impound the motor vehicle. The law enforcement officer shall notify the Department of Highway Safety and Motor Vehicles of any impoundment for violation of this subsection in accordance with procedures established by the department. Paragraphs (a) and (b) shall be applicable to such impoundment.

(6) Any motor vehicle used in violation of subsection (2) by any person within 5 years after the date of a prior conviction of that person for a violation under subsection (2) may be seized and forfeited as provided by the Florida Contraband Forfeiture Act. This subsection shall only be applicable if the owner of the motor vehicle is the person charged with violating subsection (2).

(7) This section does not apply to licensed or duly authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes.

316.192. Reckless driving.

(1) (a) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) Fleeing a law enforcement officer in a motor vehicle is reckless driving per se.

(2) Except as provided in subsection (3), any person convicted of reckless driving shall be punished:

(a) Upon a first conviction, by imprisonment for a period of not more than 90 days or by fine of not less than $25 nor more than $500, or by both such fine and imprisonment.

(b) On a second or subsequent conviction, by imprisonment for not more than 6 months or by a fine of not less than $50 nor more than $1,000, or by both such fine and imprisonment.

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vehicle; and

(c) Who, by reason of such operation, causes:

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

2. Serious bodily injury to another commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. The term "serious bodily injury" means an injury to another person, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(4) Notwithstanding any other provision of this section, $5 shall be added to a fine imposed pursuant to this section. The clerk shall remit the $5 to the Department of Revenue for deposit in the Emergency Medical Services Trust Fund.

(5) In addition to any other penalty provided under this section, if the court has reasonable cause to believe that the use of alcohol, chemical substances set forth in § 877.111, or substances controlled under chapter 893 contributed to a violation of this section, the court shall direct the person so convicted to complete a DUI program substance abuse education course and evaluation as provided in § 316.193(5) within a reasonable period of time specified by the court. If the DUI program conducting such course and evaluation refers the person to an authorized substance abuse treatment provider for substance abuse evaluation and treatment, the directive of the court requiring completion of such course, evaluation, and treatment shall be enforced as provided in § 322.245. The referral to treatment resulting from the DUI program evaluation may not be waived without a supporting independent psychosocial evaluation conducted by an authorized substance abuse treatment provider, appointed by the court, which shall have access to the DUI program psychosocial evaluation before the independent psychosocial evaluation is conducted. The court shall review the results and recommendations of both evaluations before determining the request for waiver. The offender shall bear the full cost of this procedure. If a person directed to a DUI program substance abuse education course and evaluation or referred to treatment under this subsection fails to report for or complete such course, evaluation, or treatment, the DUI program shall notify the court and the department of the failure. Upon receipt of such notice, the department shall cancel the person's driving privilege, notwithstanding the terms of the court order or any suspension or revocation of the driving privilege. The department may reinstate the driving privilege upon verification from the DUI program that the education, evaluation, and treatment are completed. The department

may temporarily reinstate the driving privilege on a restricted basis upon verification that the offender is currently participating in treatment and has completed the DUI education course and evaluation requirement. If the DUI program notifies the department of the second failure to complete treatment, the department shall reinstate the driving privilege only after notice of successful completion of treatment from the DUI program.

316.1923. Aggressive careless driving.

"Aggressive careless driving" means committing two or more of the following acts simultaneously or in succession:

(1) Exceeding the posted speed as defined in § 322.27(3)(d)5.b.

(2) Unsafely or improperly changing lanes as defined in § 316.085.

(3) Following another vehicle too closely as defined in § 316.0895(1).

(4) Failing to yield the right-of-way as defined in § 316.079, § 316.0815, or § 316.123.

(5) Improperly passing as defined in § 316.083, § 316.084, or § 316.085.

(6) Violating traffic control and signal devices as defined in §§ 316.074 and 316.075.

316.1925. Careless driving.

(1) Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.

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

316.1926. Additional offenses.

(1) A person who violates the provisions of § 316.2085(2) or (3) shall be cited for a moving violation, punishable as provided in chapter 318.

(2) A person who exceeds the speed limit in excess of 50 miles per hour or more in violation of § 316.183(2), § 316.187, or § 316.189 shall be cited for a moving violation, punishable as provided in chapter 318.

316.193. Driving under the influence; penalties.

(1) A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle within this state and:

(a) The person is under the influence of alcoholic beverages, any chemical substance set forth in § 877.111, or any substance controlled under chapter 893, when affected to the extent that the person's normal faculties are impaired;

(b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or

(c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

(2) (a) Except as provided in paragraph (b), subsection (3), or subsection (4), any person who is convicted of a violation of subsection (1) shall be punished:

1. By a fine of:

a. Not less than $500 or more than $1,000 for a first conviction.

b. Not less than $1,000 or more than $2,000 for a second conviction; and

2. By imprisonment for:

a. Not more than 6 months for a first conviction.

b. Not more than 9 months for a second conviction.

3. For a second conviction, by mandatory placement for a period of at least 1 year, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with § 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. The installation of such device may not occur before July 1, 2003.

(b) 1. Any person who is convicted of a third violation of this section for an offense that occurs within 10 years after a prior conviction for a violation of this section commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. In addition, the court shall order the mandatory placement for a period of not less than 2 years, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with § 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. The installation of such device may not occur before July 1, 2003.

2. Any person who is convicted of a third violation of this section for an offense that oc-

curs more than 10 years after the date of a prior conviction for a violation of this section shall be punished by a fine of not less than $2,000 or more than $5,000 and by imprisonment for not more than 12 months. In addition, the court shall order the mandatory placement for a period of at least 2 years, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with § 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. The installation of such device may not occur before July 1, 2003.

3. Any person who is convicted of a fourth or subsequent violation of this section, regardless of when any prior conviction for a violation of this section occurred, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. However, the fine imposed for such fourth or subsequent violation may be not less than $2,000.

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vehicle; and

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

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

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

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

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

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

I. At the time of the crash, the person knew, or should have known, that the crash occurred; and

II. The person failed to give information and render aid as required by § 316.062.

For purposes of this subsection, the definition of the term "unborn quick child" shall be determined in accordance with the definition of viable fetus as set forth in § 782.071. A person who is convicted of DUI manslaughter shall be sentenced to a mandatory minimum term of imprisonment of 4 years.

(4) Any person who is convicted of a violation of subsection (1) and who has a blood-alcohol level or breath-alcohol level of 0.15 or higher, or any person who is convicted of a violation of subsection (1) and who at the time of the offense was accompanied in the vehicle by a person under the age of 18 years, shall be punished:

(a) By a fine of:

1. Not less than $1,000 or more than $2,000 for a first conviction.

2. Not less than $2,000 or more than $4,000 for a second conviction.

3. Not less than $4,000 for a third or subsequent conviction.

(b) By imprisonment for:

1. Not more than 9 months for a first conviction.

2. Not more than 12 months for a second conviction.

For the purposes of this subsection, only the instant offense is required to be a violation of subsection (1) by a person who has a blood-alcohol level or breath-alcohol level of 0.15 or higher.

(c) In addition to the penalties in paragraphs (a) and (b), the court shall order the mandatory placement, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with § 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person for not less than 6 continuous months for the first offense and for not less than 2 continuous years for a second offense, when the convicted person qualifies for a permanent or restricted license.

(5) The court shall place all offenders convicted of violating this section on monthly reporting probation and shall require completion of a substance abuse course conducted by a DUI program licensed by the department under § 322.292, which must include a psychosocial evaluation of the offender. If the DUI program refers the offender to an authorized substance abuse treatment provider for substance abuse treatment, in addition to any sentence or fine imposed under this section, completion of all such education, evaluation, and treatment is a condition of reporting probation. The offender shall assume reasonable costs for such education, evaluation, and treatment. The referral to treatment resulting from a psychosocial evaluation shall not be waived without a supporting independent psychosocial evaluation conducted by an authorized substance abuse treatment provider appointed by the court,

which shall have access to the DUI program's psychosocial evaluation before the independent psychosocial evaluation is conducted. The court shall review the results and recommendations of both evaluations before determining the request for waiver. The offender shall bear the full cost of this procedure. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I through V of § 893.03. If an offender referred to treatment under this subsection fails to report for or complete such treatment or fails to complete the DUI program substance abuse education course and evaluation, the DUI program shall notify the court and the department of the failure. Upon receipt of the notice, the department shall cancel the offender's driving privilege, notwithstanding the terms of the court order or any suspension or revocation of the driving privilege. The department may temporarily reinstate the driving privilege on a restricted basis upon verification from the DUI program that the offender is currently participating in treatment and the DUI education course and evaluation requirement has been completed. If the DUI program notifies the department of the second failure to complete treatment, the department shall reinstate the driving privilege only after notice of completion of treatment from the DUI program. The organization that conducts the substance abuse education and evaluation may not provide required substance abuse treatment unless a waiver has been granted to that organization by the department. A waiver may be granted only if the department determines, in accordance with its rules, that the service provider that conducts the substance abuse education and evaluation is the most appropriate service provider and is licensed under chapter 397 or is exempt from such licensure. A statistical referral report shall be submitted quarterly to the department by each organization authorized to provide services under this section.

(6) With respect to any person convicted of a violation of subsection (1), regardless of any penalty imposed pursuant to subsection (2), subsection (3), or subsection (4):

(a) For the first conviction, the court shall place the defendant on probation for a period not to exceed 1 year and, as a condition of such probation, shall order the defendant to participate in public service or a community work project for a minimum of 50 hours. The court may order a defendant to pay a fine of $10 for each hour of public service or community work otherwise required only if the court finds that the residence or location of the defendant at the time public service or community work is required or the defendant's employment obligations would create an undue hardship for the defendant. However, the total period of probation and incarceration may not exceed 1 year. The court must also, as a condition of probation, order the impoundment or immobilization of the vehicle that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h).

(b) For the second conviction for an offense that occurs within a period of 5 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 10 days. The court must also, as a condition of probation, order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization, for a period of 30 days or for the unexpired term of any lease or rental agreement that expires within 30 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant and must occur concurrently with the driver's license revocation imposed under § 322.28(2)(a)2. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h). At least 48 hours of confinement must be consecutive.

(c) For the third or subsequent conviction for an offense that occurs within a period of 10 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 30 days. The court must also, as a condition of probation, order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization, for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant and must occur concurrently with the driver's license revocation imposed under § 322.28(2)

(a)3. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h). At least 48 hours of confinement must be consecutive.

(d) The court must at the time of sentencing the defendant issue an order for the impoundment or immobilization of a vehicle. The order of impoundment or immobilization must include the name and telephone numbers of all immobilization agencies meeting all of the conditions of subsection (13). Within 7 business days after the date that the court issues the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of each vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vehicle.

(e) A person who owns but was not operating the vehicle when the offense occurred may submit to the court a police report indicating that the vehicle was stolen at the time of the offense or documentation of having purchased the vehicle after the offense was committed from an entity other than the defendant or the defendant's agent. If the court finds that the vehicle was stolen or that the sale was not made to circumvent the order and allow the defendant continued access to the vehicle, the order must be dismissed and the owner of the vehicle will incur no costs. If the court denies the request to dismiss the order of impoundment or immobilization, the petitioner may request an evidentiary hearing.

(f) A person who owns but was not operating the vehicle when the offense occurred, and whose vehicle was stolen or who purchased the vehicle after the offense was committed directly from the defendant or the defendant's agent, may request an evidentiary hearing to determine whether the impoundment or immobilization should occur. If the court finds that either the vehicle was stolen or the purchase was made without knowledge of the offense, that the purchaser had no relationship to the defendant other than through the transaction, and that such purchase would not circumvent the order and allow the defendant continued access to the vehicle, the order must be dismissed and the owner of the vehicle will incur no costs.

(g) The court shall also dismiss the order of impoundment or immobilization of the vehicle if the court finds that the family of the owner of the vehicle has no other private or public means of transportation.

(h) The court may also dismiss the order of impoundment or immobilization of any vehicles that are owned by the defendant but that are operated solely by the employees of the defendant or any business owned by the defendant.

(i) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the vehicle or, if the vehicle is leased or rented, by the person leasing or renting the vehicle, unless the impoundment or immobilization order is dismissed. All provisions of § 713.78 shall apply. The costs and fees for the impoundment or immobilization must be paid directly to the person impounding or immobilizing the vehicle.

(j) The person who owns a vehicle that is impounded or immobilized under this paragraph, or a person who has a lien of record against such a vehicle and who has not requested a review of the impoundment pursuant to paragraph (e), paragraph (f), or paragraph (g), may, within 10 days after the date that person has knowledge of the location of the vehicle, file a complaint in the county in which the owner resides to determine whether the vehicle was wrongfully taken or withheld from the owner or lienholder. Upon the filing of a complaint, the owner or lienholder may have the vehicle released by posting with the court a bond or other adequate security equal to the amount of the costs and fees for impoundment or immobilization, including towing or storage, to ensure the payment of such costs and fees if the owner or lienholder does not prevail. When the bond is posted and the fee is paid as set forth in § 28.24, the clerk of the court shall issue a certificate releasing the vehicle. At the time of release, after reasonable inspection, the owner or lienholder must give a receipt to the towing or storage company indicating any loss or damage to the vehicle or to the contents of the vehicle.

(k) A defendant, in the court's discretion, may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced pursuant to this section in a residential alcoholism treatment program or a residential drug abuse treatment program. Any time spent in such a program must be credited by the court toward the term of imprisonment.

For the purposes of this section, any conviction for a violation of § 327.35; a previous conviction for the violation of former § 316.1931, former § 860.01, or former § 316.028; or a previous conviction outside

this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, driving with an unlawful breath-alcohol level, or any other similar alcohol-related or drug-related traffic offense, is also considered a previous conviction for violation of this section. However, in satisfaction of the fine imposed pursuant to this section, the court may, upon a finding that the defendant is financially unable to pay either all or part of the fine, order that the defendant participate for a specified additional period of time in public service or a community work project in lieu of payment of that portion of the fine which the court determines the defendant is unable to pay. In determining such additional sentence, the court shall consider the amount of the unpaid portion of the fine and the reasonable value of the services to be ordered; however, the court may not compute the reasonable value of services at a rate less than the federal minimum wage at the time of sentencing.

(7) A conviction under this section does not bar any civil suit for damages against the person so convicted.

(8) At the arraignment, or in conjunction with any notice of arraignment provided by the clerk of the court, the clerk shall provide any person charged with a violation of this section with notice that upon conviction the court shall suspend or revoke the offender's driver's license and that the offender should make arrangements for transportation at any proceeding in which the court may take such action. Failure to provide such notice does not affect the court's suspension or revocation of the offender's driver's license.

(9) A person who is arrested for a violation of this section may not be released from custody:

(a) Until the person is no longer under the influence of alcoholic beverages, any chemical substance set forth in § 877.111, or any substance controlled under chapter 893 and affected to the extent that his or her normal faculties are impaired;

(b) Until the person's blood-alcohol level or breath-alcohol level is less than 0.05; or

(c) Until 8 hours have elapsed from the time the person was arrested.

(10) The rulings of the Department of Highway Safety and Motor Vehicles under § 322.2615 shall not be considered in any trial for a violation of this section. Testimony or evidence from the administrative proceedings or any written statement submitted by a person in his or her request for administrative review is inadmissible into evidence or for any other purpose in any criminal proceeding, unless timely disclosed in criminal discovery pursuant to Rule 3.220, Florida Rules of Criminal Procedure.

(11) The Department of Highway Safety and Motor Vehicles is directed to adopt rules providing for the implementation of the use of ignition interlock devices.

(12) If the records of the Department of Highway Safety and Motor Vehicles show that the defendant has been previously convicted of the offense of driving under the influence, that evidence is sufficient by itself to establish that prior conviction for driving under the influence. However, such evidence may be contradicted or rebutted by other evidence. This presumption may be considered along with any other evidence presented in deciding whether the defendant has been previously convicted of the offense of driving under the influence.

(13) If personnel of the circuit court or the sheriff do not immobilize vehicles, only immobilization agencies that meet the conditions of this subsection shall immobilize vehicles in that judicial circuit.

(a) The immobilization agency responsible for immobilizing vehicles in that judicial circuit shall be subject to strict compliance with all of the following conditions and restrictions:

1. Any immobilization agency engaged in the business of immobilizing vehicles shall provide to the clerk of the court a signed affidavit attesting that the agency:

a. Has verifiable experience in immobilizing vehicles;

b. Maintains accurate and complete records of all payments for the immobilization, copies of all documents pertaining to the court's order of impoundment or immobilization, and any other documents relevant to each immobilization. Such records must be maintained by the immobilization agency for at least 3 years; and

c. Employs and assigns persons to immobilize vehicles that meet the requirements established in subparagraph 2.

2. The person who immobilizes a vehicle must:

a. Not have been adjudicated incapacitated under § 744.331, or a similar statute in another state, unless his or her capacity has been judicially restored; involuntarily placed in a treatment facility for the mentally ill under chapter 394, or a similar law in any other state, unless his or her competency has been judicially restored; or diagnosed as having an incapacitating mental illness unless a psy-

chologist or psychiatrist licensed in this state certifies that he or she does not currently suffer from the mental illness.

b. Not be a chronic and habitual user of alcoholic beverages to the extent that his or her normal faculties are impaired; not have been committed under chapter 397, former chapter 396, or a similar law in any other state; not have been found to be a habitual offender under § 856.011(3), or a similar law in any other state; or not have had any convictions under this section, or a similar law in any other state, within 2 years before the affidavit is submitted.

c. Not have been committed for controlled substance abuse or have been found guilty of a crime under chapter 893, or a similar law in any other state, relating to controlled substances in any other state.

d. Not have been found guilty of or entered a plea of guilty or nolo contendere to, regardless of adjudication, or been convicted of a felony, unless his or her civil rights have been restored.

e. Be a citizen or legal resident alien of the United States or have been granted authorization to seek employment in this country by the United States Bureau of Citizenship and Immigration Services.

(b) The immobilization agency shall conduct a state criminal history check through the Florida Department of Law Enforcement to ensure that the person hired to immobilize a vehicle meets the requirements in sub-subparagraph (a)2.d.

(c) A person who violates paragraph (a) commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(14) As used in this chapter, the term:

(a) "Immobilization," "immobilizing," or "immobilize" means the act of installing a vehicle antitheft device on the steering wheel of a vehicle, the act of placing a tire lock or wheel clamp on a vehicle, or a governmental agency's act of taking physical possession of the license tag and vehicle registration rendering a vehicle legally inoperable to prevent any person from operating the vehicle pursuant to an order of impoundment or immobilization under subsection (6).

(b) "Immobilization agency" or "immobilization agencies" means any person, firm, company, agency, organization, partnership, corporation, association, trust, or other business entity of any kind whatsoever that meets all of the conditions of subsection (13).

(c) "Impoundment," "impounding," or "impound" means the act of storing a vehicle at a storage facility pursuant to an order of impoundment or immobilization under subsection (6) where the person impounding the vehicle exercises control, supervision, and responsibility over the vehicle.

(d) "Person" means any individual, firm, company, agency, organization, partnership, corporation, association, trust, or other business entity of any kind whatsoever.

316.1932. Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.

(1) (a) 1. a. Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of the motor vehicle within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended as a result of a refusal to submit to such a test or tests, and shall also be told that if he or she refuses to submit to a lawful test of his or her breath and his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

b. Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given

his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in § 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of a motor vehicle within this state while under the influence of chemical substances or controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for the first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended as a result of a refusal to submit to such a test or tests, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine and his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program shall:

a. Establish uniform criteria for the issuance of permits to breath test operators, agency inspectors, instructors, blood analysts, and instruments.

b. Have the authority to permit breath test operators, agency inspectors, instructors, blood analysts, and instruments.

c. Have the authority to discipline and suspend, revoke, or renew the permits of breath test operators, agency inspectors, instructors, blood analysts, and instruments.

d. Establish uniform requirements for instruction and curricula for the operation and inspection of approved instruments.

e. Have the authority to specify one approved curriculum for the operation and inspection of approved instruments.

f. Establish a procedure for the approval of breath test operator and agency inspector classes.

g. Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

h. With the approval of the executive director of the Department of Law Enforcement, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as are necessary, expedient, or incidental to the performance of duties.

i. Issue final orders which include findings of fact and conclusions of law and which constitute final agency action for the purpose of chapter 120.

j. Enforce compliance with the provisions of this section through civil or administrative proceedings.

k. Make recommendations concerning any matter within the purview of this section, this chapter, chapter 322, or chapter 327.

l. Promulgate rules for the administration and implementation of this section, including definitions of terms.

m. Consult and cooperate with other entities for the purpose of implementing the mandates of this section.

n. Have the authority to approve the type of blood test utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

o. Have the authority to specify techniques and methods for breath alcohol testing and blood testing utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

p. Have the authority to approve repair facilities for the approved breath test instruments, including the authority to set criteria for approval.

Nothing in this section shall be construed to supersede provisions in this chapter and chapters 322 and 327. The specifications in this section are derived from the power and authority previously and currently possessed by the Department of Law Enforcement and are enumerated to conform with the mandates of chapter 99-379, Laws of Florida.

(b) 1. The blood-alcohol level must be based upon grams of alcohol per 100 milliliters of blood. The breath-alcohol level must be based upon grams of alcohol per 210 liters of breath.

2. An analysis of a person's breath, in order to be considered valid under this section, must have been performed substantially according to methods approved by the Department of Law Enforcement. For this purpose, the department may approve satisfactory techniques or methods. Any insubstantial differences between approved techniques and actual testing procedures in any individual case do not render the test or test results invalid.

(c) Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle. The blood test shall be performed in a reasonable manner. Any person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. A blood test may be administered whether or not the person is told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle upon the public highways of this state and that a refusal to submit to a lawful test of his or her blood, if his or her driving privilege has been previously suspended for refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor. Any person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of the person has been suspended previously as a result of a refusal to submit to such a test or tests, and that a refusal to submit to a lawful test of his or her blood, if his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor. The refusal to submit to a blood test upon the request of a law enforcement officer is admissible in evidence in any criminal proceeding.

(d) If the arresting officer does not request a chemical or physical breath test of the person arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages or controlled substances, such person may request the arresting officer to have a chemical or physical test made of the arrested person's breath or a test of the urine or blood for the purpose of determining the alcoholic content of the person's blood or breath or the presence of chemical substances or controlled substances; and, if so requested, the arresting officer shall have the test performed.

(e) 1. By applying for a driver's license and by accepting and using a driver's license, the person holding the driver's license is deemed to have expressed his or her consent to the provisions of this section.

2. A nonresident or any other person driving in a status exempt from the requirements of the driver's license law, by his or her act of driving in such exempt status, is deemed to have expressed his or her consent to the provisions of this section.

3. A warning of the consent provision of this section shall be printed on each new or renewed driver's license.

(f) 1. The tests determining the weight of alcohol in the defendant's blood or breath shall be administered at the request of a law enforcement officer substantially in accordance with rules of the Department of Law Enforcement. Such rules must specify precisely the test or tests that are approved by the Department of Law Enforcement for reliability of result and ease of administration, and must provide an approved method of administration which must be followed in all such tests given under this section. However, the failure of a law enforcement officer to request the withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

2. a. Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining its alcoholic content or the presence of chemical substances or controlled substances therein. However, the failure of a law enforcement officer to request the withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

b. Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, if a health care provider, who is providing medical care in a health care facility to a person injured in a motor vehicle crash, becomes aware, as a result of any blood test performed in the course of that medical treatment, that the person's blood-alcohol level meets or exceeds the blood-alcohol level specified in § 316.193(1)(b), the health care provider may notify any law enforcement officer or law enforcement agency. Any such notice must be given within a reasonable time after the health care provider receives the test result. Any such notice shall be used only for the purpose of providing the law enforcement officer with reasonable cause to request the withdrawal of a blood sample pursuant to this section.

c. The notice shall consist only of the name of the person being treated, the name of the person who drew the blood, the blood-alcohol level indicated by the test, and the date and time of the administration of the test.

d. Nothing contained in § 395.3025(4), § 456.057, or any applicable practice act affects the authority to provide notice under this section, and the health care provider is not considered to have breached any duty owed to the person under § 395.3025(4), § 456.057, or any applicable practice act by providing notice or failing to provide notice. It shall not be a breach of any ethical, moral, or legal duty for a health care provider to provide notice or fail to provide notice.

e. A civil, criminal, or administrative action may not be brought against any person or health care provider participating in good faith in the provision of notice or failure to provide notice as provided in this section. Any person or health care provider participating in the provision of notice or failure to provide notice as provided in this section shall be immune from any civil or criminal liability and from any professional disciplinary action with respect to the provision of notice or failure to provide notice under this section. Any such participant has the same immunity with respect to participating in any judicial proceedings resulting from the notice or failure to provide notice.

3. The person tested may, at his or her own expense, have a physician, registered nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person of his or her own choosing administer an independent test in addition to the test administered at the direction of the law enforcement officer for the purpose of determining the amount of alcohol in the person's blood or breath or the presence of chemical substances or controlled substances at the time alleged, as shown by chemical analysis of his or her blood or urine, or by chemical or physical test of his or her breath. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of the test taken at the direction of the law enforcement officer. The law enforcement officer shall not interfere with the person's opportunity to obtain the independent test and shall provide the person with timely telephone access to secure the test, but the burden is on the person to arrange and secure the test at the person's own expense.

4. Upon the request of the person tested, full information concerning the results of the test taken at the direction of the law enforcement officer shall be made available to the person or his or her attorney. Full information is limited to the following:

a. The type of test administered and the procedures followed.

b. The time of the collection of the blood or breath sample analyzed.

c. The numerical results of the test indicating the alcohol content of the blood and breath.

d. The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test.

e. If the test was administered by means of a breath testing instrument, the date of performance of the most recent required inspection of such instrument.

Full information does not include manuals, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information does not include information in the possession of the manufacturer of the test instrument.

5. A hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer does not incur any civil or criminal liability as a result of the withdrawal or analysis of a blood or urine specimen, or the chemical or physical test of a person's breath pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

(2) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(3) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information relating to the alcoholic content of the blood or breath or the presence of chemical substances or controlled substances in the blood obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of § 316.193 upon request for such information.

316.1933. Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.

(1) (a) If a law enforcement officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being, a law enforcement officer shall require the person driving or in actual physical control of the motor vehicle to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in § 877.111 or any substance controlled under chapter 893. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding § 316.1932, the testing required by this paragraph need not be incidental to a lawful arrest of the person.

(b) The term "serious bodily injury" means an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(2) (a) Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances or controlled substances therein. However, the failure of a law enforcement officer to request the withdrawal of blood shall not affect the admissibility of a test of blood withdrawn for medical purposes.

1. Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, if a health care provider, who is providing medical care in a health care facility to a person injured in a motor vehicle crash, becomes aware, as a result of any blood test performed in the course of that medical treatment, that the person's blood-alcohol level meets or exceeds the blood-alcohol level specified in § 316.193(1)(b), the health care provider may notify any law enforcement officer or law

enforcement agency. Any such notice must be given within a reasonable time after the health care provider receives the test result. Any such notice shall be used only for the purpose of providing the law enforcement officer with reasonable cause to request the withdrawal of a blood sample pursuant to this section.

2. The notice shall consist only of the name of the person being treated, the name of the person who drew the blood, the blood-alcohol level indicated by the test, and the date and time of the administration of the test.

3. Nothing contained in § 395.3025(4), § 456.057, or any applicable practice act affects the authority to provide notice under this section, and the health care provider is not considered to have breached any duty owed to the person under § 395.3025(4), § 456.057, or any applicable practice act by providing notice or failing to provide notice. It shall not be a breach of any ethical, moral, or legal duty for a health care provider to provide notice or fail to provide notice.

4. A civil, criminal, or administrative action may not be brought against any person or health care provider participating in good faith in the provision of notice or failure to provide notice as provided in this section. Any person or health care provider participating in the provision of notice or failure to provide notice as provided in this section shall be immune from any civil or criminal liability and from any professional disciplinary action with respect to the provision of notice or failure to provide notice under this section. Any such participant has the same immunity with respect to participating in any judicial proceedings resulting from the notice or failure to provide notice.

(b) A chemical analysis of the person's blood to determine the alcoholic content thereof must have been performed substantially in accordance with methods approved by the Department of Law Enforcement and by an individual possessing a valid permit issued by the department for this purpose. The Department of Law Enforcement may approve satisfactory techniques or methods, ascertain the qualifications and competence of individuals to conduct such analyses, and issue permits that are subject to termination or revocation at the discretion of the department. Any insubstantial differences between approved methods or techniques and actual testing procedures, or any insubstantial defects concerning the permit issued by the department, in any individual case, shall not render the test or test results invalid.

(c) No hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer shall incur any civil or criminal liability as a result of the withdrawal or analysis of a blood specimen pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

(3) (a) Any criminal charge resulting from the incident giving rise to the officer's demand for testing shall be tried concurrently with a charge of any violation arising out of the same incident, unless, in the discretion of the court, such charges should be tried separately. If such charges are tried separately, the fact that such person refused, resisted, obstructed, or opposed testing shall be admissible at the trial of the criminal offense which gave rise to the demand for testing.

(b) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(4) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information relating to the alcoholic content of the blood or the presence of chemical substances or controlled substances in the blood obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of § 316.193 upon request for such information.

316.1934. Presumption of impairment; testing methods.

(1) It is unlawful and punishable as provided in chapter 322 and in § 316.193 for any person who is under the influence of alcoholic beverages or controlled substances, when affected to the extent that the person's normal faculties are impaired or to the extent that the person is deprived of full possession of normal faculties, to drive or be in actual physical control of any motor vehicle within this state. Such normal faculties include, but are not limited to, the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies,

and, in general, normally perform the many mental and physical acts of daily life.

(2) At the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving, or in actual physical control of, a vehicle while under the influence of alcoholic beverages or controlled substances, when affected to the extent that the person's normal faculties were impaired or to the extent that he or she was deprived of full possession of his or her normal faculties, the results of any test administered in accordance with § 316.1932 or § 316.1933 and this section are admissible into evidence when otherwise admissible, and the amount of alcohol in the person's blood or breath at the time alleged, as shown by chemical analysis of the person's blood, or by chemical or physical test of the person's breath, gives rise to the following presumptions:

(a) If there was at that time a blood-alcohol level or breath-alcohol level of 0.05 or less, it is presumed that the person was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(b) If there was at that time a blood-alcohol level or breath-alcohol level in excess of 0.05 but less than 0.08, that fact does not give rise to any presumption that the person was or was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired but may be considered with other competent evidence in determining whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(c) If there was at that time a blood-alcohol level or breath-alcohol level of 0.08 or higher, that fact is prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired. Moreover, such person who has a blood-alcohol level or breath-alcohol level of 0.08 or higher is guilty of driving, or being in actual physical control of, a motor vehicle, with an unlawful blood-alcohol level or breath-alcohol level.

The presumptions provided in this subsection do not limit the introduction of any other competent evidence bearing upon the question of whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(3) A chemical analysis of a person's blood to determine alcoholic content or a chemical or physical test of a person's breath, in order to be considered valid under this section, must have been performed substantially in accordance with methods approved by the Department of Law Enforcement and by an individual possessing a valid permit issued by the department for this purpose. Any insubstantial differences between approved techniques and actual testing procedures or any insubstantial defects concerning the permit issued by the department, in any individual case do not render the test or test results invalid. The Department of Law Enforcement may approve satisfactory techniques or methods, ascertain the qualifications and competence of individuals to conduct such analyses, and issue permits that are subject to termination or revocation in accordance with rules adopted by the department.

(4) Any person charged with a violation of § 316.193, whether in a municipality or not, is entitled to trial by jury according to the Florida Rules of Criminal Procedure.

(5) An affidavit containing the results of any test of a person's blood or breath to determine its alcohol content, as authorized by § 316.1932 or § 316.1933, is admissible in evidence under the exception to the hearsay rule in § 90.803(8) for public records and reports. Such affidavit is admissible without further authentication and is presumptive proof of the results of an authorized test to determine alcohol content of the blood or breath if the affidavit discloses:

(a) The type of test administered and the procedures followed;

(b) The time of the collection of the blood or breath sample analyzed;

(c) The numerical results of the test indicating the alcohol content of the blood or breath;

(d) The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test; and

(e) If the test was administered by means of a breath testing instrument, the date of performance of the most recent required maintenance on such instrument.

The Department of Law Enforcement shall provide a form for the affidavit. Admissibility of the affidavit does not abrogate the right of the person tested to subpoena the person who administered the test for examination as an adverse witness at a civil or criminal trial or other proceeding.

(6) Nothing in this section prohibits the prosecution of a person under § 322.62. The provisions of subsection (2) do not apply to

such prosecution and the presumptions made pursuant to that subsection may not be introduced into evidence during such prosecution.

316.1935. Fleeing or attempting to elude a law enforcement officer; aggravated fleeing or eluding.

(1) It is unlawful for the operator of any vehicle, having knowledge that he or she has been ordered to stop such vehicle by a duly authorized law enforcement officer, willfully to refuse or fail to stop the vehicle in compliance with such order or, having stopped in knowing compliance with such order, willfully to flee in an attempt to elude the officer, and a person who violates this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) Any person who willfully flees or attempts to elude a law enforcement officer in an authorized law enforcement patrol vehicle, with agency insignia and other jurisdictional markings prominently displayed on the vehicle, with siren and lights activated commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Any person who willfully flees or attempts to elude a law enforcement officer in an authorized law enforcement patrol vehicle, with agency insignia and other jurisdictional markings prominently displayed on the vehicle, with siren and lights activated, and during the course of the fleeing or attempted eluding:

(a) Drives at high speed, or in any manner which demonstrates a wanton disregard for the safety of persons or property, commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Drives at high speed, or in any manner which demonstrates a wanton disregard for the safety of persons or property, and causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle, commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Notwithstanding any other provision of law, the court shall sentence any person convicted of committing the offense described in this paragraph to a mandatory minimum sentence of 3 years imprisonment. Nothing in this paragraph shall prevent a court from imposing a greater sentence of incarceration as authorized by law.

(4) Any person who, in the course of unlawfully leaving or attempting to leave the scene of a crash in violation of § 316.027 or § 316.061, having knowledge of an order to stop by a duly authorized law enforcement officer, willfully refuses or fails to stop in compliance with such an order, or having stopped in knowing compliance with such order, willfully flees in an attempt to elude such officer and, as a result of such fleeing or eluding:

(a) Causes injury to another person or causes damage to any property belonging to another person, commits aggravated fleeing or eluding, a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle, commits aggravated fleeing or eluding with serious bodily injury or death, a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

The felony of aggravated fleeing or eluding and the felony of aggravated fleeing or eluding with serious bodily injury or death constitute separate offenses for which a person may be charged, in addition to the offenses under §§ 316.027 and 316.061, relating to unlawfully leaving the scene of a crash, which the person had been in the course of committing or attempting to commit when the order to stop was given. Notwithstanding any other provision of law, the court shall sentence any person convicted of committing aggravated fleeing or eluding with serious bodily injury or death to a mandatory minimum sentence of 3 years imprisonment. Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law.

(5) The court shall revoke, for a period not less than 1 year nor exceeding 5 years, the driver's license of any operator of a motor vehicle convicted of a violation of subsection (1), subsection (2), subsection (3), or subsection (4).

(6) Notwithstanding § 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of this section. A person convicted and sentenced to a mandatory minimum term of incarceration under paragraph (3)(b) or paragraph (4)(b) is not eligible for statutory gain-time under § 944.275 or any form of discretionary early release, other than pardon or executive clemency or conditional medical

release under § 947.149, prior to serving the mandatory minimum sentence.

(7) Any motor vehicle involved in a violation of this section is deemed to be contraband, which may be seized by a law enforcement agency and is subject to forfeiture pursuant to §§ 932.701-932.704. Any vehicle not required to be titled under the laws of this state is presumed to be the property of the person in possession of the vehicle.

316.1936. Possession of open containers of alcoholic beverages in vehicles prohibited; penalties.

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

(a) "Open container" means any container of alcoholic beverage which is immediately capable of being consumed from, or the seal of which has been broken.

(b) "Road" means a way open to travel by the public, including, but not limited to, a street, highway, or alley. The term includes associated sidewalks, the roadbed, the right-of-way, and all culverts, drains, sluices, ditches, water storage areas, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel and all ferries used in connection therewith.

(2) (a) It is unlawful and punishable as provided in this section for any person to possess an open container of an alcoholic beverage or consume an alcoholic beverage while operating a vehicle in the state or while a passenger in or on a vehicle being operated in the state.

(b) It is unlawful and punishable as provided in this section for any person to possess an open container of an alcoholic beverage or consume an alcoholic beverage while seated in or on a motor vehicle that is parked or stopped within a road as defined in this section. Notwithstanding the prohibition contained in this section, passengers in vehicles designed, maintained, and used primarily for the transportation of persons for compensation and in motor homes are exempt.

(3) An open container shall be considered to be in the possession of the operator of a vehicle if the container is not in the possession of a passenger and is not located in a locked glove compartment, locked trunk, or other locked nonpassenger area of the vehicle.

(4) An open container shall be considered to be in the possession of a passenger of a vehicle if the container is in the physical control of the passenger.

(5) This section shall not apply to:

(a) A passenger of a vehicle in which the driver is operating the vehicle pursuant to a contract to provide transportation for passengers and such driver holds a valid commercial driver's license with a passenger endorsement issued in accordance with the requirements of chapter 322;

(b) A passenger of a bus in which the driver holds a valid commercial driver's license with a passenger endorsement issued in accordance with the requirements of chapter 322; or

(c) A passenger of a self-contained motor home which is in excess of 21 feet in length.

(6) Any operator of a vehicle who violates this section is guilty of a noncriminal moving traffic violation, punishable as provided in chapter 318. A passenger of a vehicle who violates this section is guilty of a nonmoving traffic violation, punishable as provided in chapter 318.

(7) A county or municipality may adopt an ordinance which imposes more stringent restrictions on the possession of alcoholic beverages in vehicles than those imposed by this section.

(8) Nothing in this section prohibits the enforcement of § 316.302.

(9) A bottle of wine that has been resealed and is transported pursuant to § 564.09 is not an open container under the provisions of this section.

316.1937. Ignition interlock devices, requiring; unlawful acts.

(1) In addition to any other authorized penalties, the court may require that any person who is convicted of driving under the influence in violation of § 316.193 shall not operate a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device certified by the department as provided in § 316.1938, and installed in such a manner that the vehicle will not start if the operator's blood alcohol level is in excess of 0.025 percent or as otherwise specified by the court. The court may require the use of an approved ignition interlock device for a period of at least 6 continuous months, if the person is permitted to operate a motor vehicle, whether or not the privilege to operate a motor vehicle is restricted, as determined by the court. The court, however, shall order placement of an ignition interlock device in those circumstances required by § 316.193.

(2) If the court imposes the use of an ignition interlock device, the court shall:

(a) Stipulate on the record the requirement for, and the period of, the use of a certified ignition interlock device.

(b) Order that the records of the department reflect such requirement.

(c) Order that an ignition interlock device be installed, as the court may determine necessary, on any vehicle owned or operated by the person.

(d) Determine the person's ability to pay for installation of the device if the person claims inability to pay. If the court determines that the person is unable to pay for installation of the device, the court may order that any portion of a fine paid by the person for a violation of § 316.193 shall be allocated to defray the costs of installing the device.

(e) Require proof of installation of the device and periodic reporting to the department for verification of the operation of the device in the person's vehicle.

(3) If the court imposes the use of an ignition interlock device on a person whose driving privilege is not suspended or revoked, the court shall require the person to provide proof of compliance to the department within 30 days. If the person fails to provide proof of installation within that period, absent a finding by the court of good cause for that failure which is entered in the court record, the court shall notify the department.

(4) If the court imposes the use of an ignition interlock device on a person whose driving privilege is suspended or revoked for a period of less than 3 years, the department shall require proof of compliance before reinstatement of the person's driving privilege.

(5) (a) In addition to any other provision of law, upon conviction of a violation of this section the department shall revoke the person's driving privilege for 1 year from the date of conviction. Upon conviction of a separate violation of this section during the same period of required use of an ignition interlock device, the department shall revoke the person's driving privilege for 5 years from the date of conviction.

(b) Any person convicted of a violation of subsection (6) who does not have a driver license shall, in addition to any other penalty provided by law, pay a fine of not less than $250 or more than $500 per each such violation. In the event that the person is unable to pay any such fine, the fine shall become a lien against the motor vehicle used in violation of subsection (6) and payment shall be made pursuant to § 316.3025(5).

(6) (a) It is unlawful to tamper with, or to circumvent the operation of, a court-ordered ignition interlock device.

(b) It is unlawful for any person whose driving privilege is restricted pursuant to this section to request or solicit any other person to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing the person so restricted with an operable motor vehicle.

(c) It is unlawful to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is restricted pursuant to this section.

(d) It is unlawful to knowingly lease or lend a motor vehicle to a person who has had his or her driving privilege restricted as provided in this section, unless the vehicle is equipped with a functioning, certified ignition interlock device. Any person whose driving privilege is restricted under a condition of probation requiring an ignition interlock device shall notify any other person who leases or loans a motor vehicle to him or her of such driving restriction.

(7) Notwithstanding the provisions of this section, if a person is required to operate a motor vehicle in the course and scope of his or her employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of such driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity which owns the vehicle is owned or controlled by the person whose driving privilege has been restricted.

(8) In addition to the penalties provided in this section, a violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.1939. Refusal to submit to testing; penalties.

(1) Any person who has refused to submit to a chemical or physical test of his or her breath, blood, or urine, as described in § 316.1932, and whose driving privilege was previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood, and:

(a) Who the arresting law enforcement officer had probable cause to believe was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;

(b) Who was placed under lawful arrest for a violation of § 316.193 unless such test was requested pursuant to § 316.1932(1)(c);

(c) Who was informed that, if he or she refused to submit to such test, his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months;

(d) Who was informed that a refusal to submit to a lawful test of his or her breath, urine, or blood, if his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor; and

(e) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer

commits a misdemeanor of the first degree and is subject to punishment as provided in § 775.082 or § 775.083.

(2) The disposition of any administrative proceeding that relates to the suspension of a person's driving privilege does not affect a criminal action under this section.

(3) The disposition of a criminal action under this section does not affect any administrative proceeding that relates to the suspension of a person's driving privilege. The department's records showing that a person's license has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood shall be admissible and shall create a rebuttable presumption of such suspension.

316.194. Stopping, standing or parking outside of municipalities.

(1) Upon any highway outside of a municipality, no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park, or so leave the vehicle off such part of the highway; but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles, and a clear view of the stopped vehicle shall be available from a distance of 200 feet in each direction upon the highway.

(2) This section shall not apply to the driver or owner of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in such position, or to passenger-carrying buses temporarily parked while loading or discharging passengers, where highway conditions render such parking off the paved portion of the highway hazardous or impractical.

(3) (a) Whenever any police officer or traffic accident investigation officer finds a vehicle standing upon a highway in violation of any of the foregoing provisions of this section, the officer is authorized to move the vehicle, or require the driver or other persons in charge of the vehicle to move the vehicle, to a position off the paved or main-traveled part of the highway.

(b) Officers and traffic accident investigation officers may provide for the removal of any abandoned vehicle to the nearest garage or other place of safety, cost of such removal to be a lien against motor vehicle, when an abandoned vehicle is found unattended upon a bridge or causeway or in any tunnel, or on any public highway in the following instances:

1. Where such vehicle constitutes an obstruction of traffic;

2. Where such vehicle has been parked or stored on the public right-of-way for a period exceeding 48 hours, in other than designated parking areas, and is within 30 feet of the pavement edge; and

3. Where an operative vehicle has been parked or stored on the public right-of-way for a period exceeding 10 days, in other than designated parking areas, and is more than 30 feet from the pavement edge. However, the agency removing such vehicle shall be required to report same to the Department of Highway Safety and Motor Vehicles within 24 hours of such removal.

(c) Any vehicle moved under the provisions of this chapter which is a stolen vehicle shall not be subject to the provisions hereof unless the moving authority has reported to the Florida Highway Patrol the taking into possession of the vehicle within 24 hours of the moving of the vehicle.

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

316.1945. Stopping, standing, or parking prohibited in specified places.

(1) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic control device, no person shall:

(a) Stop, stand, or park a vehicle:

1. On the roadway side of any vehicle stopped or parked at the edge or curb of a street.

2. On a sidewalk.

3. Within an intersection.

4. On a crosswalk.

5. Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the Department of Transportation indicates a different length by signs or markings.

6. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic.

7. Upon any bridge or other elevated structure upon a highway or within a highway tunnel.

8. On any railroad tracks.

9. On a bicycle path.

10. At any place where official traffic control devices prohibit stopping.

11. On the roadway or shoulder of a limited access facility, except as provided by regulation of the Department of Transportation, or on the paved portion of a connecting ramp; except that a vehicle which is disabled or in a condition improper to be driven as a result of mechanical failure or crash may be parked on such shoulder for a period not to exceed 6 hours. This provision is not applicable to a person stopping a vehicle to render aid to an injured person or assistance to a disabled vehicle in obedience to the directions of a law enforcement officer or to a person stopping a vehicle in compliance with applicable traffic laws.

12. For the purpose of loading or unloading a passenger on the paved roadway or shoulder of a limited access facility or on the paved portion of any connecting ramp. This provision is not applicable to a person stopping a vehicle to render aid to an injured person or assistance to a disabled vehicle.

(b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

1. In front of a public or private driveway.

2. Within 15 feet of a fire hydrant.

3. Within 20 feet of a crosswalk at an intersection.

4. Within 30 feet upon the approach to any flashing signal, stop sign, or traffic control signal located at the side of a roadway.

5. Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of such entrance (when property signposted).

6. On an exclusive bicycle lane.

7. At any place where official traffic control devices prohibit standing.

(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of, and while actually engaged in, loading or unloading merchandise or passengers:

1. Within 50 feet of the nearest rail of a railroad crossing unless the Department of Transportation establishes a different distance due to unusual circumstances.

2. At any place where official signs prohibit parking.

(2) No person shall move a vehicle not lawfully under his or her control into any such prohibited area or away from a curb such a distance as is unlawful.

(3) A law enforcement officer or parking enforcement specialist who discovers a vehicle parked in violation of this section or a municipal or county ordinance may:

(a) Issue a ticket form as may be used by a political subdivision or municipality to the driver; or

(b) If the vehicle is unattended, attach such ticket to the vehicle in a conspicuous place, except that the uniform traffic citation prepared by the department pursuant to § 316.650 may not be issued by being attached to an unattended vehicle.

The uniform traffic citation prepared by the department pursuant to § 316.650 may not be issued for violation of a municipal or county parking ordinance.

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

316.195. Additional parking regulations.

(1) Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the right-hand wheels parallel to and within 12 inches of the right-hand curb or edge of the roadway.

(2) Except when otherwise provided by local ordinance, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within 12 inches of the right-hand curb or edge of the roadway, or its left wheels within 12 inches of the left-hand curb or edge of the roadway.

(3) Local authorities may, by ordinance, permit angle parking on any roadway, except that angle parking shall not be permitted on any state road unless the Department of Transportation has determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

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

316.1951. Parking for certain purposes prohibited; sale of motor vehicles; prohibited acts.

(1) It is unlawful for any person to park a motor vehicle, as defined in § 320.01, upon a public street or highway, a public parking lot, or other public property, or upon private property where the public has the right to travel by motor vehicle, for the principal purpose and intent of displaying the motor vehicle thereon for sale, hire, or rental unless the sale, hire, or rental of the motor vehicle is specifically authorized on such property by municipal or county regulation and the person is in compliance with all municipal or county licensing regulations.

(2) The provisions of subsection (1) do not prohibit a person from parking his or her own motor vehicle or his or her other personal property on any private real property which the person owns or leases or on private real property which the person does not own or lease, but for which he or she obtains the permission of the owner, or on the public street immediately adjacent thereto, for the principal purpose and intent of sale, hire, or rental.

(3) Subsection (1) does not prohibit a licensed motor vehicle dealer from displaying for sale or offering for sale motor vehicles at locations other than the dealer's licensed location if the dealer has been issued a supplemental license for off-premises sales, as provided in § 320.27(5), and has complied with the requirements in subsection (1). A vehicle displayed for sale by a licensed dealer at any location other than the dealer's licensed location is subject to immediate removal without warning.

(4) A local government may adopt an ordinance to allow the towing of a motor vehicle parked in violation of this section. A law enforcement officer, compliance officer, code enforcement officer from any local government agency, or supervisor of the department may issue a citation and cause to be immediately removed at the owner's expense any motor vehicle found in violation of subsection (1), except as provided in subsections (2) and (3), or in violation of subsection (5), subsection (6), subsection (7), or subsection (8), and the owner shall be assessed a penalty as provided in § 318.18(21) by the government agency or authority that orders immediate removal of the motor vehicle. A motor vehicle removed under this section shall not be released from an impound or towing and storage facility before a release form prescribed by the department has been completed verifying that the fine has been paid to the government agency or authority that ordered immediate removal of the motor vehicle. However, the owner may pay towing and storage charges to the towing and storage facility pursuant to § 713.78 before payment of the fine or before the release form has been completed.

(5) It is unlawful to offer a vehicle for sale if the vehicle identification number has been destroyed, removed, covered, altered, or defaced, as described in § 319.33(1)(d). A vehicle found in violation of this subsection is subject to immediate removal without warning.

(6) It is unlawful to knowingly attach to any motor vehicle a registration that was not assigned or lawfully transferred to the vehicle pursuant to § 320.261. A vehicle found in violation of this subsection is subject to immediate removal without warning.

(7) It is unlawful to display or offer for sale a vehicle that does not have a valid registration as provided in § 320.02. A vehicle found in violation of this subsection is subject to immediate removal without warning. This subsection does not apply to vehicles and recreational vehicles being offered for sale through motor vehicle auctions as defined in § 320.27(1)(c)4.

(8) A vehicle is subject to immediate removal without warning if it bears a telephone number that has been displayed on three or more vehicles offered for sale within a 12-month period.

(9) Any other provision of law to the contrary notwithstanding, a violation of subsection (1), subsection (5), subsection (6), subsection (7), or subsection (8) shall subject the owner of such motor vehicle to towing fees reasonably necessitated by removal and storage of the motor vehicle and a fine as required by § 318.18.

(10) This section does not prohibit the governing body of a municipality or county, with respect to streets, highways, or other property under its jurisdiction, from regulating the parking of motor vehicles for any purpose.

(11) A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318, unless otherwise mandated by general law.

316.1955. Enforcement of parking requirements for persons who have disabilities.

(1) It is unlawful for any person to stop, stand, or park a vehicle within, or to obstruct, any such specially designated and marked parking space provided in accordance with § 553.5041, unless the vehicle displays a disabled parking permit issued under § 316.1958 or § 320.0848 or a license plate issued under § 320.084, § 320.0842, § 320.0843, or § 320.0845, and the vehicle is transporting the person to whom the displayed permit is issued. The violation may not be dismissed for failure of the marking on the parking space to comply with § 553.5041 if the space is in general compliance and is clearly distinguishable as a designated accessible parking space for people who have disabilities. Only a warning may be issued for unlawfully parking in a space designated for persons with disabilities if there is no above-grade sign as provided in § 553.5041.

(a) Whenever a law enforcement officer, a parking enforcement specialist, or the owner or lessee of the space finds a vehicle in violation of this subsection, that officer, owner, or lessor shall have the vehicle in violation removed to any lawful parking space or facility or require the operator or other person in charge of the vehicle immediately to remove the unauthorized vehicle from the parking space. Whenever any vehicle is removed under this section to a storage lot, garage, or other safe parking space, the cost of the removal and parking constitutes a lien against the vehicle.

(b) The officer or specialist shall charge the operator or other person in charge of the vehicle in violation with a noncriminal traffic infraction, punishable as provided in § 316.008(4) or § 318.18(6). The owner of a leased vehicle is not responsible for a violation of this section if the vehicle is registered in the name of the lessee.

(c) All convictions for violations of this section must be reported to the Department of Highway Safety and Motor Vehicles by the clerk of the court.

(d) A law enforcement officer or a parking enforcement specialist has the right to demand to be shown the person's disabled parking permit and driver's license or state identification card when investigating the possibility of a violation of this section. If such a request is refused, the person in charge of the vehicle may be charged with resisting an officer without violence, as provided in § 843.02.

(2) It is unlawful for any person to obstruct the path of travel to an accessible parking space, curb cut, or access aisle by standing or parking a vehicle within any such designated area. The violator is subject to the same penalties as are imposed for illegally parking in a space that is designated as an accessible parking space for persons who have disabilities.

(3) Any person who is chauffeuring a person who has a disability is allowed, without need for a disabled parking permit or a special license plate, to stand temporarily in any such parking space, for the purpose of loading or unloading the person who has a disability. A penalty may not be imposed upon the driver for such temporary standing.

(4) (a) A vehicle that is transporting a person who has a disability and that has been granted a permit under § 320.0848(1)(a) may be parked for a maximum of 30 minutes in any parking space reserved for persons who have disabilities.

(b) Notwithstanding paragraph (a), a theme park or an entertainment complex as defined in § 509.013(9) which provides parking in designated areas for persons who have disabilities may allow any vehicle that is transporting a person who has a disability to remain parked in a space reserved for persons who have disabilities throughout the period the theme park is open to the public for that day.

316.1957. Parking violations; designated parking spaces for persons who have disabilities.

When evidence is presented in any court of the fact that any motor vehicle was parked in a properly designated parking space for persons who have disabilities in violation of § 316.1955, it is prima facie evidence that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the department.

316.1958. Out-of-state vehicles bearing identification of issuance to persons who have disabilities.

Motor vehicles displaying a special license plate or parking permit issued to a person who has a disability by any other state or district subject to the laws of the United States or by a foreign country that issues disabled parking permits that display the international symbol of accessibility are recognized as displaying a valid license plate or permit, that allows such a vehicle special parking privileges under § 316.1955, if the other state

or district grants reciprocal recognition for residents of this state who have disabilities. However, when an individual is required by law to have a Florida driver's license or a Florida vehicle registration, a special motor vehicle license plate or parking permit issued by another state, district, or country to persons who have disabilities is not valid and the individual whose vehicle displays such an invalid plate or permit is subject to the same penalty as an individual whose vehicle does not display a valid plate or permit. A law enforcement officer or parking enforcement specialist may not ticket a vehicle for a violation of § 316.1955 without first determining whether the vehicle is transporting a resident of another state who is the owner of the out-of-state placard.

316.1959. Handicapped parking enforcement.

The provisions of handicapped parking shall be enforced by state, county, and municipal authorities in their respective jurisdictions whether on public or private property in the same manner as is used to enforce other parking laws and ordinances by said agencies.

316.1964. Exemption of vehicles transporting certain persons who have disabilities from payment of parking fees and penalties.

(1) A state agency, county, municipality, or any agency thereof, may not exact any fee for parking on the public streets or highways or in any metered parking space from the driver of a vehicle that displays a disabled parking permit or a license plate issued under § 316.1958 or § 320.0848 or a license plate issued under § 320.084, § 320.0842, § 320.0843, or § 320.0845 if the vehicle is transporting the person who has a disability and to whom the disabled parking permit or license plate was issued.

(2) The driver of a vehicle that is parked as provided in subsection (1) may not be penalized for parking, except in clearly defined bus loading zones, fire zones, or access aisles adjacent to the parking spaces for persons who have disabilities, or in areas posted as "No Parking" zones or as emergency vehicle zones, or for parking in excess of the posted time limits.

(3) Notwithstanding subsection (1), when a state, county, or municipal parking facility or lot is being used in connection with an event at a convention center, cruise-port terminal, sports stadium, sports arena, coliseum, or auditorium, the parking facility may charge a person whose vehicle displays such a parking permit a parking fee in the same manner and amount as it charges other persons.

(4) A parking facility that restricts the number of consecutive days that a vehicle may be parked may impose that same restriction on a vehicle that displays a disabled parking permit issued to a person who has a disability.

(5) Notwithstanding subsection (1), when an on-street parking meter restricts the duration of time that a vehicle may be parked, a vehicle properly displaying a disabled parking permit is allowed a maximum of 4 hours at no charge; however, local governments may extend such time by local ordinance.

(6) A parking facility that leases a parking space for a duration that exceeds 1 week is not required to reduce the fee for a lessee who is disabled.

(7) An airport that owns, operates, or leases parking facilities, or any other parking facilities that are used for the purpose of air travel, may charge for parking vehicles that display a disabled parking permit or license tag issued under § 316.1958, § 320.084, § 320.0842, § 320.0843, § 320.0845, or § 320.0848. However, the governing body of each publicly owned or publicly operated airport must grant free parking to any vehicle with specialized equipment, such as ramps, lifts, or foot or hand controls, or for utilization by a person who has a disability or whose vehicle is displaying the Florida Toll Exemption permit.

(8) Notwithstanding subsection (1), a county, municipality, or any agency thereof may charge for parking in a facility or lot that provides timed parking spaces any vehicle that displays a disabled parking permit, except that any vehicle with specialized equipment, such as ramps, lifts, or foot or hand controls, for use by a person who has a disability, or any vehicle that is displaying the Florida Toll Exemption permit, is exempt from any parking fees.

316.1965. Parking near rural mailbox during certain hours; penalties.

Whoever parks any vehicle within 30 feet of any rural mailbox upon any state highway in this state between 8 a.m. and 6 p.m. shall be cited for a nonmoving violation, punishable as provided in chapter 318.

316.1967. Liability for payment of parking ticket violations and other parking violations.

(1) The owner of a vehicle is responsible and liable for payment of any parking ticket violation unless the owner can furnish evidence, when required by this subsection, that the vehicle was, at the time of the parking violation, in the care, custody, or control of another person. In such instances, the owner of the vehicle is required, within a reasonable time after notification of the parking violation, to furnish to the appropriate law enforcement authorities an affidavit setting forth the name, address, and driver's license number of the person who leased, rented, or otherwise had the care, custody, or control of the vehicle. The affidavit submitted under this subsection is admissible in a proceeding charging a parking ticket violation and raises the rebuttable presumption that the person identified in the affidavit is responsible for payment of the parking ticket violation. The owner of a vehicle is not responsible for a parking ticket violation if the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle. The owner of a leased vehicle is not responsible for a parking ticket violation and is not required to submit an affidavit or the other evidence specified in this section, if the vehicle is registered in the name of the person who leased the vehicle.

(2) Any person who is issued a county or municipal parking ticket by a parking enforcement specialist or officer is deemed to be charged with a noncriminal violation and shall comply with the directions on the ticket. If payment is not received or a response to the ticket is not made within the time period specified thereon, the county court or its traffic violations bureau shall notify the registered owner of the vehicle that was cited, or the registered lessee when the cited vehicle is registered in the name of the person who leased the vehicle, by mail to the address given on the motor vehicle registration, of the ticket. Mailing the notice to this address constitutes notification. Upon notification, the registered owner or registered lessee shall comply with the court's directive.

(3) Any person who fails to satisfy the court's directive waives his or her right to pay the applicable civil penalty.

(4) Any person who elects to appear before a designated official to present evidence waives his or her right to pay the civil penalty provisions of the ticket. The official, after a hearing, shall make a determination as to whether a parking violation has been committed and may impose a civil penalty not to exceed $100 or the fine amount designated by county ordinance, plus court costs. Any person who fails to pay the civil penalty within the time allowed by the court is deemed to have been convicted of a parking ticket violation, and the court shall take appropriate measures to enforce collection of the fine.

(5) Any provision of subsections (2), (3), and (4) to the contrary notwithstanding, chapter 318 does not apply to violations of county parking ordinances and municipal parking ordinances.

(6) Any county or municipality may provide by ordinance that the clerk of the court or the traffic violations bureau shall supply the department with a magnetically encoded computer tape reel or cartridge or send by other electronic means data which is machine readable by the installed computer system at the department, listing persons who have three or more outstanding parking violations, including violations of § 316.1955. Each county shall provide by ordinance that the clerk of the court or the traffic violations bureau shall supply the department with a magnetically encoded computer tape reel or cartridge or send by other electronic means data that is machine readable by the installed computer system at the department, listing persons who have any outstanding violations of § 316.1955 or any similar local ordinance that regulates parking in spaces designated for use by persons who have disabilities. The department shall mark the appropriate registration records of persons who are so reported. Section 320.03(8) applies to each person whose name appears on the list.

316.1974. Funeral procession right-of-way and liability.

(1) DEFINITIONS.—

(a) "Funeral director" and "funeral establishment" shall have the same meaning as set forth in § 497.005.

(b) "Funeral procession" means two or more vehicles accompanying the body of a deceased person, or traveling to the church, chapel, or other location at which the funeral service is to be held, in the daylight hours, including a funeral lead vehicle or a funeral escort vehicle.

(c) "Funeral lead vehicle" means any authorized law enforcement or non-law enforcement motor vehicle properly equipped pursuant to subsection (2) or a funeral escort vehicle being used to lead and facilitate the

movement of a funeral procession. A funeral hearse may serve as a funeral lead vehicle.

(d) "Funeral escort" means a person or entity that provides escort services for funeral processions, including law enforcement personnel and agencies.

(e) "Funeral escort vehicle" means any motor vehicle that is properly equipped pursuant to subsection (2) and which escorts a funeral procession.

(2) EQUIPMENT.—

(a) All non-law enforcement funeral escort vehicles and funeral lead vehicles shall be equipped with at least one lighted circulation lamp exhibiting an amber or purple light or lens visible under normal atmospheric conditions for a distance of 500 feet from the front of the vehicle. Flashing amber or purple lights may be used only when such vehicles are used in a funeral procession.

(b) Any law enforcement funeral escort vehicle may be equipped with red, blue, or amber flashing lights which meet the criteria established in paragraph (a).

(3) FUNERAL PROCESSION RIGHT-OF-WAY; FUNERAL ESCORT VEHICLES; FUNERAL LEAD VEHICLES.—

(a) Regardless of any traffic control device or right-of-way provisions prescribed by state or local ordinance, pedestrians and operators of all vehicles, except as stated in paragraph (c), shall yield the right-of-way to any vehicle which is part of a funeral procession being led by a funeral escort vehicle or a funeral lead vehicle.

(b) When the funeral lead vehicle lawfully enters an intersection, either by reason of a traffic control device or at the direction of law enforcement personnel, the remaining vehicles in the funeral procession may follow through the intersection regardless of any traffic control devices or right-of-way provisions prescribed by state or local law.

(c) Funeral processions shall have the right-of-way at intersections regardless of traffic control devices, subject to the following conditions and exceptions:

1. Operators of vehicles in a funeral procession shall yield the right-of-way to an approaching emergency vehicle giving an audible or visible signal.

2. Operators of vehicles in a funeral procession shall yield the right-of-way when directed to do so by a police officer.

3. Operators of vehicles in a funeral procession must exercise due care when participating in a funeral procession.

(4) DRIVING IN PROCESSION.—

(a) All vehicles comprising a funeral procession shall follow the preceding vehicle in the funeral procession as closely as is practical and safe.

(b) Any ordinance, law, or regulation stating that motor vehicles shall be operated to allow sufficient space enabling any other vehicle to enter and occupy such space without danger shall not be applicable to vehicles in a funeral procession.

(c) Each vehicle which is part of a funeral procession shall have its headlights, either high or low beam, and tail lights lighted and may also use the flashing hazard lights if the vehicle is so equipped.

(5) LIABILITY.—

(a) Liability for any death, personal injury, or property damage suffered on or after October 1, 1997, by any person in a funeral procession shall not be imposed upon the funeral director or funeral establishment or their employees or agents unless such death, personal injury, or property damage is proximately caused by the negligent or intentional act of an employee or agent of the funeral director or funeral establishment.

(b) A funeral director, funeral establishment, funeral escort, or other participant that leads, organizes, or participates in a funeral procession in accordance with this section shall be presumed to have acted with reasonable care.

(c) Except for a grossly negligent or intentional act by a funeral director or funeral establishment, there shall be no liability on the part of a funeral director or funeral establishment for failing, on or after October 1, 1997, to use reasonable care in the planning or selection of the route to be followed by the funeral procession.

(6) VIOLATIONS.—A violation of this section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as a nonmoving violation for infractions of subsection (2), a pedestrian violation for infractions of subsection (3), or as a moving violation for infractions of subsection (3) or subsection (4) if the infraction resulted from the operation of a vehicle.

316.1975. Unattended motor vehicle.

(1) A person driving or in charge of any motor vehicle may not permit it to stand unattended without first stopping the engine, locking the ignition, and removing the key. A vehicle may not be permitted to stand unattended upon any perceptible grade without stopping the engine and effectively setting the brake thereon and turning the front

wheels to the curb or side of the street. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(2) This section does not apply to the operator of:

(a) An authorized emergency vehicle while in the performance of official duties and the vehicle is equipped with an activated antitheft device that prohibits the vehicle from being driven;

(b) A licensed delivery truck or other delivery vehicle while making deliveries; or

(c) A solid waste or recovered materials collection vehicle while collecting such items.

316.1985. Limitations on backing.

(1) The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(2) The driver of a vehicle shall not back the same upon any shoulder or roadway of any limited access facility.

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

316.1995. Driving upon sidewalk or bicycle path.

(1) Except as provided in § 316.008 or § 316.212(8), a person may not drive any vehicle other than by human power upon a bicycle path, sidewalk, or sidewalk area, except upon a permanent or duly authorized temporary driveway.

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

(3) This section does not apply to motorized wheelchairs.

316.2004. Obstruction to driver's view or driving mechanism.

(1) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(2) (a) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides or with the driver's control over the driving mechanism of the vehicle.

(b) No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of such vehicle which materially obstructs, obscures, or impairs the driver's clear view of the highway or any intersecting highway.

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

316.2005. Opening and closing vehicle doors.

No person shall open any door on a motor vehicle unless and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.2014. Riding in house trailers.

No person or persons shall occupy a house trailer while it is being moved upon a public street or highway. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.2015. Unlawful for person to ride on exterior of vehicle.

(1) It is unlawful for any operator of a passenger vehicle to permit any person to ride on the bumper, radiator, fender, hood, top, trunk, or running board of such vehicle when operated upon any street or highway which is maintained by the state, county, or municipality. Any person who violates this subsection shall be cited for a moving violation, punishable as provided in chapter 318.

(2) (a) No person shall ride on any vehicle upon any portion thereof not designed or intended for the use of passengers. This paragraph does not apply to an employee of a fire department, an employee of a governmentally operated solid waste disposal department or a waste disposal service operating pursuant to a contract with a governmental entity, or to a volunteer firefighter when the employee or firefighter is engaged in the necessary discharge of a duty, and does not apply to a person who is being transported in response to an emergency by a public agency or pursuant to the direction or authority of a public agency. This paragraph does not apply to an employee engaged in the necessary discharge of a duty or to a person or persons riding within truck bodies in space intended for merchandise.

(b) It is unlawful for any operator of a pickup truck or flatbed truck to permit a minor

child who has not attained 18 years of age to ride upon limited access facilities of the state within the open body of a pickup truck or flatbed truck unless the minor is restrained within the open body in the back of a truck that has been modified to include secure seating and safety restraints to prevent the passenger from being thrown, falling, or jumping from the truck. This paragraph does not apply in a medical emergency if the child is accompanied within the truck by an adult. A county is exempt from this paragraph if the governing body of the county, by majority vote, following a noticed public hearing, votes to exempt the county from this paragraph.

(c) Any person who violates this subsection shall be cited for a nonmoving violation, punishable as provided in chapter 318.

(3) This section shall not apply to a performer engaged in a professional exhibition or person participating in an exhibition or parade, or any such person preparing to participate in such exhibitions or parades.

316.2025. Following fire apparatus prohibited.

No driver of any vehicle other than an authorized emergency vehicle on official business shall follow any fire apparatus traveling in response to a fire alarm closer than 500 feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm. A violation of this section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as a moving violation for following too close to a fire apparatus or as a nonmoving violation for parking near a fire apparatus.

316.2034. Crossing fire hose.

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or highway, or private road or driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

316.2035. Injurious substances prohibited; dragging vehicle or load; obstructing, digging, etc.

(1) It is unlawful to place or allow to be placed upon any street or highway any tacks, wire, scrap metal, glass, crockery, or other substance which may be injurious to the feet of persons or animals or to the tires of vehicles or in any way injurious to the road.

(2) It is unlawful to allow any vehicle or contrivance or any part of same, or any load or portion of a load carried on the same, to drag upon any street or highway.

(3) It is unlawful to obstruct, dig up, or in any way disturb any street or highway. However, this subsection shall not be construed so as to hinder or prevent the installation or replacement of any utilities in accordance with the provisions of law now existing or that may hereafter be enacted.

(4) It is unlawful for any vehicle to be equipped with any solid tires or any airless-type tire on any motor-driven vehicle when operated upon a highway.

(5) A violation of this section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as either a nonmoving violation for infractions of subsection (1) or subsection (3) or as a moving violation for infractions of subsection (2) or subsection (4).

316.2044. Removal of injurious substances.

(1) Any person who drops, or permits to be dropped or thrown, upon any street or highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(2) Any person removing a wrecked or damaged vehicle from a street or highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

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

316.2045. Obstruction of public streets, highways, and roads.

(1) It is unlawful for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles or pedestrians traveling thereon; and any person or persons who violate the provisions of this subsection, upon conviction, shall be cited for a pedestrian violation, punishable as provided in chapter 318.

(2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of this

subsection is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Organizations qualified under § 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons or organizations acting on their behalf are exempted from the provisions of this subsection for activities on streets or roads not maintained by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in § 337.406.

(3) Permits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government. An organization that is qualified under § 501(c)(3) of the Internal Revenue Code and registered under chapter 496, or a person or organization acting on behalf of that organization, is exempt from local requirements for a permit issued under this subsection for charitable solicitation activities on or along streets or roads that are not maintained by the state under the following conditions:

(a) The organization, or the person or organization acting on behalf of the organization, must provide all of the following to the local government:

1. No fewer than 14 calendar days prior to the proposed solicitation, the name and address of the person or organization that will perform the solicitation and the name and address of the organization that will receive funds from the solicitation.

2. For review and comment, a plan for the safety of all persons participating in the solicitation, as well as the motoring public, at the locations where the solicitation will take place.

3. Specific details of the location or locations of the proposed solicitation and the hours during which the solicitation activities will occur.

4. Proof of commercial general liability insurance against claims for bodily injury and property damage occurring on streets, roads, or rights-of-way or arising from the solicitor's activities or use of the streets, roads, or rights-of-way by the solicitor or the solicitor's agents, contractors, or employees. The insurance shall have a limit of not less than $1 million per occurrence for the general aggregate. The certificate of insurance shall name the local government as an additional insured and shall be filed with the local government no later than 72 hours before the date of the solicitation.

5. Proof of registration with the Department of Agriculture and Consumer Services pursuant to § 496.405 or proof that the soliciting organization is exempt from the registration requirement.

(b) Organizations or persons meeting the requirements of subparagraphs (a)1.-5. may solicit for a period not to exceed 10 cumulative days within 1 calendar year.

(c) All solicitation shall occur during daylight hours only.

(d) Solicitation activities shall not interfere with the safe and efficient movement of traffic and shall not cause danger to the participants or the public.

(e) No person engaging in solicitation activities shall persist after solicitation has been denied, act in a demanding or harassing manner, or use any sound or voice-amplifying apparatus or device.

(f) All persons participating in the solicitation shall be at least 18 years of age and shall possess picture identification.

(g) Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.

(h) The local government may stop solicitation activities if any conditions or requirements of this subsection are not met.

(4) Nothing in this section shall be construed to inhibit political campaigning on the public right-of-way or to require a permit for such activity.

(5) Notwithstanding the provisions of subsection (1), any commercial vehicle used solely for the purpose of collecting solid waste or recyclable or recovered materials may stop or stand on any public street, highway, or road for the sole purpose of collecting solid waste or recyclable or recovered materials. However, such solid waste or recyclable or recovered materials collection vehicle shall show or display amber flashing hazard lights at all times that it is engaged in stopping or standing for the purpose of collecting solid waste or recyclable or recovered materials. Local governments may establish reasonable regulations governing the standing and stopping of such commercial vehicles, provided that such regulations are applied uniformly and without regard to the ownership of the vehicles.

316.2051. Certain vehicles prohibited on hard-surfaced roads.

It is unlawful to operate upon any hard-surfaced road in this state any log cart, tractor, or well machine; any steel-tired vehicle other than the ordinary farm wagon or buggy; or any other vehicle or machine that is

likely to damage a hard-surfaced road except to cause ordinary wear and tear on the same. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

316.2055. Motor vehicles, throwing advertising materials in.

It is unlawful for any person on a public street, highway, or sidewalk in the state to throw into, or attempt to throw into, any motor vehicle, or offer, or attempt to offer, to any occupant of any motor vehicle, whether standing or moving, or to place or throw into any motor vehicle any advertising or soliciting materials or to cause or secure any person or persons to do any one of such unlawful acts.

316.2061. Stop when traffic obstructed.

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle the driver is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

316.2065. Bicycle regulations.

(1) Every person propelling a vehicle by human power has all of the rights and all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in this chapter, and except as to provisions of this chapter which by their nature can have no application.

(2) A person operating a bicycle may not ride other than upon or astride a permanent and regular seat attached thereto.

(3) (a) A bicycle may not be used to carry more persons at one time than the number for which it is designed or equipped, except that an adult rider may carry a child securely attached to his or her person in a backpack or sling.

(b) Except as provided in paragraph (a), a bicycle rider must carry any passenger who is a child under 4 years of age, or who weighs 40 pounds or less, in a seat or carrier that is designed to carry a child of that age or size and that secures and protects the child from the moving parts of the bicycle.

(c) A bicycle rider may not allow a passenger to remain in a child seat or carrier on a bicycle when the rider is not in immediate control of the bicycle.

(d) A bicycle rider or passenger who is under 16 years of age must wear a bicycle helmet that is properly fitted and is fastened securely upon the passenger's head by a strap and that meets the federal safety standard for bicycle helmets, final rule, 16 C.F.R. part 1203. A helmet purchased before October 1, 2012, which meets the standards of the American National Standards Institute (ANSI Z 90.4 Bicycle Helmet Standards), the standards of the Snell Memorial Foundation (1984 Standard for Protective Headgear for Use in Bicycling), or any other nationally recognized standards for bicycle helmets adopted by the department may continue to be worn by a bicycle rider or passenger until January 1, 2016. As used in this subsection, the term "passenger" includes a child who is riding in a trailer or semitrailer attached to a bicycle.

(e) Law enforcement officers and school crossing guards may issue a bicycle safety brochure and a verbal warning to a bicycle rider or passenger who violates this subsection. A bicycle rider or passenger who violates this subsection may be issued a citation by a law enforcement officer and assessed a fine for a pedestrian violation, as provided in § 318.18. The court shall dismiss the charge against a bicycle rider or passenger for a first violation of paragraph (d) upon proof of purchase of a bicycle helmet that complies with this subsection.

(4) No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle may attach the same or himself or herself to any vehicle upon a roadway. This subsection does not prohibit attaching a bicycle trailer or bicycle semitrailer to a bicycle if that trailer or semitrailer is commercially available and has been designed for such attachment.

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

1. When overtaking and passing another bicycle or vehicle proceeding in the same direction.

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

3. When reasonably necessary to avoid any condition or potential conflict, including,

but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane. For the purposes of this subsection, a "substandard-width lane" is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

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

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

(7) Every bicycle in use between sunset and sunrise shall be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp and reflector on the rear each exhibiting a red light visible from a distance of 600 feet to the rear. A bicycle or its rider may be equipped with lights or reflectors in addition to those required by this section. A law enforcement officer may issue a bicycle safety brochure and a verbal warning to a bicycle rider who violates this subsection or may issue a citation and assess a fine for a pedestrian violation as provided in § 318.18. The court shall dismiss the charge against a bicycle rider for a first violation of this subsection upon proof of purchase and installation of the proper lighting equipment.

(8) No parent of any minor child and no guardian of any minor ward may authorize or knowingly permit any such minor child or ward to violate any of the provisions of this section.

(9) A person propelling a vehicle by human power upon and along a sidewalk, or across a roadway upon and along a crosswalk, has all the rights and duties applicable to a pedestrian under the same circumstances.

(10) A person propelling a bicycle upon and along a sidewalk, or across a roadway upon and along a crosswalk, shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing such pedestrian.

(11) No person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar device, may go upon any roadway except while crossing a street on a crosswalk; and, when so crossing, such person shall be granted all rights and shall be subject to all of the duties applicable to pedestrians.

(12) This section shall not apply upon any street while set aside as a play street authorized herein or as designated by state, county, or municipal authority.

(13) Every bicycle shall be equipped with a brake or brakes which will enable its rider to stop the bicycle within 25 feet from a speed of 10 miles per hour on dry, level, clean pavement.

(14) A person engaged in the business of selling bicycles at retail shall not sell any bicycle unless the bicycle has an identifying number permanently stamped or cast on its frame.

(15) (a) A person may not knowingly rent or lease any bicycle to be ridden by a child who is under the age of 16 years unless:

1. The child possesses a bicycle helmet; or
2. The lessor provides a bicycle helmet for the child to wear.

(b) A violation of this subsection is a nonmoving violation, punishable as provided in § 318.18.

(16) The court may waive, reduce, or suspend payment of any fine imposed under subsection (3) or subsection (15) and may impose any other conditions on the waiver, reduction, or suspension. If the court finds that a person does not have sufficient funds to pay the fine, the court may require the performance of a specified number of hours of community service or attendance at a safety seminar.

(17) Notwithstanding § 318.21, all proceeds collected pursuant to § 318.18 for violations under paragraphs (3)(e) and (15)(b) shall be deposited into the State Transportation Trust Fund.

(18) The failure of a person to wear a bicycle helmet or the failure of a parent or guardian to prevent a child from riding a bicycle without a bicycle helmet may not be considered evidence of negligence or contributory negligence.

(19) Except as otherwise provided in this section, a violation of this section is a noncriminal traffic infraction, punishable as a pedestrian violation as provided in chapter 318. A law enforcement officer may issue traffic citations for a violation of subsection (3) or subsection (15) only if the violation occurs on a bicycle path or road, as defined in

§ 334.03. However, a law enforcement officer may not issue citations to persons on private property, except any part thereof which is open to the use of the public for purposes of vehicular traffic.

316.2074. All-terrain vehicles.

(1) It is the intent of the Legislature through the adoption of this section to provide safety protection for minors while operating an all-terrain vehicle in this state.

(2) As used in this section, the term "all-terrain vehicle" means any motorized off-highway vehicle 50 inches or less in width, having a dry weight of 1,200 pounds or less, designed to travel on three or more non-highway tires, having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator with no passenger. For the purposes of this section, "all-terrain vehicle" also includes any "two-rider ATV" as defined in § 317.0003.

(3) No person under 16 years of age shall operate, ride, or be otherwise propelled on an all-terrain vehicle unless the person wears a safety helmet meeting United States Department of Transportation standards and eye protection.

(4) If a crash results in the death of any person or in the injury of any person which results in treatment of the person by a physician, the operator of each all-terrain vehicle involved in the crash shall give notice of the crash pursuant to § 316.066.

(5) Except as provided in this section, an all-terrain vehicle may not be operated upon the public roads, streets, or highways of this state, except as otherwise permitted by the managing state or federal agency.

(6) An all-terrain vehicle having four wheels may be used by police officers on public beaches designated as public roadways for the purpose of enforcing the traffic laws of the state. All-terrain vehicles may also be used by the police to travel on public roadways within 5 miles of beach access only when getting to and from the beach.

(7) An all-terrain vehicle having four wheels may be used by law enforcement officers on public roads within public lands while in the course and scope of their duties.

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

316.208. Motorcycles and mopeds.

(1) Any person operating a motorcycle or moped shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in this chapter and except as to those provisions of this chapter which by their nature can have no application.

(2) (a) Any person operating a moped upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

1. When overtaking or passing another vehicle proceeding in the same direction.

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

3. When reasonably necessary to avoid any condition, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, or substandard-width lane, that makes it unsafe to continue along the right-hand curb or edge. For purposes of this paragraph, a "substandard-width lane" is a lane that is too narrow for a moped and another vehicle to travel safely side by side within the lane.

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

(3) A person propelling a moped solely by human power upon and along a sidewalk, or across a roadway upon and along a crosswalk, has all the rights and duties applicable to a pedestrian under the same circumstances, except that such person shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing a pedestrian.

(4) No person shall propel a moped upon and along a sidewalk while the motor is operating.

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

316.2085. Riding on motorcycles or mopeds.

(1) A person operating a motorcycle or moped shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person, nor shall any other person ride on a motorcycle or moped, unless such motorcycle or moped is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons or upon another seat firmly at-

tached to the motorcycle or moped at the rear or side of the operator.

(2) A person shall ride upon a motorcycle or moped only while sitting astride the seat, with both wheels on the ground at all times, facing forward, and with one leg on each side of the motorcycle or moped. However, it is not a violation of this subsection if the wheels of a motorcycle or moped lose contact with the ground briefly due to the condition of the road surface or other circumstances beyond the control of the operator.

(3) The license tag of a motorcycle or moped must be permanently affixed to the vehicle and remain clearly visible from the rear at all times. Any deliberate act to conceal or obscure the legibility of the license tag of a motorcycle is prohibited. The license tag of a motorcycle or moped may be affixed horizontally to the ground so that the numbers and letters read from left to right. Alternatively, a license tag for a motorcycle or moped for which the numbers and letters read from top to bottom may be affixed perpendicularly to the ground. Notwithstanding the authorization to affix the license tag of a motorcycle or moped perpendicularly to the ground, the owner or operator of a motorcycle or moped shall pay any required toll pursuant to § 316.1001 by whatever means available.

(4) No person shall operate a motorcycle or moped while carrying any package, bundle, or other article which prevents the person from keeping both hands on the handlebars.

(5) No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation or control of the motorcycle or moped or the view of the operator.

(6) A person under 16 years of age may not:

(a) Operate a motorcycle that has a motor with more than 150 cubic centimeters displacement.

(b) Rent a motorcycle or a moped.

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

316.209. Operating motorcycles on roadways laned for traffic.

(1) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two abreast in a single lane.

(2) The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(3) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(4) Motorcycles shall not be operated more than two abreast in a single lane.

(5) Subsections (2) and (3) do not apply to police officers or firefighters in the performance of their official duties.

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

316.2095. Footrests, handholds, and handlebars.

(1) Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for such passenger.

(2) No person shall operate any motorcycle with handlebars or with handgrips that are higher than the top of the shoulders of the person operating the motorcycle while properly seated upon the motorcycle.

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

316.211. Equipment for motorcycle and moped riders.

(1) A person may not operate or ride upon a motorcycle unless the person is properly wearing protective headgear securely fastened upon his or her head which complies with Federal Motorcycle Vehicle Safety Standard 218 promulgated by the United States Department of Transportation. The Department of Highway Safety and Motor Vehicles shall adopt this standard by agency rule.

(2) A person may not operate a motorcycle unless the person is wearing an eye-protective device over his or her eyes of a type approved by the department.

(3) (a) This section does not apply to persons riding within an enclosed cab or to any person 16 years of age or older who is operating or riding upon a motorcycle powered by a motor with a displacement of 50 cubic centimeters or less or is rated not in excess of 2 brake horsepower and which is not capable of propelling such motorcycle at a speed greater than 30 miles per hour on level ground.

(b) Notwithstanding subsection (1), a person over 21 years of age may operate or ride upon a motorcycle without wearing protective headgear securely fastened upon his or her head if such person is covered by an insurance policy providing for at least $10,000

in medical benefits for injuries incurred as a result of a crash while operating or riding on a motorcycle.

(4) A person under 16 years of age may not operate or ride upon a moped unless the person is properly wearing protective headgear securely fastened upon his or her head which complies with Federal Motorcycle Vehicle Safety Standard 218 promulgated by the United States Department of Transportation.

(5) The department shall make available a list of protective headgear approved in this section, and the list shall be provided on request.

(6) Each motorcycle registered to a person under 21 years of age must display a license plate that is unique in design and color.

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

316.212. Operation of golf carts on certain roadways.

The operation of a golf cart upon the public roads or streets of this state is prohibited except as provided herein:

(1) A golf cart may be operated only upon a county road that has been designated by a county, or a municipal street that has been designated by a municipality, for use by golf carts. Prior to making such a designation, the responsible local governmental entity must first determine that golf carts may safely travel on or cross the public road or street, considering factors including the speed, volume, and character of motor vehicle traffic using the road or street. Upon a determination that golf carts may be safely operated on a designated road or street, the responsible governmental entity shall post appropriate signs to indicate that such operation is allowed.

(2) A golf cart may be operated on a part of the State Highway System only under the following conditions:

(a) To cross a portion of the State Highway System which intersects a county road or municipal street that has been designated for use by golf carts if the Department of Transportation has reviewed and approved the location and design of the crossing and any traffic control devices needed for safety purposes.

(b) To cross, at midblock, a part of the State Highway System where a golf course is constructed on both sides of the highway if the Department of Transportation has reviewed and approved the location and design of the crossing and any traffic control devices needed for safety purposes.

(c) A golf cart may be operated on a state road that has been designated for transfer to a local government unit pursuant to § 335.0415 if the Department of Transportation determines that the operation of a golf cart within the right-of-way of the road will not impede the safe and efficient flow of motor vehicular traffic. The department may authorize the operation of golf carts on such a road if:

1. The road is the only available public road along which golf carts may travel or cross or the road provides the safest travel route among alternative routes available; and

2. The speed, volume, and character of motor vehicular traffic using the road is considered in making such a determination.

Upon its determination that golf carts may be operated on a given road, the department shall post appropriate signs on the road to indicate that such operation is allowed.

(3) Notwithstanding any other provision of this section, a golf cart may be operated for the purpose of crossing a street or highway where a single mobile home park is located on both sides of the street or highway and is divided by that street or highway, provided that the governmental entity having original jurisdiction over such street or highway shall review and approve the location of the crossing and require implementation of any traffic controls needed for safety purposes. This subsection shall apply only to residents or guests of the mobile home park. If notice is posted at the entrance and exit of any mobile home park where residents of the park operate golf carts or electric vehicles within the confines of the park, it is not necessary for the park to have a gate or other device at the entrance and exit in order for such golf carts or electric vehicles to be lawfully operated in the park.

(4) Notwithstanding any other provision of this section, if authorized by the Division of Recreation and Parks of the Department of Environmental Protection, a golf cart may be operated on a road that is part of the State Park Road System if the posted speed limit is 35 miles per hour or less.

(5) A golf cart may be operated only during the hours between sunrise and sunset, unless the responsible governmental entity has determined that a golf cart may be operated during the hours between sunset and sunrise and the golf cart is equipped with

headlights, brake lights, turn signals, and a windshield.

(6) A golf cart must be equipped with efficient brakes, reliable steering apparatus, safe tires, a rearview mirror, and red reflectorized warning devices in both the front and rear.

(7) A golf cart may not be operated on public roads or streets by any person under the age of 14.

(8) A local governmental entity may enact an ordinance relating to:

(a) Golf cart operation and equipment which is more restrictive than those enumerated in this section. Upon enactment of such ordinance, the local governmental entity shall post appropriate signs or otherwise inform the residents that such an ordinance exists and that it will be enforced within the local government's jurisdictional territory. An ordinance referred to in this section must apply only to an unlicensed driver.

(b) Golf cart operation on sidewalks adjacent to specific segments of municipal streets, county roads, or state highways within the jurisdictional territory of the local governmental entity if:

1. The local governmental entity determines, after considering the condition and current use of the sidewalks, the character of the surrounding community, and the locations of authorized golf cart crossings, that golf carts, bicycles, and pedestrians may safely share the sidewalk;

2. The local governmental entity consults with the Department of Transportation before adopting the ordinance;

3. The ordinance restricts golf carts to a maximum speed of 15 miles per hour and permits such use on sidewalks adjacent to state highways only if the sidewalks are at least 8 feet wide;

4. The ordinance requires the golf carts to meet the equipment requirements in subsection (6). However, the ordinance may require additional equipment, including horns or other warning devices required by § 316.271; and

5. The local governmental entity posts appropriate signs or otherwise informs residents that the ordinance exists and applies to such sidewalks.

(9) A violation of this section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as a moving violation for infractions of subsections (1)-(5) or a local ordinance corresponding thereto and enacted pursuant to subsection (8), or punishable pursuant to chapter 318 as a nonmoving violation for infractions of subsection (6), subsection (7), or a local ordinance corresponding thereto and enacted pursuant to subsection (8).

316.2122. Operation of a low-speed vehicle or mini truck on certain roadways.

The operation of a low-speed vehicle as defined in § 320.01 or a mini truck as defined in § 320.01 on any road is authorized with the following restrictions:

(1) A low-speed vehicle or mini truck may be operated only on streets where the posted speed limit is 35 miles per hour or less. This does not prohibit a low-speed vehicle or mini truck from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(2) A low-speed vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.

(3) A low-speed vehicle or mini truck must be registered and insured in accordance with § 320.02 and titled pursuant to chapter 319.

(4) Any person operating a low-speed vehicle or mini truck must have in his or her possession a valid driver license.

(5) A county or municipality may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if the governing body of the county or municipality determines that such prohibition is necessary in the interest of safety.

(6) The Department of Transportation may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if it determines that such prohibition is necessary in the interest of safety.

316.2123. Operation of an ATV on certain roadways.

(1) The operation of an ATV, as defined in § 317.0003, upon the public roads or streets of this state is prohibited, except that an ATV may be operated during the daytime on an unpaved roadway where the posted speed limit is less than 35 miles per hour.

(2) A county is exempt from this section if the governing body of the county, by majority vote, following a noticed public hearing, votes to exempt the county from this section. Alternatively, a county may, by majority vote after such a hearing, designate certain unpaved roadways where an ATV may be operated during the daytime as long as each such designated roadway has a posted speed limit

of less than 35 miles per hour and is appropriately marked to indicate permissible ATV use.

(3) Any ATV operation that is permitted under subsection (1) or subsection (2) may be undertaken only by a licensed driver or a minor who is under the direct supervision of a licensed driver. The operator must provide proof of ownership under chapter 317 upon the request of a law enforcement officer.

316.2125. Operation of golf carts within a retirement community.

(1) Notwithstanding the provisions of § 316.212, the reasonable operation of a golf cart, equipped and operated as provided in § 316.212 (5), (6), and (7), within any self-contained retirement community is permitted unless prohibited under subsection (2).

(2) (a) A county or municipality may prohibit the operation of golf carts on any street or highway under its jurisdiction if the governing body of the county or municipality determines that such prohibition is necessary in the interest of safety.

(b) The Department of Transportation may prohibit the operation of golf carts on any street or highway under its jurisdiction if it determines that such prohibition is necessary in the interest of safety.

(3) A local governmental entity may enact an ordinance regarding golf cart operation and equipment which is more restrictive than those enumerated in this section. Upon enactment of any such ordinance, the local governmental entity shall post appropriate signs or otherwise inform the residents that such an ordinance exists and that it shall be enforced within the local government's jurisdictional territory. An ordinance referred to in this section must apply only to an unlicensed driver.

316.2127. Operation of utility vehicles on certain roadways by homeowners' associations.

The operation of a utility vehicle, as defined in § 320.01, upon the public roads or streets of this state by a homeowners' association, as defined in § 720.301, or its agents is prohibited except as provided herein:

(1) A utility vehicle may be operated by a homeowners' association or its agents only upon a county road that has been designated by a county, or a city street that has been designated by a city, for use by a utility vehicle for general maintenance, security, and landscaping purposes. Prior to making such a designation, the responsible local governmental entity must first determine that utility vehicles may safely travel on or cross the public road or street, considering factors including the speed, volume, and character of motor vehicle traffic on the road or street. Upon a determination that utility vehicles may be safely operated on a designated road or street, the responsible governmental entity shall post appropriate signs to indicate that such operation is allowed.

(2) A utility vehicle may be operated by a homeowners' association or its agents on a portion of the State Highway System only under the following conditions:

(a) To cross a portion of the State Highway System which intersects a county road or a city street that has been designated for use by utility vehicles if the Department of Transportation has reviewed and approved the location and design of the crossing and any traffic control devices needed for safety purposes.

(b) To cross, at midblock, a portion of the State Highway System where the highway bisects property controlled or maintained by a homeowners' association if the Department of Transportation has reviewed and approved the location and design of the crossing and any traffic control devices needed for safety purposes.

(c) To travel on a state road that has been designated for transfer to a local government unit pursuant to § 335.0415 if the Department of Transportation determines that the operation of a utility vehicle within the right-of-way of the road will not impede the safe and efficient flow of motor vehicle traffic. The department may authorize the operation of utility vehicles on such a road if:

1. The road is the only available public road on which utility vehicles may travel or cross or the road provides the safest travel route among alternative routes available; and

2. The speed, volume, and character of motor vehicle traffic on the road is considered in making such a determination.

Upon its determination that utility vehicles may be operated on a given road, the department shall post appropriate signs on the road to indicate that such operation is allowed.

(3) A utility vehicle may be operated by a homeowners' association or its agents only during the hours between sunrise and sunset, unless the responsible governmental entity has determined that a utility vehicle may be operated during the hours between sunset and sunrise and the utility vehicle is

equipped with headlights, brake lights, turn signals, and a windshield.

(4) A utility vehicle must be equipped with efficient brakes, a reliable steering apparatus, safe tires, a rearview mirror, and red reflectorized warning devices in both the front and the rear.

(5) A utility vehicle may not be operated on public roads or streets by any person under the age of 14.

A violation of this section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as either a moving violation for infractions of subsection (1), subsection (2), subsection (3), or subsection (4) or as a nonmoving violation for infractions of subsection (5).

316.215. Scope and effect of regulations.

(1) It is a violation of this chapter for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle, or combination of vehicles, which is in such unsafe condition as to endanger any person, which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden, or fail to perform any act required, under this chapter.

(2) Nothing contained in this chapter shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.

(3) The provisions of this chapter with respect to equipment required on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(4) The provisions of this chapter with respect to equipment required on vehicles shall not apply to motorcycles or motor-driven cycles, except as herein made applicable.

(5) The provisions of this chapter and 49 C.F.R. part 393, with respect to number, visibility, distribution of light, and mounting height requirements for headlamps, auxiliary lamps, and turn signals shall not apply to a front-end loading collection vehicle, when:

(a) The front-end loading mechanism and container or containers are in the lowered position;

(b) The vehicle is engaged in collecting solid waste or recyclable or recovered materials; and

(c) The vehicle is being operated at speeds less than 20 miles per hour with the vehicular hazard-warning lights activated.

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

316.217. When lighted lamps are required.

(1) Every vehicle operated upon a highway within this state shall display lighted lamps and illuminating devices as herein respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles, under the following conditions;

(a) At any time from sunset to sunrise including the twilight hours. Twilight hours shall mean the time between sunset and full night or between full night and sunrise.

(b) During any rain, smoke, or fog.

(c) Stop lights, turn signals, and other signaling devices shall be lighted as prescribed for use of such devices.

(2) Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible, said provisions shall apply during the times stated in subsection (1) in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions, unless a different time or condition is expressly stated.

(3) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices, it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when the vehicle is without a load.

(4) Law enforcement vehicles may be operated without the display of lighted lamps required by this chapter under the following conditions:

(a) Operation without the display of lighted lamps is necessary to the performance of a law enforcement officer's duties.

(b) The law enforcement agency has a written policy authorizing and providing guidelines for vehicle operation without the display of lighted lamps.

(c) The law enforcement vehicle is operated in compliance with agency policy.

(d) The operation without the display of lighted lamps may be safely accomplished.

The provisions of this subsection shall not relieve the operator of such a vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the vehicle operator from the consequences

of his or her reckless disregard for the safety of others.

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

316.220. Headlamps on motor vehicles.

(1) Every motor vehicle shall be equipped with at least two headlamps with at least one on each side of the front of the motor vehicle, which headlamps shall comply with the requirements and limitations set forth in this chapter, and shall show a white light. An object, material, or covering that alters the headlamp's light color may not be placed, displayed, installed, affixed, or applied over a headlamp.

(2) Every headlamp upon every motor vehicle shall be located at a height of not more than 54 inches nor less than 24 inches to be measured as set forth in § 316.217.

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

316.221. Taillamps.

(1) Every motor vehicle, trailer, semitrailer, and pole trailer, and any other vehicle which is being drawn at the end of a combination of vehicles, shall be equipped with at least two taillamps mounted on the rear, which, when lighted as required in § 316.217, shall emit a red light plainly visible from a distance of 1,000 feet to the rear, except that passenger cars and pickup trucks manufactured or assembled prior to January 1, 1972, which were originally equipped with only one taillamp shall have at least one taillamp. On a combination of vehicles, only the taillamps on the rearmost vehicle need actually be seen from the distance specified. On vehicles equipped with more than one taillamp, the lamps shall be mounted on the same level and as widely spaced laterally as practicable. An object, material, or covering that alters the taillamp's visibility from 1,000 feet may not be placed, displayed, installed, affixed, or applied over a taillamp.

(2) Either a taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted. Dump trucks and vehicles having dump bodies are exempt from the requirements of this subsection.

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

316.222. Stop lamps and turn signals.

(1) Every motor vehicle, trailer, semitrailer, and pole trailer shall be equipped with two or more stop lamps meeting the requirements of § 316.234(1). Motor vehicles, trailers, semitrailers and pole trailers manufactured or assembled prior to January 1, 1972, shall be equipped with at least one stop lamp. On a combination of vehicles, only the stop lamps on the rearmost vehicle need actually be seen from the distance specified in § 316.234(1).

(2) Every motor vehicle, trailer, semitrailer, and pole trailer shall be equipped with electric turn signal lamps meeting the requirements of § 316.234(2).

(3) Passenger cars and trucks less than 80 inches in width, manufactured or assembled prior to January 1, 1972, need not be equipped with electric turn signal lamps.

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

316.2225. Additional equipment required on certain vehicles.

In addition to other equipment required in this chapter, the following vehicles shall be equipped as herein stated under the conditions stated in § 316.217.

(1) On every bus or truck, whatever its size, there shall be the following: On the rear, two reflectors, one at each side, and one stop light.

(2) On every bus or truck 80 inches or more in overall width, in addition to the requirements in subsection (1):

(a) On the front, two clearance lamps, one at each side.

(b) On the rear, two clearance lamps, one at each side.

(c) On each side, two side marker lamps, one at or near the front and one at or near the rear.

(d) On each side, two reflectors, one at or near the front and one at or near the rear.

(3) On every truck tractor:

(a) On the front, two clearance lamps, one at each side.

(b) On the rear, one stop light.

(4) On every trailer or semitrailer having a gross weight in excess of 3,000 pounds:

(a) On the front, two clearance lamps, one at each side.

(b) On each side, two side marker lamps, one at or near the front and one at or near the rear.

(c) On each side, two reflectors, one at or near the front and one at or near the rear.

(d) On the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stop light.

(5) On every pole trailer in excess of 3,000 pounds gross weight:

(a) On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side and rear.

(b) On the rear of the pole trailer or load, two reflectors, one at each side.

(6) On every trailer, semitrailer, and pole trailer weighing 3,000 pounds gross, or less: On the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded, or is of such dimensions as to obscure the stop light on the towing vehicle, then such vehicle shall also be equipped with one stop light.

(7) On every slow-moving vehicle or equipment, animal-drawn vehicle, or other machinery designed for use and speeds less than 25 miles per hour, including all road construction and maintenance machinery except when engaged in actual construction or maintenance work either guarded by a flagger or a clearly visible warning sign, which normally travels or is normally used at a speed of less than 25 miles per hour and which is operated on a public highway:

(a) A triangular slow-moving vehicle emblem SMV as described in, and displayed as provided in paragraph (b). The requirement of the emblem shall be in addition to any other equipment required by law. The emblem shall not be displayed on objects which are customarily stationary in use except while being transported on the roadway of any public highway of this state.

(b) The Department of Highway Safety and Motor Vehicles shall adopt such rules and regulations as are required to carry out the purpose of this section. The requirements of such rules and regulations shall incorporate the current specifications for SMV emblems of the American Society of Agricultural Engineers.

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

316.224. Color of clearance lamps, identification lamps, side marker lamps, backup lamps, reflectors, and deceleration lights.

(1) Front clearance lamps, identification lamps, and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(2) Rear clearance lamps, identification lamps, and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(3) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber, or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a backup lamp shall be white or amber. Deceleration lights as authorized by § 316.235(5) shall display an amber color.

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

316.225. Mounting of reflectors, clearance lamps and side marker lamps.

(1) Reflectors, when required by § 316.2225, shall be mounted at a height not less than 24 inches and not more than 60 inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than 24 inches, the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

(a) The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

(b) Any required red reflector on the rear of a vehicle may be incorporated with the taillamp, but such reflector shall meet all the other reflector requirements of this chapter.

(2) Clearance lamps shall, so far as is practicable, be mounted on the permanent structure of the vehicle in such a manner as to indicate the extreme height and width of the vehicle. When rear identification lamps are required and are mounted as high as is practicable, rear clearance lamps may be mounted at optional height, and when the mounting of front clearance lamps results in such lamps failing to indicate the extreme width of the trailer, such lamps may be mounted at optional height but must indicate, as nearly as practicable, the extreme width of the trail-

er. Clearance lamps on truck tractors shall be located so as to indicate the extreme width of the truck tractor cab. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both.

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

316.226. Visibility requirements for reflectors, clearance lamps, identification lamps and marker lamps.

(1) Every reflector upon any vehicle referred to in § 316.2225 shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within 600 feet to 100 feet from the vehicle when directly in front of lawful lower beams of headlamps, except that the visibility for reflectors on vehicles manufactured or assembled prior to January 1, 1972, shall be measured in front of lawful upper beams of headlamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides and those mounted on the rear shall reflect a red color to the rear.

(2) Front and rear clearance lamps and identification lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at all distances between 550 feet from the front and rear, respectively, of the vehicle.

(3) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at all distances between 550 feet from the side of the vehicle on which mounted.

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

316.227. Obstructed lights not required.

Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except taillamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

316.228. Lamps or flags on projecting load.

(1) Except as provided in subsection (2), whenever the load upon any vehicle extends to the rear 4 feet or more beyond the bed or body of such vehicle, there shall be displayed at the extreme rear end of the load, at the times specified in § 316.217, two red lamps visible from a distance of at least 500 feet to the rear, two red reflectors visible at night from all distances within 600 feet to 100 feet to the rear when directly in front of lawful lower beams of headlamps and located so as to indicate maximum width, and on each side one red lamp visible from a distance of at least 500 feet to the side and located so as to indicate maximum overhang. There shall be displayed at all other times on any vehicle having a load which extends beyond its sides or more than 4 feet beyond its rear, red flags, not less than 12 inches square, marking the extremities of such load, at each point where a lamp would otherwise be required by this section. A violation of this section is a noncriminal traffic infraction punishable as a nonmoving violation as provided in chapter 318.

(2) Any commercial motor vehicle or trailer transporting a load of unprocessed logs or pulpwood, which load extends more than 4 feet beyond the rear of the body or bed of such vehicle, must have securely fixed as close as practical to the end of any such projection one amber strobe-type lamp equipped with a multidirectional type lens so mounted as to be visible from the rear and both sides of the projecting load. If the mounting of one strobe lamp cannot be accomplished so that it is visible from the rear and both sides of the projecting load, multiple strobe lights must be used to meet the visibility requirements of this subsection. The strobe lamp must flash at a rate of at least 60 flashes per minute and must be plainly visible from a distance of at least 500 feet to the rear and sides of the projecting load at any time of the day or night. The lamp must be operating at any time of the day or night when the vehicle is operated on any highway or parked on the shoulder or immediately adjacent to the traveled portion of any public roadway. The projecting load must also be marked with a red flag as described in subsection (1).

316.229. Lamps on parked vehicles.

(1) Every vehicle shall be equipped with one or more lamps which, when lighted, shall display a white or amber light visible from a distance of 1,000 feet to the front of the vehicle and a red light visible from a distance

of 1,000 feet to the rear of the vehicle. The location of the lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic.

(2) Whenever a vehicle is lawfully parked upon a street or highway during the hours between sunset and sunrise and in the event there is sufficient light to reveal persons and vehicles within a distance of 1,000 feet upon such street or highway, no lights need be displayed upon such parked vehicle.

(3) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto outside of a municipality, whether attended or unattended, during the hours between sunset and sunrise and there is insufficient light to reveal any person or object within a distance of 1,000 feet upon such highway, the vehicle so parked or stopped shall be equipped with and shall display lamps meeting the requirements of subsection (1).

(4) Any lighted headlamps upon a parked vehicle shall be depressed or dimmed.

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

316.2295. Lamps, reflectors and emblems on farm tractors, farm equipment and implements of husbandry.

(1) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1972, shall be equipped with vehicular hazard-warning lights visible from a distance of not less than 1,000 feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.

(2) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1972, shall at all times, and every other such motor vehicle shall at all times mentioned in § 316.217, be equipped with lamps and reflectors as follows:

(a) At least two headlamps meeting the requirements of §§ 316.237 and 316.239.

(b) At least one red lamp visible when lighted from a distance of not less than 1,000 feet to the rear mounted as far to the left of the center of the vehicle as practicable.

(c) At least two red reflectors visible from all distances within 600 feet to 100 feet to the rear when directly in front of lawful lower beams of headlamps.

(3) Every combination of farm tractor and towed farm equipment or towed implement of husbandry shall at all times mentioned in § 316.217 be equipped with lamps and reflectors as follows:

(a) The farm tractor shall be equipped as required in subsections (1) and (2).

(b) If the towed unit or its load extends more than 4 feet to the rear of the tractor or obscures any light thereon, the unit shall be equipped on the rear with at least two red reflectors visible from all distances within 600 feet to 100 feet to the rear when directly in front of lawful lower beams of headlamps.

(c) If the towed unit of such combination extends more than 4 feet to the left of the centerline of the tractor, the unit shall be equipped on the front with an amber reflector visible from all distances within 600 feet to 100 feet to the front when directly in front of lawful lower beams of headlamps. This reflector shall be so positioned to indicate, as nearly as practicable, the extreme left projection of the towed unit.

(4) The two red reflectors required in the foregoing subsections shall be so positioned as to show from the rear, as nearly as practicable, the extreme width of the vehicle or combination carrying them. If all other requirements are met, reflective tape or paint may be used in lieu of the reflectors required by subsection (3).

(5) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry designed for operation at speeds not in excess of 25 miles per hour shall at all times be equipped with a slow moving vehicle emblem mounted on the rear except as provided in subsection (6).

(6) Every combination of farm tractor and towed farm equipment or towed implement of husbandry normally operating at speeds not in excess of 25 miles per hour shall at all times be equipped with a slow moving vehicle emblem as follows:

(a) When the towed unit or any load thereon obscures the slow moving vehicle emblem on the farm tractor, the towed unit shall be equipped with a slow moving vehicle emblem. In such cases, the towing vehicle need not display the emblem.

(b) When the slow moving vehicle emblem on the farm tractor unit is not obscured by the towed unit or its load, then either or both may be equipped with the required emblem, but it shall be sufficient if either has it.

(c) The emblem required by subsections (5) and (6) shall comply with current standards and specifications of the American So-

ciety of Agricultural Engineers approved by the department.

(7) Except during the periods of time stated in § 316.217(1), an agricultural product trailer which is less than 10 feet in length and narrower than the hauling vehicle is not required to have taillamps, stop lamps, and turn signals and may use the hauling vehicle's lighting apparatus to meet the requirements of §§ 316.221 and 316.222. However, the load of the agricultural product trailer must be contained within the trailer and must not in any way obstruct the hauling vehicle's lighting apparatus.

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

316.231. Lamps on other vehicles and equipment.

Every vehicle, including animal-drawn vehicles and vehicles referred to in § 316.215(3), not specifically required by the provisions of this section to be equipped with lamps or other lighting devices shall at all times specified in § 316.217 be equipped with at least one lamp displaying a white light visible from a distance of not less than 1,000 feet to the front of said vehicle, and shall also be equipped with two lamps displaying red light visible from a distance of not less than 1,000 feet to the rear of the vehicle, or, as an alternative, one lamp displaying a red light visible from a distance of not less than 1,000 feet to the rear and two red reflectors visible from all distances of 600 to 100 feet to the rear when illuminated by the lawful lower beams of headlamps. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.233. Spot lamps and auxiliary lamps.

(1) SPOT LAMPS.—Any motor vehicle may be equipped with not to exceed two spot lamps and every lighted spot lamp shall be so aimed and used that no part of the high intensity portion of the beam will strike the windshield, or any windows, mirror, or occupant of another vehicle in use.

(2) FOG LAMPS.—Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height not less than 12 inches nor more than 30 inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high intensity portion of the light to the left of the center of the vehicle shall at a distance of 25 feet ahead project higher than a level of 4 inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower headlamp beams as specified in § 316.237(1)(b).

(3) AUXILIARY PASSING LAMPS.—Any motor vehicle may be equipped with not to exceed two auxiliary passing lamps mounted on the front at a height not less than 24 inches nor more than 42 inches above the level surface upon which the vehicle stands. The provisions of § 316.237 shall apply to any combination of headlamps and auxiliary passing lamps.

(4) AUXILIARY DRIVING LAMPS.—Any motor vehicle may be equipped with not to exceed two auxiliary driving lamps mounted on the front at a height not less than 16 inches nor more than 42 inches above the level surface upon which the vehicle stands. The provisions of § 316.237 shall apply to any combination of headlamps and auxiliary driving lamps.

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

316.234. Signal lamps and signal devices.

(1) Any vehicle may be equipped and, when required under this chapter, shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, visible from a distance of not less than 300 feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may but need not be incorporated with one or more other rear lamps. An object, material, or covering that alters the stop lamp's visibility from 300 feet to the rear in normal sunlight may not be placed, displayed, installed, affixed, or applied over a stop lamp.

(2) Any vehicle may be equipped and, when required under § 316.222(2), shall be equipped with electric turn signals which shall indicate an intention to turn by flashing lights showing to the front and rear of a vehicle or on a combination of vehicles on the side of the vehicle or combination toward which the turn is to be made. The lamps showing to the front shall be mounted on the same level and as widely spaced laterally as practicable and, when signaling, shall emit white or amber light. The lamps showing to the rear shall be mounted on the same level and as widely spaced laterally as practicable, and, when signaling, shall emit a red or amber light. Turn signal lamps on vehicles 80

inches or more in overall width shall be visible from a distance of not less than 500 feet to the front and rear in normal sunlight, and an object, material, or covering that alters the lamp's visibility from a distance of 500 feet to the front or rear in normal sunlight may not be placed, displayed, installed, affixed, or applied over a turn signal lamp. Turn signal lamps on vehicles less than 80 inches wide shall be visible at a distance of not less than 300 feet to the front and rear in normal sunlight, and an object, material, or covering that alters the lamp's visibility from a distance of 300 feet to the front or rear in normal sunlight may not be placed, displayed, installed, affixed, or applied over a turn signal lamp. Turn signal lamps may, but need not be, incorporated in other lamps on the vehicle.

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

316.235. Additional lighting equipment.

(1) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

(2) Any motor vehicle may be equipped with not more than one running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(3) Any motor vehicle may be equipped with one or more backup lamps either separately or in combination with other lamps, but any such backup lamp or lamps shall not be lighted when the motor vehicle is in forward motion.

(4) Any vehicle 80 inches or more in overall width, if not otherwise required by § 316.2225, may be equipped with not more than three identification lamps showing to the front which shall emit an amber light without glare and not more than three identification lamps showing to the rear which shall emit a red light without glare. Such lamps shall be mounted as specified in this chapter.

(5) A bus, as defined in § 316.003(3), may be equipped with a deceleration lighting system which cautions following vehicles that the bus is slowing, preparing to stop, or is stopped. Such lighting system shall consist of amber lights mounted in horizontal alignment on the rear of the vehicle at or near the vertical centerline of the vehicle, not higher than the lower edge of the rear window or, if the vehicle has no rear window, not higher than 72 inches from the ground. Such lights shall be visible from a distance of not less than 300 feet to the rear in normal sunlight. Lights are permitted to light and flash during deceleration, braking, or standing and idling of the bus. Vehicular hazard warning flashers may be used in conjunction with or in lieu of a rear-mounted deceleration lighting system.

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

316.237. Multiple-beam road-lighting equipment.

(1) Except as hereinafter provided, the headlamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 450 feet ahead for all conditions of loading.

(b) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 150 feet ahead; and on a straight level road under any condition of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

An object, material, or covering that alters the headlamp's visibility from at least 450 feet for an uppermost distribution of light or at least 150 feet for a lowermost distribution of light may not be placed, displayed, installed, affixed, or applied over a headlamp.

(2) Every new motor vehicle registered in this state shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the headlamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

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

316.238. Use of multiple-beam road-lighting equipment.

(1) Whenever a motor vehicle is being operated on a roadway or shoulder adja-

cent thereto during the times specified in § 316.217, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(a) Whenever the driver of a vehicle approaches an oncoming vehicle within 500 feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in §§ 316.237(1)(b) and 316.430(2)(b) shall be deemed to avoid glare at all times, regardless of road contour and loading.

(b) Whenever the driver of a vehicle approaches another vehicle from the rear within 300 feet, such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in §§ 316.237(1)(a) and 316.430(2)(a).

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

316.2385. Requirements for use of lower beam.

The lower or passing beam shall be used at all times during the twilight hours in the morning and the twilight hours in the evening, and during fog, smoke and rain. Twilight shall mean the time between sunset and full night or between full night and sunrise. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

316.239. Single-beam road-lighting equipment.

(1) Headlamp systems which provide only a single distribution of light shall be permitted on all farm tractors regardless of date of manufacture, and on other motor vehicles manufactured and sold prior to January 1, 1972, in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

(a) The headlamps shall be so aimed that when the vehicle is not loaded none of the high intensity portion of the light shall, at a distance of 25 feet ahead, project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than 42 inches above the level on which the vehicle stands at a distance of 75 feet ahead.

(b) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least 200 feet.

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

316.2395. Motor vehicles; minimum headlamp requirement.

Any motor vehicle may be operated at nighttime under the conditions specified in §§ 316.237 and 316.239, when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects 100 feet ahead in lieu of lamps required in §§ 316.237 and 316.239. However, at no time when lighted lamps are required shall such motor vehicle be operated in excess of 20 miles per hour. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.2396. Number of driving lamps required or permitted.

(1) At all times specified in § 316.217, at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(2) Whenever a motor vehicle equipped with headlamps, as herein required, is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than 300 candlepower, not more than a total of 4 of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

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

316.2397. Certain lights prohibited; exceptions.

(1) No person shall drive or move or cause to be moved any vehicle or equipment upon any highway within this state with any lamp or device thereon showing or displaying a red or blue light visible from directly in front thereof except for certain vehicles hereinafter provided.

(2) It is expressly prohibited for any vehicle or equipment, except police vehicles, to show or display blue lights. However, vehicles owned, operated, or leased by the Department of Corrections or any county correctional agency may show or display blue lights when responding to emergencies.

(3) Vehicles of the fire department and fire patrol, including vehicles of volunteer firefighters as permitted under § 316.2398, vehicles of medical staff physicians or technicians of medical facilities licensed by the state as authorized under § 316.2398, ambulances as authorized under this chapter, and buses and taxicabs as authorized under § 316.2399 may show or display red lights. Vehicles of the fire department, fire patrol, police vehicles, and such ambulances and emergency vehicles of municipal and county departments, public service corporations operated by private corporations, the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the Department of Transportation, the Department of Agriculture and Consumer Services, and the Department of Corrections as are designated or authorized by their respective department or the chief of police of an incorporated city or any sheriff of any county may operate emergency lights and sirens in an emergency. Wreckers, mosquito control fog and spray vehicles, and emergency vehicles of governmental departments or public service corporations may show or display amber lights when in actual operation or when a hazard exists provided they are not used going to and from the scene of operation or hazard without specific authorization of a law enforcement officer or law enforcement agency. Wreckers must use amber rotating or flashing lights while performing recoveries and loading on the roadside day or night, and may use such lights while towing a vehicle on wheel lifts, slings, or under reach if the operator of the wrecker deems such lights necessary. A flatbed, car carrier, or rollback may not use amber rotating or flashing lights when hauling a vehicle on the bed unless it creates a hazard to other motorists because of protruding objects. Further, escort vehicles may show or display amber lights when in the actual process of escorting overdimensioned equipment, material, or buildings as authorized by law. Vehicles owned or leased by private security agencies may show or display green and amber lights, with either color being no greater than 50 percent of the lights displayed, while the security personnel are engaged in security duties on private or public property.

(4) Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles may show or display amber lights when in operation or a hazard exists.

(5) Road maintenance and construction equipment and vehicles may display flashing white lights or flashing white strobe lights when in operation and where a hazard exists. Additionally, school buses and vehicles that are used to transport farm workers may display flashing white strobe lights.

(6) All lighting equipment heretofore referred to shall meet all requirements as set forth in § 316.241.

(7) Flashing lights are prohibited on vehicles except:

(a) As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;

(b) When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so; and

(c) For the lamps authorized under subsections (1), (2), (3), (4), and (9), § 316.2065, or § 316.235(5) which may flash.

(8) Subsections (1) and (7) do not apply to police, fire, or authorized emergency vehicles while in the performance of their necessary duties.

(9) Flashing red lights may be used by emergency response vehicles of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, and the Department of Health when responding to an emergency in the line of duty.

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

316.2398. Display or use of red warning signals; motor vehicles of volunteer firefighters or medical staff.

(1) A privately owned vehicle belonging to an active firefighter member of a regularly organized volunteer firefighting company or association, while en route to the fire station for the purpose of proceeding to the scene of a fire or other emergency or while en route to the scene of a fire or other emergency in the line of duty as an active firefighter member of a regularly organized firefighting company or association, or a privately owned vehicle belonging to a medical staff physician or technician of a medical facility licensed by the state, while responding to an emergency in the line of duty, may display or use red warning signals visible from the front and from the rear of such vehicle, subject to the following restrictions and conditions:

(a) No more than two red warning signals may be displayed.

(b) No inscription of any kind may appear across the face of the lens of the red warning signal.

(c) In order for an active volunteer firefighter to display such red warning signals on his or her vehicle, the volunteer firefighter must first secure a written permit from the chief executive officers of the firefighting organization to use the red warning signals, and this permit must be carried by the volunteer firefighter at all times while the red warning signals are displayed.

(2) It is unlawful for any person who is not an active firefighter member of a regularly organized volunteer firefighting company or association or a physician or technician of the medical staff of a medical facility licensed by the state to display on any motor vehicle owned by him or her, at any time, any red warning signals as described in subsection (1).

(3) It is unlawful for an active volunteer firefighter to operate any red warning signals as authorized in subsection (1), except while en route to the fire station for the purpose of proceeding to the scene of a fire or other emergency, or while at or en route to the scene of a fire or other emergency, in the line of duty.

(4) It is unlawful for a physician or technician of the medical staff of a medical facility to operate any red warning signals as authorized in subsection (1), except when responding to an emergency in the line of duty.

(5) A violation of this section is a nonmoving violation, punishable as provided in chapter 318. In addition, any volunteer firefighter shall be dismissed from membership in the firefighting organization by the chief executive officers thereof.

316.2399. Special warning lights for buses or taxicabs.

The provisions of § 316.2397(7) to the contrary notwithstanding, a bus or taxicab may be equipped with two flashing devices for the purpose of warning the operators of other vehicles and law enforcement agents that an emergency situation exists within the bus or taxicab. Such devices shall be capable of activation by the operator of the bus or taxicab and shall be of a type approved by the Department of Highway Safety and Motor Vehicles. Such devices shall be mounted one at the front and one at the rear of the bus or taxicab and shall display flashing red lights which shine on the roadway under the vehicle. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.251. Maximum bumper heights.

(1) Every motor vehicle of net shipping weight of not more than 5,000 pounds shall be equipped with a front and a rear bumper such that when measured from the ground to the bottom of the bumper the maximum height shall be as follows:

NET WEIGHT	FRONT	REAR
Automobiles for private use:		
Net weight of less than 2,500 pounds	22″	22″
Net weight of 2,500 pounds or more, but less than 3,500 pounds	24″	26″
Net weight of 3,500 pounds or more	27″	29″
Trucks:		
Net weight of less than 2,000 pounds	24″	26″
Net weight of 2,000 or more, but not more than 3,000 pounds	27″	29″
Net weight of 3,000 pounds, but not more than 5,000 pounds	28″	30″

(2) "New motor vehicles" as defined in § 319.001(9), "antique automobiles" as defined in § 320.08, "horseless carriages" as defined in § 320.086, and "street rods" as defined in § 320.0863 shall be excluded from the requirements of this section.

(3) A violation of this section shall be defined as a moving violation. A person charged with a violation of this section is subject to the penalty provided in § 318.18.

316.253. Vehicles used to sell ice cream and other confections; display of warnings required.

Any person who sells ice cream or other frozen confections at retail from a motor vehicle shall display on each side of such motor vehicle, in letters at least 3 inches high, a warning containing the words "look out for children" or "caution: children" or such similar words as are approved by the department. A violation of this section is a noncriminal

traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.261. Brake equipment required.

Every motor vehicle, trailer, semitrailer, and pole trailer, and any combination of such vehicles, operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this chapter.

(1) SERVICE BRAKES; ADEQUACY.—Every such vehicle and combination of vehicles, except special mobile equipment not designed to carry persons, shall be equipped with service brakes adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(2) PARKING BRAKES; ADEQUACY.—Every such vehicle and combination of vehicles shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free of loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brakedrums, brakeshoes and lining assemblies, brakeshoe anchors, and mechanical brakeshoe actuation mechanism normally associated with the wheel-brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(3) BRAKES ON ALL WHEELS.—Every vehicle shall be equipped with brakes acting on all wheels except:

(a) Trailers, semitrailers, or pole trailers of a gross weight not exceeding 3,000 pounds, provided that:

1. The total weight on and including the wheels of the trailer or trailers shall not exceed 40 percent of the gross weight of the towing vehicle when connected to the trailer or trailers; and

2. The combination of vehicles, consisting of the towing vehicle and its total towed load, is capable of complying with the performance requirements of § 316.262.

(b) Pole trailers with a gross weight in excess of 3,000 pounds manufactured prior to January 1, 1972, need not be equipped with brakes.

(c) Any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of § 316.262.

(d) Trucks and truck tractors having three or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck tractors must be capable of complying with the performance requirements of § 316.262.

(e) Special mobile equipment not designed to carry persons.

(f) "Antique cars" as defined in § 320.08, and "horseless carriages" as defined in § 320.086.

(g) Four-wheeled motorized golf carts operated by municipal or county law enforcement officers on official business.

(4) AUTOMATIC TRAILER BRAKE APPLICATION UPON BREAKAWAY.—Every trailer, semitrailer, and pole trailer with air or vacuum-actuated brakes, every trailer and semitrailer with a gross weight in excess of 3,000 pounds, and every pole trailer with a gross weight in excess of 3,000 pounds manufactured or assembled after January 1, 1972, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least 15 minutes, upon breakaway from the towing vehicle.

(5) TRACTOR BRAKES PROTECTED.—Every motor vehicle manufactured or assembled after January 1, 1972, and used to tow a trailer, semitrailer, or pole trailer equipped with brakes, shall be equipped with means for providing that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(6) TRAILER AIR RESERVOIRS SAFEGUARDED.—Air brake systems installed on trailers manufactured or assembled after January 1, 1972, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguard-

ed against backflow of air from the reservoir through the supply line.

(7) TWO MEANS OF EMERGENCY BRAKE OPERATION.—

(a) Every towing vehicle, when used to tow another vehicle equipped with air-controlled brakes, in other than driveaway or towaway operations, shall be equipped with two means for emergency application of the trailer brakes. One of these means shall apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure which shall not be lower than 20 pounds per square inch nor higher than 45 pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

(b) Every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single-control device required by subsection (8), a second-control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system is so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(8) SINGLE CONTROL TO OPERATE ALL BRAKES.—Every motor vehicle, trailer, semitrailer and pole trailer, and every combination of such vehicles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle.

(9) RESERVOIR CAPACITY AND CHECK VALVE.—

(a) Air brakes.—Every bus, truck or truck tractor with air-operated brakes shall be equipped with at least one reservoir sufficient to ensure that, when fully charged to the maximum pressure as regulated by the air compressor governor cutout setting, a full service-brake application may be made without lowering such reservoir pressure by more than 20 percent. Each reservoir shall be provided with means for readily draining accumulated oil or water.

(b) Vacuum brakes.—Every truck with three or more axles equipped with vacuum assistor-type brakes and every truck tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to ensure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service-brake application may be made without depleting the vacuum supply by more than 40 percent.

(c) Reservoir safeguarded.—All motor vehicles, trailers, semitrailers, and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(10) WARNING DEVICES.—

(a) Air brakes.—Every bus, truck or truck tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the air reservoir pressure of the vehicle is below 50 percent of the air compressor governor cutout pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

(b) Vacuum brakes.—Every truck tractor and truck used for towing a vehicle equipped with vacuum operated brakes and every truck with three or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than 8 inches of mercury.

(c) Combination of warning devices.—When a vehicle required to be equipped with

a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes. A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

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

316.267. Brakes on electric-powered vehicles.

When operated on the public streets and roads, every electric-powered vehicle with a rating of 3 to 6 horsepower shall be equipped with hydraulic brakes on the two rear wheels and at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(1) Developing a braking force that is not less than 43.5 percent of its gross weight.

(2) Decelerating to a stop from not more than 20 miles per hour at not less than 17 feet per second.

(3) Stopping from a speed of 20 miles per hour in not more than 25 feet, such distance to be measured from the point at which movement of the service brake pedal or control begins.

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

316.271. Horns and warning devices.

(1) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet.

(2) No horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle.

(3) The driver of a motor vehicle shall, when reasonably necessary to ensure safe operation, give audible warning with his or her horn.

(4) No vehicle shall be equipped with, nor shall any person use upon a vehicle, any siren, whistle, or bell, except as otherwise permitted in this section.

(5) It is permissible but not required that any vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

(6) Every authorized emergency vehicle shall be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type approved by the department, but such siren, whistle, or bell shall not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which event the driver of the vehicle shall sound the siren, whistle, or bell when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

(7) Notwithstanding the other provisions of this section, a trolley may be equipped with a bell, and the bell is not required to be used only as a warning device. As used in this subsection, the term "trolley" includes any bus which resembles a streetcar, which is powered by overhead electric wires or is self-propelled, and which is used primarily as a public conveyance.

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

316.272. Exhaust systems, prevention of noise.

(1) Every motor vehicle shall at all times be equipped with an exhaust system in good working order and in constant operation, including muffler, manifold pipe, and tailpiping to prevent excessive or unusual noise. In no event shall an exhaust system allow noise at a level which exceeds a maximum decibel level to be established by regulation of the Department of Environmental Protection as provided in § 403.061(11) in cooperation with the Department of Highway Safety and Motor Vehicles. No person shall use a muffler cutout, bypass or similar device upon a vehicle on a highway.

(2) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

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

316.2935. Air pollution control equipment; tampering prohibited; penalty.

(1) (a) It is unlawful for any person or motor vehicle dealer as defined in § 320.27 to offer or display for retail sale or lease, sell, lease, or transfer title to, a motor vehicle in Florida that has been tampered with in vio-

lation of this section, as determined pursuant to subsection (7). Tampering is defined as the dismantling, removal, or rendering ineffective of any air pollution control device or system which has been installed on a motor vehicle by the vehicle manufacturer except to replace such device or system with a device or system equivalent in design and function to the part that was originally installed on the motor vehicle. All motor vehicles sold, reassigned, or traded to a licensed motor vehicle dealer are exempt from this paragraph.

(b) At the time of sale, lease, or transfer of title of a motor vehicle, the seller, lessor, or transferor shall certify in writing to the purchaser, lessee, or transferee that the air pollution control equipment of the motor vehicle has not been tampered with by the seller, lessor, or transferor or their agents, employees, or other representatives. A licensed motor vehicle dealer shall also visually observe those air pollution control devices listed by department rule pursuant to subsection (7), and certify that they are in place, and appear properly connected and undamaged. Such certification shall not be deemed or construed as a warranty that the pollution control devices of the subject vehicle are in functional condition, nor does the execution or delivery of this certification create by itself grounds for a cause of action between the parties to this transaction.

(c) All motor vehicles sold, reassigned, or traded by a licensed motor vehicle dealer to a licensed motor vehicle dealer, all new motor vehicles subject to certification under § 207, Clean Air Act, 42 U.S.C. § 7541, and all lease agreements for 30 days or less are exempt from this subsection. Also exempt from this subsection are sales of motor vehicles for salvage purposes only.

(2) No person shall operate any gasoline-powered motor vehicle, except a motorcycle, moped, scooter, or an imported nonconforming motor vehicle which has received a one-time exemption from federal emission control requirements under 40 C.F.R. 85, subpart P, on the public roads and streets of this state which emits visible emissions from the exhaust pipe for more than a continuous period of 5 seconds, and no person shall operate on the public roads or streets of this state any motor vehicle that has been tampered with in violation of this section, as determined pursuant to subsection (7).

(3) No person shall operate on the public roads or streets of this state any diesel-powered motor vehicle which emits visible emissions from the exhaust pipe for more than a continuous period of 5 seconds, except during engine acceleration, engine lugging, or engine deceleration.

(4) This section shall be enforced by the Department of Environmental Protection and any law enforcement officer of this state as defined in § 112.531.

(5) Any person who knowingly and willfully violates subsection (1) shall be punished as follows:

(a) For a first violation, violators shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, except that a motor vehicle dealer shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(b) For a second or subsequent offense, violators, including motor vehicle dealers, shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. In addition, the Department of Highway Safety and Motor Vehicles may temporarily or permanently revoke or suspend the motor vehicle dealer license authorized pursuant to the provisions of § 320.27.

(6) Except as provided in subsection (5), any person who violates subsection (1), subsection (2), or subsection (3) shall be charged with a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318. However, the penalty may be reduced if the person committing the violation corrects the violation pursuant to the provisions of § 316.6105.

(7) The Department of Environmental Protection shall adopt rules that define the specific wording of the required certification and the circumstances under which the certificate is not required. In addition, the department shall adopt rules as necessary to conform to requirements of federal law, to establish procedures to determine compliance with this section, including specifying what tampering activities constitute a violation of this section, and to provide for exceptions and waivers. For those rules applicable pursuant to subsection (1) to licensed motor vehicle dealers for certification by visual observation, the air pollution control devices or systems that shall be included in such certification for motor vehicles dated model year 1981 or later are the catalytic converter, fuel inlet restrictor, unvented fuel cap, exhaust gas recirculation system (EGR), air pump and/or air injector system (AIS), and fuel evaporative emissions system (EVP). The department may by rule remove or add devices or systems to this test if justified by develop-

ments in air pollution control technology or changes in federal law.

316.294. Mirrors.

Every vehicle, operated singly or when towing any other vehicle, shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of the motor vehicle. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.2951. Motor vehicle windows; definitions.

Whenever used in §§ 316.2951-316.2957, unless the context otherwise requires, the following terms have the following meanings:

(1) "Motor vehicle" means any vehicle as defined in § 316.003, except vehicles used in farm husbandry, which is registered or required to be registered in the state.

(2) "Multipurpose passenger vehicle" means a motor vehicle with motive power designed to carry 10 persons or fewer which is constructed either on a truck chassis or with special features for occasional off-road operation.

(3) "Reflectance" means the ratio of the amount of total light, expressed in a percentage, which is reflected outward by the product or material to the amount of total light falling on the product or material.

(4) "Sunscreening material" means a product or material, including film, glazing, and perforated sunscreening, which, when applied to the windshield or windows of a motor vehicle, reduces the effects of the sun with respect to light reflectance or transmittance.

(5) "Transmittance" means the ratio of the amount of total light, expressed in a percentage, which is allowed to pass through the product or material, including glazing, to the amount of total light falling on the product or material and the glazing.

(6) "Window" means any device designed for exterior viewing from a motor vehicle, except the windshield, any roof-mounted viewing device, and any viewing device having less than 150 square inches in area.

(7) "Windshield" means the front exterior viewing device of a motor vehicle.

316.2952. Windshields; requirements; restrictions.

(1) A windshield in a fixed and upright position, which windshield is equipped with safety glazing as required by federal safety-glazing material standards, is required on every motor vehicle which is operated on the public highways, roads, and streets, except on a motorcycle or implement of husbandry.

(2) A person shall not operate any motor vehicle on any public highway, road, or street with any sign, sunscreening material, product, or covering attached to, or located in or upon, the windshield, except the following:

(a) A certificate or other paper required to be displayed by law.

(b) Sunscreening material along a strip at the top of the windshield, so long as such material is transparent and does not encroach upon the driver's direct forward viewing area as more particularly described and defined in Federal Motor Vehicle Safety Standards No. 205 as the AS/1 portion of the windshield.

(c) A device, issued by a governmental entity as defined in § 334.03, or its designee, for the purpose of electronic toll payments.

(d) A global positioning system device or similar satellite receiver device which uses the global positioning system operated pursuant to 10 U.S.C. § 2281 for the purpose of obtaining navigation or routing information while the motor vehicle is being operated.

(3) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be constructed as to be controlled or operated by the driver of the vehicle.

(4) Every windshield wiper upon a motor vehicle shall be maintained in good working order.

(5) Grove equipment, including "goats," "highlift-goats," grove chemical supply tanks, fertilizer distributors, fruit-loading equipment, and electric-powered vehicles regulated under the provisions of § 316.267, are exempt from the requirements of this section. However, such electric-powered vehicles shall have a windscreen approved by the department sufficient to give protection from wind, rain, or insects, and such windscreen shall be in place whenever the vehicle is operated on the public roads and highways.

(6) A former military vehicle is exempt from the requirements of this section if the department determines that the exemption is necessary to maintain the vehicle's accurate military design and markings. However, whenever the vehicle is operating on the public roads and highways, the operator and passengers must wear eye-protective devices approved by the department. For purposes of this subsection, "former military vehicle" means a vehicle, including a trailer, regard-

less of the vehicle's size, weight, or year of manufacture, that was manufactured for use in any country's military forces and is maintained to represent its military design and markings accurately.

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

316.2953. Side windows; restrictions on sunscreening material.

A person shall not operate any motor vehicle on any public highway, road, or street on which vehicle the side wings and side windows on either side forward of or adjacent to the operator's seat are composed of, covered by, or treated with any sunscreening material or other product or covering which has the effect of making the window nontransparent or which would alter the window's color, increase its reflectivity, or reduce its light transmittance, except as expressly permitted by this section. A sunscreening material is authorized for such windows if, when applied to and tested on the glass of such windows on the specific motor vehicle, the material has a total solar reflectance of visible light of not more than 25 percent as measured on the nonfilm side and a light transmittance of at least 28 percent in the visible light range. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.2954. Windows behind the driver; restrictions on sunscreening material.

(1) A person shall not operate any motor vehicle on any public highway, road, or street on which vehicle any windows behind the driver are composed of, covered by, or treated with any sunscreening material, or other product or material which has the effect of making the window nontransparent or which would alter the window's color, increase its reflectivity, or reduce its light transmittance, except as specified below:

(a) Sunscreening material consisting of film which, when applied to and tested on the rear window glass of the specific motor vehicle, has a total solar reflectance of visible light of not more than 35 percent as measured on the nonfilm side and a light transmittance of at least 15 percent in the visible light range; however, sunscreening material which, when applied to and tested on the rear window glass of the specific motor vehicle, has a total solar reflectance of visible light of not more than 35 percent as measured on the nonfilm side and a light transmittance of at least 6 percent in the visible light range may be used on multipurpose passenger vehicles.

(b) Perforated sunscreening material which, when tested in conjunction with existing glazing or film material, has a total reflectance of visible light of not more than 35 percent and a light transmittance of no less than 30 percent. For those products or materials having different levels of reflectance, the highest reflectance from the product or material will be measured by dividing the area into 16 equal sections and averaging the overall reflectance. The measured reflectance of any of those sections may not exceed 50 percent.

(c) Louvered materials, if the installation of the materials does not reduce driver visibility by more than 50 percent.

(d) Privacy drapes, curtains and blinds, provided such covering is in an open and secure position when the motor vehicle is being operated on any public highway, road, or street.

(2) A person shall not operate any motor vehicle upon any public highway, road, or street, on which vehicle the rear window is composed of, covered by, or treated with any material which has the effect of making the window nontransparent, unless the vehicle is equipped with side mirrors on both sides that meet the requirements of § 316.294.

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

316.29545. Window sunscreening exclusions; medical exemption; certain law enforcement vehicles and private investigative service vehicles exempt.

(1) The department shall issue medical exemption certificates to persons who are afflicted with Lupus, any autoimmune disease, or other medical conditions which require a limited exposure to light, which certificates shall entitle the person to whom the certificate is issued to have sunscreening material on the windshield, side windows, and windows behind the driver which is in violation of the requirements of §§ 316.2951-316.2957. The department shall consult with the Medical Advisory Board established in § 322.125 for guidance with respect to the autoimmune diseases and other medical conditions which shall be included on the form of the medical certificate authorized by this section. At a minimum, the medical exemption certificate shall include a vehicle description with the make, model, year, vehicle identification number, medical exemption decal number

issued for the vehicle, and the name of the person or persons who are the registered owners of the vehicle. A medical exemption certificate shall be nontransferable and shall become null and void upon the sale or transfer of the vehicle identified on the certificate.

(2) The department shall exempt all law enforcement vehicles used in undercover or canine operations from the window sunscreening requirements of §§ 316.2951-316.2957.

(3) The department shall exempt from the window sunscreening restrictions of §§ 316.2953, 316.2954, and 316.2956 vehicles that are owned or leased by private investigators or private investigative agencies licensed under chapter 493.

(4) The department may charge a fee in an amount sufficient to defray the expenses of issuing a medical exemption certificate as described in subsection (1).

(5) The department is authorized to promulgate rules for the implementation of this section.

316.2955. Window sunscreening material; compliance labeling; tolerances.

(1) Each installer or seller of sunscreening material shall provide a pressure-sensitive, self-destructive, nonremovable, vinyl-type film label to the purchaser stating that the material complies with the provisions of §§ 316.2951-316.2954. Each such installer shall affix the required label to the inside left door jamb of the motor vehicle. In addition, the label shall state the trade name of the material and the installer's or seller's business name. Labeling is not required for factory glazing which complies with Federal Motor Vehicle Safety Standard No. 205.

(2) Every percentage measurement required by §§ 316.2951-316.2954 is subject to a tolerance of plus or minus 3 percent.

(3) The department shall adopt rules approving light transmittance measuring devices for use in making measurements required by §§ 316.2951-316.2954. A witness otherwise qualified to testify shall be competent to give testimony regarding the percentage of light transmission when the testimony is derived from the use of an approved device. The reading from an approved device is presumed accurate and shall be admissible into evidence in the trial of any infraction arising under §§ 316.2951-316.2954.

316.2956. Violation of provisions relating to windshields, windows, and sunscreening material; penalties.

(1) Any person who operates a motor vehicle on which, after June 20, 1984, material was installed in violation of §§ 316.2951-316.2954 commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(2) The replacement or repair of any material legally installed is not a violation of §§ 316.2951-316.2954.

(3) Any person who sells or installs sunscreening material in violation of any provision of §§ 316.2951-316.2955 is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

316.2957. Exemption for motor vehicle manufacturers.

The provisions of §§ 316.2951-316.2956 do not apply to the manufacturer's tinting or glazing of motor vehicle windows or windshields which is otherwise in compliance with or permitted by Federal Motor Vehicle Safety Standard No. 205 as promulgated in 49 C.F.R. § 571.205.

316.299. Rough surfaced wheels prohibited.

No person shall drive, propel, operate, or cause to be driven, propelled or operated over any paved or graded public road of this state any tractor engine, tractor or other vehicle or contrivance having wheels provided with sharpened or roughened surfaces, other than roughened pneumatic rubber tires having studs designed to improve traction without materially injuring the surface of the highway, unless the rims or tires of the wheels of such tractor engines, tractors, or other vehicles or contrivances are provided with suitable filler blocks between the cleats so as to form a smooth surface. This requirement shall not apply to tractor engines, tractors, or other vehicles or contrivances if the rims or tires of their wheels are constructed in such manner as to prevent injury to such roads. This restriction shall not apply to tractor engines, tractors, and other vehicles or implements used by any county or the Department of Transportation in the construction or maintenance of roads or to farm implements weighing less than 1,000 pounds when provided with wheel surfaces of more than 1/2 inch in width. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.300. Certain vehicles to carry flares or other devices.

(1) No person shall operate any truck, bus, truck tractor, trailer, semitrailer, pole trailer, or motor vehicle towing a house trailer, when such vehicle is 80 inches or more in overall width or 30 feet or more in overall length, upon any highway outside an urban district or upon any divided highway at any time between sunset and sunrise unless there is carried in such vehicle the following equipment, except as provided in subsection (2):

(a) At least three flares, three red electric lanterns, or three portable red emergency reflectors, each of which shall be capable of being seen and distinguished at a distance of not less than 600 feet under normal atmospheric conditions at nighttime. No flare, fusee, electric lantern, or warning flag shall be used for the purpose of compliance with the requirements of this section unless such equipment is of a type which has been submitted to the department and approved by it. No portable reflector unit shall be used for the purpose of compliance with the requirements of this section unless it is so designed and constructed as to be capable of reflecting red light clearly visible from all distances within 600 feet to 100 feet under normal atmospheric conditions at night when directly in front of lawful lower beams of headlamps and unless it is of a type which has been submitted to the department and approved by it.

(b) At least three red-burning fusees, unless red electric lanterns or red portable emergency reflectors are carried.

(2) No person shall operate at the time and under conditions stated in subsection (1) any motor vehicle used for the transportation of explosives or any cargo tank truck used for the transportation of flammable liquids or compressed gases unless there is carried in such vehicle three red electric lanterns or three portable red emergency reflectors meeting the requirements of subsection (1), and there shall not be carried in any such vehicle any flares, fusees, or signal produced by flame.

(3) No person shall operate any vehicle described in subsection (1) or subsection (2) upon any highway outside an urban district or upon a divided highway at any time when lighted lamps are not required by § 316.217 unless there is carried in such vehicle at least two red flags, not less than 12 inches square, with standards to support such flags, or two red portable emergency reflectors of the type described in subsection (1).

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

316.301. Display of warning lights and devices when vehicle is stopped or disabled.

(1) Whenever any truck, bus, truck tractor, trailer, semitrailer, or pole trailer 80 inches or more in overall width or 30 feet or more in overall length is stopped upon a roadway or adjacent shoulder, the driver shall immediately actuate vehicular hazard-warning signal lamps meeting the requirements of this chapter. Such lights need not be displayed by a vehicle parked lawfully in an urban district, or stopped lawfully to receive or discharge passengers, or stopped to avoid conflict with other traffic or to comply with the directions of a police officer or an official traffic control device, or while the devices specified in subsections (2)-(8) are in place.

(2) Whenever any vehicle of a type referred to in subsection (1) is disabled, or stopped for more than 10 minutes, upon a roadway outside an urban district at any time when lighted lamps are required, the driver of such vehicle shall display the following warning devices except as provided in subsection (3):

(a) A lighted fusee, a lighted red electric lantern, or a portable red emergency reflector shall immediately be placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.

(b) As soon thereafter as possible but in any event within the burning period of the fusee (15 minutes), the driver shall place three liquid-burning flares (pot torches), or three lighted red electric lanterns, or three portable red emergency reflectors on the roadway in the following order:

1. One approximately 100 feet from the disabled vehicle in the center of the lane occupied by such vehicle and toward traffic approaching in that lane;

2. One approximately 100 feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by such vehicle; and

3. One at the traffic side of the disabled vehicle not less than 10 feet rearward or forward thereof in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with paragraph (a), it may be used for this purpose.

(3) Whenever any vehicle referred to in this section is disabled, or stopped for more than 10 minutes, within 500 feet of a curve,

hill crest, or other obstruction to view, the warning device in that direction shall be so placed as to afford ample warning to other users of the highway, but in no case less than 100 feet nor more than 500 feet from the disabled vehicle.

(4) Whenever any vehicle of a type referred to in this section is disabled, or stopped for more than 10 minutes, upon any roadway of a divided highway during the time lighted lamps are required, the appropriate warning devices prescribed in subsections (2) and (5) shall be placed as follows:

(a) One at a distance of approximately 200 feet from the vehicle in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane.

(b) One at a distance of approximately 100 feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane.

(c) One at the traffic side of the vehicle and approximately 10 feet from the vehicle in the direction of the nearest approaching traffic.

(5) Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas is disabled, or stopped for more than 10 minutes, at any time and place mentioned in subsection (2), subsection (3), or subsection (4), the driver of such vehicle shall immediately display red electric lanterns or portable red emergency reflectors in the same number and manner specified therein. Flares, fusees, or signals produced by flame shall not be used as warning devices for disabled vehicles of the type mentioned in this subsection.

(6) The warning devices described in subsections (2)-(5) need not be displayed where there is sufficient light to reveal persons and vehicles within a distance of 1,000 feet.

(7) Whenever any vehicle described in this section is disabled, or stopped for more than 10 minutes, upon a roadway outside an urban district or upon the roadway of a divided highway at any time when lighted lamps are not required by § 316.217, the driver of the vehicle shall display two red flags or two red portable emergency reflectors as follows:

(a) If traffic on the roadway moves in two directions, one flag or reflector shall be placed approximately 100 feet to the rear and one flag or reflector approximately 100 feet in advance of the vehicle in the center of the lane occupied by such vehicle.

(b) Upon a one-way roadway, one flag or reflector shall be placed approximately 100 feet, and one flag or reflector approximately 200 feet, to the rear of the vehicle in the center of the lane occupied by such vehicle.

(8) When any vehicle described in this section is stopped entirely off the roadway and on an adjacent shoulder at any time and place hereinbefore mentioned, the warning devices shall be placed, as nearly as practicable, on the shoulder near the edge of the roadway.

(9) The flares, fusees, red electric lanterns, portable red emergency reflectors and flags to be displayed as required in this section shall conform with the requirements of this chapter applicable thereto.

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

316.302. Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.

(1) (a) All owners and drivers of commercial motor vehicles that are operated on the public highways of this state while engaged in interstate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397.

(b) Except as otherwise provided in this section, all owners or drivers of commercial motor vehicles that are engaged in intrastate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 383, 385, and 390-397, with the exception of 49 C.F.R. § 390.5 as it relates to the definition of bus, as such rules and regulations existed on December 31, 2012.

(c) The emergency exceptions provided by 49 C.F.R. § 392.82 also apply to communications by utility drivers and utility contractor drivers during a Level 1 activation of the State Emergency Operations Center, as provided in the Florida Comprehensive Emergency Management plan, or during a state of emergency declared by executive order or proclamation of the Governor.

(d) Except as provided in § 316.215(5), and except as provided in § 316.228 for rear overhang lighting and flagging requirements for intrastate operations, the requirements of this section supersede all other safety requirements of this chapter for commercial motor vehicles.

(2) (a) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 need not comply

with 49 C.F.R. §§ 391.11(b)(1) and 395.3(a) and (b).

(b) Except as provided in 49 C.F.R. § 395.1, a person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 may not drive:

1. More than 12 hours following 10 consecutive hours off duty; or

2. For any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty.

The provisions of this paragraph do not apply to drivers of utility service vehicles as defined in 49 C.F.R. § 395.2.

(c) Except as provided in 49 C.F.R. § 395.1, a person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 may not drive after having been on duty more than 70 hours in any period of 7 consecutive days or more than 80 hours in any period of 8 consecutive days if the motor carrier operates every day of the week. Thirty-four consecutive hours off duty shall constitute the end of any such period of 7 or 8 consecutive days. This weekly limit does not apply to a person who operates a commercial motor vehicle solely within this state while transporting, during harvest periods, any unprocessed agricultural products or unprocessed food or fiber that is subject to seasonal harvesting from place of harvest to the first place of processing or storage or from place of harvest directly to market or while transporting livestock, livestock feed, or farm supplies directly related to growing or harvesting agricultural products. Upon request of the Department of Highway Safety and Motor Vehicles, motor carriers shall furnish time records or other written verification to that department so that the Department of Highway Safety and Motor Vehicles can determine compliance with this subsection. These time records must be furnished to the Department of Highway Safety and Motor Vehicles within 2 days after receipt of that department's request. Falsification of such information is subject to a civil penalty not to exceed $100. The provisions of this paragraph do not apply to operators of farm labor vehicles operated during a state of emergency declared by the Governor or operated pursuant to § 570.07(21), and do not apply to drivers of utility service vehicles as defined in 49 C.F.R. § 395.2.

(d) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 within a 150 air-mile radius of the location where the vehicle is based need not comply with 49 C.F.R. § 395.8, if the requirements of 49 C.F.R. § 395.1(e)(1)(iii) and (v) are met. If a driver is not released from duty within 12 hours after the driver arrives for duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period.

(e) A person who operates a commercial motor vehicle solely in intrastate commerce is exempt from subsection (1) while transporting agricultural products, including horticultural or forestry products, from farm or harvest place to the first place of processing or storage, or from farm or harvest place directly to market. However, such person must comply with 49 C.F.R. parts 382, 392, and 393, and with 49 C.F.R. §§ 396.3(a)(1) and 396.9. A vehicle or combination of vehicles operated pursuant to this paragraph having a gross vehicle weight of 26,001 pounds or more or having three or more axles on the power unit, regardless of weight, must display the name of the vehicle owner or motor carrier and the municipality or town where the vehicle is based on each side of the power unit in letters that contrast with the background and that are readable from a distance of 50 feet. A person who violates this vehicle identification requirement may be assessed a penalty as provided in § 316.3025(3)(a).

(f) A person who operates a commercial motor vehicle having a declared gross vehicle weight of less than 26,001 pounds solely in intrastate commerce and who is not transporting hazardous materials in amounts that require placarding pursuant to 49 C.F.R. part 172, or who is transporting petroleum products as defined in § 376.301, is exempt from subsection (1). However, such person must comply with 49 C.F.R. parts 382, 392, and 393, and with 49 C.F.R. §§ 396.3(a)(1) and 396.9.

(g) A person whose driving record shows no convictions for the preceding 3 years and who, as of October 1, 1988, is employed as a driver-salesperson, as defined in 49 C.F.R. § 395.2, and who operates solely in intrastate commerce, is exempt from 49 C.F.R. part 391.

(h) A person who is an employee of an electric utility, as defined in § 361.11, or a telephone company, as defined in § 364.02, and who operates a commercial motor vehicle solely in intrastate commerce and within

a 200 air-mile radius of the location where the vehicle is based, is exempt from 49 C.F.R. §§ 396.11 and 396.13 and 49 C.F.R. part 391, subparts D and E.

(i) A person whose driving record shows no traffic convictions, pursuant to § 322.61, during the 2-year period immediately preceding the application for the commercial driver license, who is otherwise qualified as a driver under 49 C.F.R. part 391, and who operates a commercial vehicle in intrastate commerce only shall be exempt from the requirements of 49 C.F.R. part 391, subpart E, § 391.41(b)(10). However, such operators are still subject to the requirements of §§ 322.12 and 322.121. As proof of eligibility, such driver shall have in his or her possession a physical examination form dated within the past 24 months.

(j) A person who is otherwise qualified as a driver under 49 C.F.R. part 391, who operates a commercial motor vehicle in intrastate commerce only, and who does not transport hazardous materials in amounts that require placarding pursuant to 49 C.F.R. part 172, is exempt from the requirements of 49 C.F.R. part 391, subpart E, §§ 391.41(b)(3) and 391.43(e), relating to diabetes.

(k) A person holding a commercial driver license who is a regularly employed driver of a commercial motor vehicle and is subject to an alcohol and controlled substance testing program related to that employment shall not be required to be part of a separate testing program for operating any bus owned and operated by a church when the driver does not receive any form of compensation for operating the bus and when the bus is used to transport people to or from church-related activities at no charge. The provisions of this paragraph may not be implemented if the Federal Government notifies the department that implementation will adversely affect the allocation of federal funds to the state.

(3) A person who has not attained 18 years of age may not operate a commercial motor vehicle, except that a person who has not attained 18 years of age may operate a commercial motor vehicle which has a gross vehicle weight of less than 26,001 pounds while transporting agricultural products, including horticultural or forestry products, from farm or harvest place to storage or market.

(4) (a) Except as provided in this subsection, all commercial motor vehicles transporting any hazardous material on any road, street, or highway open to the public, whether engaged in interstate or intrastate commerce, and any person who offers hazardous materials for such transportation, are subject to the regulations contained in 49 C.F.R. part 107, subparts F and G, and 49 C.F.R. parts 171, 172, 173, 177, 178, and 180. Effective July 1, 1997, the exceptions for intrastate motor carriers provided in 49 C.F.R. 173.5 and 173.8 are hereby adopted.

(b) In addition to the penalties provided in § 316.3025(3)(b), (c), (d), and (e), any motor carrier or any of its officers, drivers, agents, representatives, employees, or shippers of hazardous materials that do not comply with this subsection or any rule adopted by a state agency that is consistent with the federal rules and regulations regarding hazardous materials commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. To ensure compliance with this subsection, state highway patrol officers may inspect shipping documents and cargo of any vehicle known or suspected to be a transporter of hazardous materials.

(5) The Department of Highway Safety and Motor Vehicles may adopt and revise rules to assure the safe operation of commercial motor vehicles. The Department of Highway Safety and Motor Vehicles may enter into cooperative agreements as provided in 49 C.F.R. part 388. Department of Highway Safety and Motor Vehicles personnel may conduct motor carrier and shipper compliance reviews for the purpose of determining compliance with this section and § 627.7415.

(6) The state Department of Highway Safety and Motor Vehicles shall perform the duties that are assigned to the Field Administrator, Federal Motor Carrier Safety Administration under the federal rules, and an agent of that department may enforce those rules.

(7) A person who operates a commercial motor vehicle solely in intrastate commerce shall direct to the state Department of Highway Safety and Motor Vehicles any communication that the federal rules require persons subject to the jurisdiction of the United States Department of Transportation to direct to that department.

(8) For the purpose of enforcing this section, any law enforcement officer of the Department of Highway Safety and Motor Vehicles or duly appointed agent who holds a current safety inspector certification from the Commercial Vehicle Safety Alliance may require the driver of any commercial vehicle operated on the highways of this state to stop and submit to an inspection of the vehicle or the driver's records. If the vehicle or driver

is found to be operating in an unsafe condition, or if any required part or equipment is not present or is not in proper repair or adjustment, and the continued operation would present an unduly hazardous operating condition, the officer may require the vehicle or the driver to be removed from service pursuant to the North American Standard Out-of-Service Criteria, until corrected. However, if continuous operation would not present an unduly hazardous operating condition, the officer may give written notice requiring correction of the condition within 14 days.

(a) Any member of the Florida Highway Patrol or any law enforcement officer employed by a sheriff's office or municipal police department authorized to enforce the traffic laws of this state pursuant to § 316.640 who has reason to believe that a vehicle or driver is operating in an unsafe condition may, as provided in subsection (10), enforce the provisions of this section.

(b) Any person who fails to comply with an officer's request to submit to an inspection under this subsection commits a violation of § 843.02 if the person resists the officer without violence or a violation of § 843.01 if the person resists the officer with violence.

(9) This section does not apply to any nonpublic sector bus.

(10) Any traffic enforcement officer or any person otherwise authorized to enforce this section may issue a traffic citation as provided by § 316.650 to an alleged violator of any provision of this section.

(11) In addition to any other penalty provided in this section, a person who operates a commercial motor vehicle that bears an identification number required by this section which is false, fraudulent, or displayed without the consent of the person to whom it is assigned commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(12) (a) Notwithstanding any provision of law to the contrary, a provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the promisee is against the public policy of this state and is void and unenforceable.

(b) As used in this subsection, the term "promisee" means the contract's promisee and any agents, employees, servants, or independent contractors who are directly responsible to the contract's promisee, except that the term does not include motor carriers which are party to a motor carrier transportation contract with the contract's promisee, including such motor carrier's agents, employees, servants, or independent contractors directly responsible to such motor carrier.

(c) This subsection only applies to motor carrier transportation contracts entered into or renewed on or after July 1, 2010.

316.303. Television receivers.

(1) No motor vehicle operated on the highways of this state shall be equipped with television-type receiving equipment so located that the viewer or screen is visible from the driver's seat.

(2) This section does not prohibit the use of television-type receiving equipment used exclusively for safety or law enforcement purposes, provided such use is approved by the department.

(3) This section does not prohibit the use of an electronic display used in conjunction with a vehicle navigation system.

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

316.304. Wearing of headsets.

(1) No person shall operate a vehicle while wearing a headset, headphone, or other listening device, other than a hearing aid or instrument for the improvement of defective human hearing.

(2) This section does not apply to:

(a) Any law enforcement officer equipped with any communication device necessary in performing his or her assigned duties or to any emergency vehicle operator equipped with any ear protection device.

(b) Any applicant for a license to operate a motorcycle while taking the examination required by § 322.12(5).

(c) Any person operating a motorcycle who is using a headset that is installed in a helmet and worn so as to prevent the speakers from making direct contact with the user's ears so that the user can hear surrounding sounds.

(d) Any person using a headset in conjunction with a cellular telephone that only provides sound through one ear and allows surrounding sounds to be heard with the other ear.

(e) Any person using a headset in conjunction with communicating with the central base operation that only provides sound

through one ear and allows surrounding sounds to be heard with the other ear.

(3) The Department of Highway Safety and Motor Vehicles shall promulgate, by administrative rule, standards and specifications for headset equipment the use of which is permitted under this section. The department shall inspect and review all such devices submitted to it and shall publish a list by name and type of approved equipment.

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

316.305. Wireless communications devices; prohibition.

(1) This section may be cited as the "Florida Ban on Texting While Driving Law."

(2) It is the intent of the Legislature to:

(a) Improve roadway safety for all vehicle operators, vehicle passengers, bicyclists, pedestrians, and other road users.

(b) Prevent crashes related to the act of text messaging while driving a motor vehicle.

(c) Reduce injuries, deaths, property damage, health care costs, health insurance rates, and automobile insurance rates related to motor vehicle crashes.

(d) Authorize law enforcement officers to stop motor vehicles and issue citations as a secondary offense to persons who are texting while driving.

(3) (a) A person may not operate a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device or while sending or reading data [1]on such a device for the purpose of nonvoice interpersonal communication, including, but not limited to, communication methods known as texting, e-mailing, and instant messaging. As used in this section, the term "wireless communications device" means any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in § 812.15 and that allows text communications. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

(b) Paragraph (a) does not apply to a motor vehicle operator who is:

1. Performing official duties as an operator of an authorized emergency vehicle as defined in § 322.01, a law enforcement or fire service professional, or an emergency medical services professional.

2. Reporting an emergency or criminal or suspicious activity to law enforcement authorities.

3. Receiving messages that are:

a. Related to the operation or navigation of the motor vehicle;

b. Safety-related information, including emergency, traffic, or weather alerts;

c. Data used primarily by the motor vehicle; or

d. Radio broadcasts.

4. Using a device or system for navigation purposes.

5. Conducting wireless interpersonal communication that does not require manual entry of multiple letters, numbers, or symbols, except to activate, deactivate, or initiate a feature or function.

6. Conducting wireless interpersonal communication that does not require reading text messages, except to activate, deactivate, or initiate a feature or function.

7. Operating an autonomous vehicle, as defined in § 316.003, in autonomous mode.

(c) Only in the event of a crash resulting in death or personal injury, a user's billing records for a wireless communications device or the testimony of or written statements from appropriate authorities receiving such messages may be admissible as evidence in any proceeding to determine whether a violation of paragraph (a) has been committed.

(4) (a) Any person who violates paragraph (3)(a) commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b) Any person who commits a second or subsequent violation of paragraph (3)(a) within 5 years after the date of a prior conviction for a violation of paragraph (3)(a) commits a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

(5) Enforcement of this section by state or local law enforcement agencies must be accomplished only as a secondary action when an operator of a motor vehicle has been detained for a suspected violation of another provision of this chapter, chapter 320, or chapter 322.

316.400. Headlamps.

(1) Every motorcycle and every motor-driven cycle shall be equipped with at least one and not more than two headlamps which shall comply with the requirements and limitations of this chapter.

(2) Every headlamp upon every motorcycle and motor-driven cycle shall be located at a height of not more than 54 inches nor less than 24 inches to be measured as set forth in § 316.217(3).

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

316.405. Motorcycle headlights to be turned on.

(1) Any person who operates a motorcycle or motor-driven cycle on the public streets or highways shall, while so engaged, have the headlight or headlights of such motorcycle or motor-driven cycle turned on. Failure to comply with this section during the hours from sunrise to sunset, unless compliance is otherwise required by law, shall not be admissible as evidence of negligence in a civil action. During the hours of operation between sunrise and sunset, the headlights may modulate either the upper beam or the lower beam from its maximum intensity to a lower intensity, in accordance with Federal Motor Vehicle Safety Standard 571.108.

(2) Failure to comply with the provisions of this section shall not be deemed negligence per se in any civil action, but the violation of this section may be considered on the issue of negligence if the violation of this section is a proximate cause of a crash.

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

316.410. Taillamps.

(1) Every motorcycle and motor-driven cycle shall have at least one taillamp which shall be located at a height of not more than 72 nor less than 20 inches.

(2) Either a taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted.

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

316.415. Reflectors.

Every motorcycle and motor-driven cycle shall carry on the rear, either as part of the taillamp or separately, at least one red reflector. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.420. Stop lamps.

Every motorcycle and motor-driven cycle shall be equipped with at least one stop lamp meeting the requirements of § 316.234(1). A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.425. Lamps on parked motorcycles.

(1) Every motorcycle must comply with the provisions of § 316.229 regarding lamps on parked vehicles and the use thereof.

(2) Motor-driven cycles need not be equipped with parking lamps or otherwise comply with the provisions of § 316.229.

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

316.430. Multiple-beam road-lighting equipment.

(1) Every motorcycle other than a motor-driven cycle shall be equipped with multiple-beam road-lighting equipment.

(2) Such equipment shall:

(a) Reveal persons and vehicles at a distance of at least 300 feet ahead when the uppermost distribution of light is selected;

(b) Reveal persons and vehicles at a distance of at least 150 feet ahead when the lowermost distribution of light is selected.

On a straight, level road under any condition of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

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

316.435. Lighting equipment for motor-driven cycles.

The headlamp or headlamps upon every motor-driven cycle may be of the single-beam or multiple-beam type, but in either event shall comply with the requirements and limitations as follows:

(1) Every such headlamp or headlamps on a motor-driven cycle shall be of sufficient intensity to reveal persons and vehicles at a distance of not less than 100 feet when the motor-driven cycle is operated at any speed less than 25 miles per hour; at a distance of not less than 200 feet when the motor-driven cycle is operated at a speed of 25 or more miles per hour; and at a distance of not less than 300 feet when the motor-driven cycle is

operated at a speed of 35 or more miles per hour.

(2) In the event the motor-driven cycle is equipped with a multiple-beam headlamp or headlamps, such equipment shall comply with the requirements of § 316.430(2).

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

HIST: § 1, ch. 71-135; §§ 1, 29, ch. 76-31; § 228, ch. 99-248.

Former § 316.249.

316.440. Brake equipment required.

Every motor-driven cycle must comply with the provisions of § 316.261, except that:

(1) Motorcycles and motor-driven cycles need not be equipped with parking brakes.

(2) The wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, and the front wheel of a motor-driven cycle, need not be equipped with brakes, provided that such motorcycle or motor-driven cycle is capable of complying with the performance requirements of this chapter.

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

316.455. Other equipment.

Every motorcycle and every motor-driven cycle when operated upon a highway shall comply with the requirements and limitations of:

(1) Section 316.271(1) and (2) on the requirement for horns and warning devices.

(2) Section 316.271(3) on the requirement for the use of horns.

(3) Section 316.271(4) on the requirement for sirens, whistles, and bells.

(4) Section 316.271(5) on the requirement for theft alarms.

(5) Section 316.271(6) on the requirement for emergency vehicles.

(6) Section 316.272 on the requirement for mufflers and prevention of noise.

(7) Section 316.294 on the requirement for mirrors.

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

316.46. Equipment regulations for mopeds.

No person may operate a moped that does not conform to all applicable federal motor vehicle safety standards relating to lights and safety and other equipment contained in Title 49, Code of Federal Regulations. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.510. Projecting loads on passenger vehicles.

No passenger type vehicle shall be operated on any highway with any load carried thereon extending beyond the fenders on the left side of the vehicle or extending more than 6 inches beyond the line of the fenders on the right side thereof. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.520. Loads on vehicles.

(1) A vehicle may not be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking, blowing, or otherwise escaping therefrom, except that sand may be dropped only for the purpose of securing traction or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway.

(2) It is the duty of every owner and driver, severally, of any vehicle hauling, upon any public road or highway open to the public, dirt, sand, lime rock, gravel, silica, or other similar aggregate or trash, garbage, any inanimate object or objects, or any similar material that could fall or blow from such vehicle, to prevent such materials from falling, blowing, or in any way escaping from such vehicle. Covering and securing the load with a close-fitting tarpaulin or other appropriate cover or a load securing device meeting the requirements of 49 C.F.R. § 393.100 or a device designed to reasonably ensure that cargo will not shift upon or fall from the vehicle is required and shall constitute compliance with this section.

(3) (a) Except as provided in paragraph (b), a violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b) Any person who willfully violates the provisions of this section which offense results in serious bodily injury or death to an individual and which offense occurs as a result of failing to comply with subsections (1) and (2) commits a criminal traffic offense and a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(4) The provision of subsection (2) requiring covering and securing the load with a close-fitting tarpaulin or other appropriate cover does not apply to vehicles carrying

agricultural products locally from a harvest site or to or from a farm on roads where the posted speed limit is 65 miles per hour or less and the distance driven on public roads is less than 20 miles.

316.525. Requirements for vehicles hauling loads.

(1) It is the duty of every owner, licensee, and driver, severally, of any truck, trailer, semitrailer, or pole trailer to use such stanchions, standards, stays, supports, or other equipment, appliances, or contrivances, together with one or more lock chains, when lock chains are the most suitable means of fastening the load, or together with nylon strapping, when nylon strapping is the most suitable means of securing the load, so as to fasten the load securely to the vehicle.

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

316.530. Towing requirements.

(1) When one vehicle is towing another vehicle the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby, and said drawbar or other connection shall not exceed 15 feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered. When one vehicle is towing another vehicle and the connection consists of a chain, rope, or cable, there shall be displayed upon such connection a white flag or cloth not less than 12 inches square.

(2) When a vehicle is towing a trailer or semitrailer on a public road or highway by means of a trailer hitch to the rear of the vehicle, there shall be attached in addition thereto safety chains, cables, or other safety devices that comply with 49 C.F.R. subpart F, §§ 393.71(g)(2)(1) and 393.71(h)(10) from the trailer or semitrailer to the vehicle. These safety chains, cables, or other safety devices shall be of sufficient strength to maintain connection of the trailer or semitrailer to the pulling vehicle under all conditions while the trailer or semitrailer is being towed by the vehicle. The provisions of this subsection shall not apply to trailers or semitrailers using a hitch known as a fifth wheel nor to farm equipment traveling less than 20 miles per hour.

(3) Whenever a motor vehicle becomes disabled upon the highways of this state and a wrecker or tow truck is required to remove it to a repair shop or other appropriate location, if the combined weights of those two vehicles and the loads thereon exceed the maximum allowable weights as established by § 316.535, no penalty shall be assessed either vehicle or driver. However, this exception shall not apply to the load limits for bridges and culverts established by the department as provided in § 316.555.

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

316.550. Operations not in conformity with law; special permits.

(1) An oversize or overweight vehicle or load thereon may not enter onto or be operated on a public road in this state unless the owner or operator of such vehicle has first obtained the special permit for such movement from the appropriate governing jurisdiction.

(2) The Department of Transportation, with respect to highways under its jurisdiction, or a local authority, with respect to highways under its jurisdiction, may, in its discretion and upon application and good cause shown therefor that the same is not contrary to the public interest, issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight exceeding the maximum specified in this chapter, or otherwise not in conformity with the provisions of this chapter, upon any highway under the jurisdiction of the authority issuing such permit and for the maintenance of which the authority is responsible. The permit shall describe the vehicle or vehicles and load to be operated or moved and the highways for which the permit is requested. The Department of Transportation or local authority is authorized to issue or withhold such permit at its discretion or, if such permit is issued, to limit or prescribe the conditions of operation of such vehicle or vehicles; and the department or local authority may require such undertaking or other security as may be deemed necessary to compensate for any damage to any roadway or road structure.

(3) A permit may authorize a self-propelled truck crane operating off the Interstate Highway System to tow a motor vehicle which does not weigh more than 5,000 pounds if the combined weight of the crane and such motor vehicle does not exceed 95,000 pounds. Notwithstanding § 320.01(7) or (12), truck cranes that tow another motor vehicle under the provision of this subsection shall be taxed under the provisions of § 320.08(5)(b).

(4) (a) The Department of Transportation or local authority may issue permits that authorize commercial vehicles having weights not exceeding the limits of § 316.535(5), plus the scale tolerance provided in § 316.545(2), to operate off the interstate highway system on a designated route specified in the permit. Such permits shall be issued within 14 days after receipt of the request.

(b) The designated route shall avoid any bridge which the department determines cannot safely accommodate vehicles with a gross vehicle weight authorized in paragraph (a).

(c) Any vehicle or combination of vehicles which exceeds the weight limits authorized in paragraph (a) shall be unloaded, and all material so unloaded shall be cared for by the owner or operator.

(5) (a) The Department of Transportation may issue a wrecker special blanket permit to authorize a wrecker as defined in § 320.01 to tow a disabled motor vehicle as defined in § 320.01 where the combination of the wrecker and the disabled vehicle being towed exceeds the maximum weight limits as established by § 316.535.

(b) The Department of Transportation must supply the permitted wrecker with a map showing the routes on which the wrecker may safely tow disabled vehicles for all special permit classifications for which the wrecker applies.

(6) The Department of Transportation or such local authority is authorized to promulgate rules and regulations concerning the issuance of such permits and to charge a fee for the issuance thereof, which rules, regulations, and fees shall have the force and effect of law. The minimum fee for issuing any such permit shall be $5. The Department of Transportation may issue blanket permits for not more than 36 months. The department may charge an annualized fee for blanket permits not to exceed $500.

(7) Every special permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of any authority granting such permit. No person shall violate any of the terms or conditions of such special permit.

(8) The Department of Transportation may impose fines for the operation of a vehicle in violation of this section, as provided in subsection (10).

(9) The Department of Transportation may not refuse to issue a permit under this section to any person solely on the basis that such person allegedly violated this chapter or the rules promulgated hereunder until a final order is entered with regard to such violation pursuant to chapter 120.

(10) Whenever any motor vehicle, or the combination of a wrecker as defined in § 320.01 and a towed motor vehicle, exceeds any weight or dimensional criteria or special operational or safety stipulation contained in a special permit issued under the provisions of this section, the penalty assessed to the owner or operator shall be as follows:

(a) For violation of weight criteria contained in a special permit, the penalty per pound or portion thereof exceeding the permitted weight shall be as provided in § 316.545.

(b) For each violation of dimensional criteria in a special permit, the penalty shall be as provided in § 316.516 and penalties for multiple violations of dimensional criteria shall be cumulative except that the total penalty for the vehicle shall not exceed $1,000.

(c) For each violation of an operational or safety stipulation in a special permit, the penalty shall be an amount not to exceed $1,000 per violation and penalties for multiple violations of operational or safety stipulations shall be cumulative except that the total penalty for the vehicle shall not exceed $1,000.

(d) For violation of any special condition that has been prescribed in the rules of the Department of Transportation and declared on the permit, the vehicle shall be determined to be out of conformance with the permit and the permit shall be declared null and void for the vehicle, and weight and dimensional limits for the vehicle shall be as established in § 316.515 or § 316.535, whichever is applicable, and:

1. For weight violations, a penalty as provided in § 316.545 shall be assessed for those weights which exceed the limits thus established for the vehicle; and

2. For dimensional, operational, or safety violations, a penalty as established in paragraph (c) or § 316.516, whichever is applicable, shall be assessed for each nonconforming dimensional, operational, or safety violation and the penalties for multiple violations shall be cumulative for the vehicle.

(11) All penalties imposed by violations of this section shall be assessed, collected, and deposited in accordance with the provisions of § 316.545(6).

316.600. Health and sanitation hazards.

No motor vehicle, trailer or semitrailer shall be equipped with an open toilet or other device that may be a hazard from a health and sanitation standpoint. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

316.605. Licensing of vehicles.

(1) Every vehicle, at all times while driven, stopped, or parked upon any highways, roads, or streets of this state, shall be licensed in the name of the owner thereof in accordance with the laws of this state unless such vehicle is not required by the laws of this state to be licensed in this state and shall, except as otherwise provided in § 320.0706 for front-end registration license plates on truck tractors and § 320.086(5) which exempts display of license plates on described former military vehicles, display the license plate or both of the license plates assigned to it by the state, one on the rear and, if two, the other on the front of the vehicle, each to be securely fastened to the vehicle outside the main body of the vehicle not higher than 60 inches and not lower than 12 inches from the ground and no more than 24 inches to the left or right of the centerline of the vehicle, and in such manner as to prevent the plates from swinging, and all letters, numerals, printing, writing, and other identification marks upon the plates regarding the word "Florida," the registration decal, and the alphanumeric designation shall be clear and distinct and free from defacement, mutilation, grease, and other obscuring matter, so that they will be plainly visible and legible at all times 100 feet from the rear or front. Except as provided in § 316.2085(3), vehicle license plates shall be affixed and displayed in such a manner that the letters and numerals shall be read from left to right parallel to the ground. No vehicle license plate may be displayed in an inverted or reversed position or in such a manner that the letters and numbers and their proper sequence are not readily identifiable. Nothing shall be placed upon the face of a Florida plate except as permitted by law or by rule or regulation of a governmental agency. No license plates other than those furnished by the state shall be used. However, if the vehicle is not required to be licensed in this state, the license plates on such vehicle issued by another state, by a territory, possession, or district of the United States, or by a foreign country, substantially complying with the provisions hereof, shall be considered as complying with this chapter. A violation of this subsection is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

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

316.610. Safety of vehicle; inspection.

It is a violation of this chapter for any person to drive or move, or for the owner or his or her duly authorized representative to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or property, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter.

(1) Any police officer may at any time, upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, require the driver of the vehicle to stop and submit the vehicle to an inspection and such test with reference thereto as may be appropriate.

(2) In the event the vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment, and the continued operation would probably present an unduly hazardous operating condition, the officer may require the vehicle to be immediately repaired or removed from use. However, if continuous operation would not present unduly hazardous operating conditions, that is, in the case of equipment defects such as tailpipes, mufflers, windshield wipers, marginally worn tires, the officer shall give written notice to require proper repair and ad-

justment of same within 48 hours, excluding Sunday.

316.6105. Violations involving operation of motor vehicle in unsafe condition or without required equipment; procedure for disposition.

(1) In the event that a law enforcement officer issues a traffic citation for a violation of § 316.2935 or for the operation of a motor vehicle which is in an unsafe condition or which is not properly equipped as required pursuant to § 316.610, the law enforcement officer shall also issue an affidavit-of-compliance form.

(2) The person to whom the citation has been issued may mitigate the civil penalty by making the necessary repair and presenting the vehicle to any local police department or sheriff's department in this state for inspection within 30 days after the issuance of the citation.

(3) The police or sheriff's department shall make available a person or persons to confirm that the defect has been corrected. If the correction has been made, such employee shall execute the affidavit-of-compliance form in a manner established by the Department of Highway Safety and Motor Vehicles and return it to the person who received the citation. The person who received the citation shall, upon receipt of the executed affidavit of compliance, pay the appropriate fine to the law enforcement agency pursuant to § 318.18(2)(c) thereby completing the affidavit of compliance. The affidavit of compliance shall not be construed by the courts as a warranty of the mechanical condition of the motor vehicle. Neither the person who confirms that a defect has been corrected nor the department by which he or she is employed shall be liable in damages for any defect, failure, or improper functioning of any item of equipment on such motor vehicle.

(4) The person to whom the citation was issued shall mail or present the traffic citation and the affidavit-of-compliance form to the clerk of the court where the traffic citation was issued and shall thereupon pay the appropriate fine pursuant to § 318.18(2)(c).

(5) In the event that the person to whom the traffic citation has been issued chooses not to correct the defect, the procedure for the collection of the fine and any other penalties shall proceed as provided by law.

(6) This section does not apply to commercial motor vehicles as defined in § 316.003(66) or transit buses owned or operated by a governmental entity.

316.613. Child restraint requirements.

(1) (a) Every operator of a motor vehicle as defined in this section, while transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, shall, if the child is 5 years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device. For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat. For children aged 4 through 5 years, a separate carrier, an integrated child seat, or a seat belt may be used.

(b) The department shall provide notice of the requirement for child restraint devices, which notice shall accompany the delivery of each motor vehicle license tag.

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

(a) A school bus as defined in § 316.003(45).

(b) A bus used for the transportation of persons for compensation, other than a bus regularly used to transport children to or from school, as defined in § 316.615(1)(b), or in conjunction with school activities.

(c) A farm tractor or implement of husbandry.

(d) A truck having a gross vehicle weight rating of more than 26,000 pounds.

(e) A motorcycle, moped, or bicycle.

(3) The failure to provide and use a child passenger restraint shall not be considered comparative negligence, nor shall such failure be admissible as evidence in the trial of any civil action with regard to negligence.

(4) It is the legislative intent that all state, county, and local law enforcement agencies, and safety councils, in recognition of the problems with child death and injury from unrestrained occupancy in motor vehicles, conduct a continuing safety and public awareness campaign as to the magnitude of the problem.

(5) Any person who violates this section commits a moving violation, punishable as provided in chapter 318 and shall have 3 points assessed against his or her driver license as set forth in § 322.27. In lieu of the penalty specified in § 318.18 and the assessment of points, a person who violates this section may elect, with the court's approval, to participate in a child restraint safety pro-

gram approved by the chief judge of the circuit in which the violation occurs, and, upon completing such program, the penalty specified in chapter 318 and associated costs may be waived at the court's discretion and the assessment of points shall be waived. The child restraint safety program must use a course approved by the Department of Highway Safety and Motor Vehicles, and the fee for the course must bear a reasonable relationship to the cost of providing the course.

(6) The child restraint requirements imposed by this section do not apply to a chauffeur-driven taxi, limousine, sedan, van, bus, motor coach, or other passenger vehicle if the operator and the motor vehicle are hired and used for the transportation of persons for compensation. It is the obligation and responsibility of the parent, guardian, or other person responsible for a child's welfare, as defined in § 39.01(47), to comply with the requirements of this section.

316.6135. Leaving children unattended or unsupervised in motor vehicles; penalty; authority of law enforcement officer.

(1) A parent, legal guardian, or other person responsible for a child younger than 6 years of age may not leave the child unattended or unsupervised in a motor vehicle:

(a) For a period in excess of 15 minutes;

(b) For any period of time if the motor of the vehicle is running, the health of the child is in danger, or the child appears to be in distress.

(2) Any person who violates the provisions of paragraph (1)(a) commits a misdemeanor of the second degree punishable as provided in § 775.082 or § 775.083.

(3) Any person who violates the provisions of paragraph (1)(b) is guilty of a noncriminal traffic infraction, punishable by a fine not less than $50 and not more than $500.

(4) Any person who violates subsection (1) and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to a child commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(5) Any law enforcement officer who observes a child left unattended or unsupervised in a motor vehicle in violation of subsection (1) may use whatever means are reasonably necessary to protect the minor child and to remove the child from the vehicle.

(6) If the child is removed from the immediate area, notification should be placed on the vehicle.

(7) The child shall be remanded to the custody of the Department of Children and Family Services pursuant to chapter 39, unless the law enforcement officer is able to locate the parents or legal guardian or other person responsible for the child.

316.614. Safety belt usage.

(1) This section may be cited as the "Florida Safety Belt Law."

(2) It is the policy of this state that enactment of this section is intended to be compatible with the continued support by the state for federal safety standards requiring automatic crash protection, and the enactment of this section should not be used in any manner to rescind or delay the implementation of the federal automatic crash protection system requirements of Federal Motor Safety Standard 208 as set forth in S4.1.2.1 thereof, as entered on July 17, 1984, for new cars.

(3) As used in this section:

(a) "Motor vehicle" means a motor vehicle as defined in § 316.003 which is operated on the roadways, streets, and highways of this state. The term does not include:

1. A school bus.

2. A bus used for the transportation of persons for compensation.

3. A farm tractor or implement of husbandry.

4. A truck having a gross vehicle weight rating of more than 26,000 pounds.

5. A motorcycle, moped, or bicycle.

(b) "Safety belt" means a seat belt assembly that meets the requirements established under Federal Motor Vehicle Safety Standard No. 208, 49 C.F.R. § 571.208.

(c) "Restrained by a safety belt" means being restricted by an appropriately adjusted safety belt which is properly fastened at all times when a motor vehicle is in motion.

(4) It is unlawful for any person:

(a) To operate a motor vehicle in this state unless each passenger and the operator of the vehicle under the age of 18 years are restrained by a safety belt or by a child restraint device pursuant to § 316.613, if applicable; or

(b) To operate a motor vehicle in this state unless the person is restrained by a safety belt.

(5) It is unlawful for any person 18 years of age or older to be a passenger in the front seat of a motor vehicle unless such person is restrained by a safety belt when the vehicle is in motion.

(6) (a) Neither a person who is certified by a physician as having a medical condition that causes the use of a safety belt to be in-

appropriate or dangerous nor an employee of a newspaper home delivery service while in the course of his or her employment delivering newspapers on home delivery routes is required to be restrained by a safety belt.

(b) An employee of a solid waste or recyclable collection service is not required to be restrained by a safety belt while in the course of employment collecting solid waste or recyclables on designated routes.

(c) The requirements of this section do not apply to the living quarters of a recreational vehicle or a space within a truck body primarily intended for merchandise or property.

(d) The requirements of this section do not apply to motor vehicles that are not required to be equipped with safety belts under federal law.

(7) It is the intent of the Legislature that all state, county, and local law enforcement agencies, safety councils, and public school systems, in recognition of the fatalities and injuries attributed to unrestrained occupancy of motor vehicles, shall conduct a continuing safety and public awareness campaign as to the magnitude of the problem and adopt programs designed to encourage compliance with the safety belt usage requirements of this section.

(8) Any person who violates the provisions of this section commits a nonmoving violation, punishable as provided in chapter 318.

(9) By January 1, 2006, each law enforcement agency in this state shall adopt departmental policies to prohibit the practice of racial profiling. When a law enforcement officer issues a citation for a violation of this section, the law enforcement officer must record the race and ethnicity of the violator. All law enforcement agencies must maintain such information and forward the information to the department in a form and manner determined by the department. The department shall collect this information by jurisdiction and annually report the data to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must show separate statewide totals for the state's county sheriffs and municipal law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies.

(10) A violation of the provisions of this section shall not constitute negligence per se, nor shall such violation be used as prima facie evidence of negligence or be considered in mitigation of damages, but such violation may be considered as evidence of comparative negligence, in any civil action.

316.622. Farm labor vehicles.

(1) Each owner or operator of a farm labor vehicle that is operated on the public highways of this state shall ensure that such vehicle conforms to vehicle safety standards prescribed by the Secretary of Labor under § 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1841(b), and other applicable federal and state safety standards.

(2) On or after January 1, 2008, a farm labor vehicle having a gross vehicle weight rating of 10,000 pounds or less must be equipped at each passenger position with a seat belt assembly that meets the requirements established under Federal Motor Vehicle Safety Standard No. 208, 49 C.F.R. § 571.208.

(3) A farm labor contractor may not transport migrant or seasonal farm workers in a farm labor vehicle unless the display sticker described in § 450.33 is clearly displayed on the vehicle.

(4) The owner or operator of a farm labor vehicle must prominently display in the vehicle standardized notification instructions requiring passengers to fasten their seat belts. The Department of Highway Safety and Motor Vehicles shall create standard notification instructions.

(5) Failure of any migrant or seasonal farm worker to use a seat belt provided by the owner of a farm labor vehicle under this section does not constitute negligence per se, and such failure may not be used as prima facie evidence of negligence or be considered in mitigation of damages, but such failure may be considered as evidence of comparative negligence in a civil action.

(6) Failure of any owner or operator of a farm labor vehicle to require that all passengers be restrained by a safety belt when the vehicle is in motion may not be considered as evidence of negligence in any civil action, if such vehicle is otherwise in compliance with this section.

(7) A violation of this section is a noncriminal traffic infraction, punishable as provided in § 318.18(16).

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

316.635. Courts having jurisdiction over traffic violations; powers relating to custody and detention of minors.

(1) A court which has jurisdiction over traffic violations shall have original jurisdic-

tion in the case of any minor who is alleged to have committed a violation of law or of a county or municipal ordinance pertaining to the operation of a motor vehicle; however, any traffic offense that is punishable by law as a felony shall be under the jurisdiction of the circuit court.

(2) If a minor is arrested for the commission of a criminal traffic offense and transportation is necessary, the minor shall not be placed in any police car or other vehicle which at the same time contains an adult under arrest, except upon special order of the circuit court. However, if the minor is alleged to have participated with an adult in the same offense or transaction, the minor may be transported in the same vehicle with the adult.

(3) If a minor is taken into custody for a criminal traffic offense or a violation of chapter 322 and the minor does not demand to be taken before a trial court judge, or a Civil Traffic Infraction Hearing Officer, who has jurisdiction over the offense or violation, the arresting officer or booking officer shall immediately notify, or cause to be notified, the minor's parents, guardian, or responsible adult relative of the action taken. After making every reasonable effort to give notice, the arresting officer or booking officer may:

(a) Issue a notice to appear pursuant to chapter 901 and release the minor to a parent, guardian, responsible adult relative, or other responsible adult;

(b) Issue a notice to appear pursuant to chapter 901 and release the minor pursuant to § 903.06;

(c) Issue a notice to appear pursuant to chapter 901 and deliver the minor to an appropriate substance abuse treatment or rehabilitation facility or refer the minor to an appropriate medical facility as provided in § 901.29. If the minor cannot be delivered to an appropriate substance abuse treatment or rehabilitation facility or medical facility, the arresting officer may deliver the minor to an appropriate intake office of the Department of Juvenile Justice, which shall take custody of the minor and make any appropriate referrals; or

(d) If the violation constitutes a felony and the minor cannot be released pursuant to § 903.03, transport and deliver the minor to an appropriate Department of Juvenile Justice intake office. Upon delivery of the minor to the intake office, the department shall assume custody and proceed pursuant to chapter 984 or chapter 985.

If action is not taken pursuant to paragraphs (a)-(d), the minor shall be delivered to the Department of Juvenile Justice, and the department shall make every reasonable effort to contact the parents, guardian, or responsible adult relative to take custody of the minor. If there is no parent, guardian, or responsible adult relative available, the department may retain custody of the minor for up to 24 hours.

(4) A minor who willfully fails to appear before any court or judicial officer as required by written notice to appear is guilty of contempt of court. Upon a finding by a court, after notice and a hearing, that a minor is in contempt of court for willful failure to appear pursuant to a valid notice to appear, the court may:

(a) For a first offense, order the minor to serve up to 5 days in a staff-secure shelter as defined in chapter 984 or chapter 985 or, if space in a staff-secure shelter is unavailable, in a secure juvenile detention center.

(b) For a second or subsequent offense, the court may order a minor to serve up to 15 days in a staff-secure shelter or, if space in a staff-secure shelter is unavailable, in a secure juvenile detention center.

316.640. Enforcement.

The enforcement of the traffic laws of this state is vested as follows:

(1) STATE.—

(a) 1. a. The Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles; the Division of Law Enforcement of the Fish and Wildlife Conservation Commission; and the agents, inspectors, and officers of the Department of Law Enforcement each have authority to enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel by motor vehicle.

b. University police officers may enforce all of the traffic laws of this state when violations occur on or within 1,000 feet of any property or facilities that are under the guidance, supervision, regulation, or control of a state university, a direct-support organization of such state university, or any other organization controlled by the state university or a direct-support organization of the state university, or when such violations occur within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to § 23.1225(1). Traffic laws may also be enforced off-campus when hot pursuit originates on or within 1,000 feet of any such

property or facilities, or as agreed upon in accordance with the mutual aid agreement.

c. Florida College System institution police officers may enforce all the traffic laws of this state only when such violations occur on or within 1,000 feet of any property or facilities that are under the guidance, supervision, regulation, or control of the Florida College System institution, or when such violations occur within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to § 23.1225. Traffic laws may also be enforced off-campus when hot pursuit originates on or within 1,000 feet of any such property or facilities, or as agreed upon in accordance with the mutual aid agreement.

d. Police officers employed by an airport authority may enforce all of the traffic laws of this state only when such violations occur on any property or facilities that are owned or operated by an airport authority.

I. An airport authority may employ as a parking enforcement specialist any individual who successfully completes a training program established and approved by the Criminal Justice Standards and Training Commission for parking enforcement specialists but who does not otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary or part-time officers under § 943.12. This sub-sub-subparagraph may not be construed to permit the carrying of firearms or other weapons, nor shall such parking enforcement specialist have arrest authority.

II. A parking enforcement specialist employed by an airport authority may enforce all state, county, and municipal laws and ordinances governing parking only when such violations are on property or facilities owned or operated by the airport authority employing the specialist, by appropriate state, county, or municipal traffic citation.

e. The Office of Agricultural Law Enforcement of the Department of Agriculture and Consumer Services may enforce traffic laws of this state.

f. School safety officers may enforce all of the traffic laws of this state when such violations occur on or about any property or facilities that are under the guidance, supervision, regulation, or control of the district school board.

2. An agency of the state as described in subparagraph 1. is prohibited from establishing a traffic citation quota. A violation of this subparagraph is not subject to the penalties provided in chapter 318.

3. Any disciplinary action taken or performance evaluation conducted by an agency of the state as described in subparagraph 1. of a law enforcement officer's traffic enforcement activity must be in accordance with written work-performance standards. Such standards must be approved by the agency and any collective bargaining unit representing such law enforcement officer. A violation of this subparagraph is not subject to the penalties provided in chapter 318.

4. The Division of the Florida Highway Patrol may employ as a traffic accident investigation officer any individual who successfully completes instruction in traffic accident investigation and court presentation through the Selective Traffic Enforcement Program as approved by the Criminal Justice Standards and Training Commission and funded through the National Highway Traffic Safety Administration or a similar program approved by the commission, but who does not necessarily meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary law enforcement officers under chapter 943. Any such traffic accident investigation officer who makes an investigation at the scene of a traffic accident may issue traffic citations, based upon personal investigation, when he or she has reasonable and probable grounds to believe that a person who was involved in the accident committed an offense under this chapter, chapter 319, chapter 320, or chapter 322 in connection with the accident. This subparagraph does not permit the officer to carry firearms or other weapons, and such an officer does not have authority to make arrests.

(b) 1. The Department of Transportation has authority to enforce on all the streets and highways of this state all laws applicable within its authority.

2. a. The Department of Transportation shall develop training and qualifications standards for toll enforcement officers whose sole authority is to enforce the payment of tolls pursuant to § 316.1001. Nothing in this subparagraph shall be construed to permit the carrying of firearms or other weapons, nor shall a toll enforcement officer have arrest authority.

b. For the purpose of enforcing § 316.1001, governmental entities, as defined in § 334.03, which own or operate a toll facility may employ independent contractors or designate employees as toll enforcement officers; how-

ever, any such toll enforcement officer must successfully meet the training and qualifications standards for toll enforcement officers established by the Department of Transportation.

3. For the purpose of enforcing § 316.0083, the department may designate employees as traffic infraction enforcement officers. A traffic infraction enforcement officer must successfully complete instruction in traffic enforcement procedures and court presentation through the Selective Traffic Enforcement Program as approved by the Division of Criminal Justice Standards and Training of the Department of Law Enforcement, or through a similar program, but may not necessarily otherwise meet the uniform minimum standards established by the Criminal Justice Standards and Training Commission for law enforcement officers or auxiliary law enforcement officers under § 943.13. This subparagraph does not authorize the carrying of firearms or other weapons by a traffic infraction enforcement officer and does not authorize a traffic infraction enforcement officer to make arrests. The department's traffic infraction enforcement officers must be physically located in the state.

(2) COUNTIES.—

(a) The sheriff's office of each of the several counties of this state shall enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the county wherever the public has the right to travel by motor vehicle. In addition, the sheriff's office may be required by the county to enforce the traffic laws of this state on any private or limited access road or roads over which the county has jurisdiction pursuant to a written agreement entered into under § 316.006(3)(b).

(b) The sheriff's office of each county may employ as a traffic crash investigation officer any individual who successfully completes instruction in traffic crash investigation and court presentation through the Selective Traffic Enforcement Program (STEP) as approved by the Criminal Justice Standards and Training Commission and funded through the National Highway Traffic Safety Administration (NHTSA) or a similar program approved by the commission, but who does not necessarily otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary law enforcement officers under chapter 943. Any such traffic crash investigation officer who makes an investigation at the scene of a traffic crash may issue traffic citations when, based upon personal investigation, he or she has reasonable and probable grounds to believe that a person who was involved in the crash has committed an offense under this chapter, chapter 319, chapter 320, or chapter 322 in connection with the crash. This paragraph does not permit the carrying of firearms or other weapons, nor do such officers have arrest authority.

(c) The sheriff's office of each of the several counties of this state may employ as a parking enforcement specialist any individual who successfully completes a training program established and approved by the Criminal Justice Standards and Training Commission for parking enforcement specialists, but who does not necessarily otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary or part-time officers under § 943.12.

1. A parking enforcement specialist employed by the sheriff's office of each of the several counties of this state is authorized to enforce all state and county laws, ordinances, regulations, and official signs governing parking within the unincorporated areas of the county by appropriate state or county citation and may issue such citations for parking in violation of signs erected pursuant to § 316.006(3) at parking areas located on property owned or leased by a county, whether or not such areas are within the boundaries of a chartered municipality.

2. A parking enforcement specialist employed pursuant to this subsection shall not carry firearms or other weapons or have arrest authority.

(3) MUNICIPALITIES.—

(a) The police department of each chartered municipality shall enforce the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the municipality wherever the public has the right to travel by motor vehicle. In addition, the police department may be required by a municipality to enforce the traffic laws of this state on any private or limited access road or roads over which the municipality has jurisdiction pursuant to a written agreement entered into under § 316.006(2)(b). However, nothing in this chapter shall affect any law, general, special, or otherwise, in effect on January 1, 1972, relating to "hot pursuit" without the boundaries of the municipality.

(b) The police department of a chartered municipality may employ as a traffic crash investigation officer any individual who successfully completes instruction in traffic

crash investigation and court presentation through the Selective Traffic Enforcement Program (STEP) as approved by the Criminal Justice Standards and Training Commission and funded through the National Highway Traffic Safety Administration (NHTSA) or a similar program approved by the commission, but who does not otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary law enforcement officers under chapter 943. Any such traffic crash investigation officer who makes an investigation at the scene of a traffic crash is authorized to issue traffic citations when, based upon personal investigation, he or she has reasonable and probable grounds to believe that a person involved in the crash has committed an offense under the provisions of this chapter, chapter 319, chapter 320, or chapter 322 in connection with the crash. This paragraph does not permit the carrying of firearms or other weapons, nor do such officers have arrest authority.

(c) 1. A chartered municipality or its authorized agency or instrumentality may employ as a parking enforcement specialist any individual who successfully completes a training program established and approved by the Criminal Justice Standards and Training Commission for parking enforcement specialists, but who does not otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary or part-time officers under § 943.12.

2. A parking enforcement specialist employed by a chartered municipality or its authorized agency or instrumentality is authorized to enforce all state, county, and municipal laws and ordinances governing parking within the boundaries of the municipality employing the specialist, by appropriate state, county, or municipal traffic citation.

3. A parking enforcement specialist employed pursuant to this subsection may not carry firearms or other weapons or have arrest authority.

(4) (a) Any sheriff's department, or any police department of a municipality, may employ as a traffic control officer any individual who successfully completes at least 8 hours of instruction in traffic control procedures through a program approved by the Division of Criminal Justice Standards and Training of the Department of Law Enforcement, or through a similar program offered by the local sheriff's department or police department, but who does not necessarily otherwise meet the uniform minimum standards established by the Criminal Justice Standards and Training Commission for law enforcement officers or auxiliary law enforcement officers under § 943.13. A traffic control officer employed pursuant to this subsection may direct traffic or operate a traffic control device only at a fixed location and only upon the direction of a fully qualified law enforcement officer; however, it is not necessary that the traffic control officer's duties be performed under the immediate supervision of a fully qualified law enforcement officer.

(b) In the case of a special event or activity in relation to which a nongovernmental entity is paying for traffic control on public streets, highways, or roads, traffic control officers may be employed to perform such traffic control responsibilities only when off-duty, full-time law enforcement officers, as defined in § 943.10(1), are unavailable to perform those responsibilities. However, this paragraph may not be construed to limit the use of traffic infraction enforcement officers for traffic enforcement purposes.

(c) This subsection does not permit the carrying of firearms or other weapons, nor do traffic control officers have arrest authority.

(5) (a) Any sheriff's department or police department of a municipality may employ, as a traffic infraction enforcement officer, any individual who successfully completes instruction in traffic enforcement procedures and court presentation through the Selective Traffic Enforcement Program as approved by the Division of Criminal Justice Standards and Training of the Department of Law Enforcement, or through a similar program, but who does not necessarily otherwise meet the uniform minimum standards established by the Criminal Justice Standards and Training Commission for law enforcement officers or auxiliary law enforcement officers under § 943.13. Any such traffic infraction enforcement officer who observes the commission of a traffic infraction or, in the case of a parking infraction, who observes an illegally parked vehicle may issue a traffic citation for the infraction when, based upon personal investigation, he or she has reasonable and probable grounds to believe that an offense has been committed which constitutes a noncriminal traffic infraction as defined in § 318.14. In addition, any such traffic infraction enforcement officer may issue a traffic citation under § 316.0083. For purposes of enforcing § 316.0083, any sheriff's department or police department of a municipality may designate employees as traffic infraction

enforcement officers. The traffic infraction enforcement officers must be physically located in the county of the respective sheriff's or police department.

(b) The traffic infraction enforcement officer shall be employed in relationship to a selective traffic enforcement program at a fixed location or as part of a crash investigation team at the scene of a vehicle crash or in other types of traffic infraction enforcement under the direction of a fully qualified law enforcement officer; however, it is not necessary that the traffic infraction enforcement officer's duties be performed under the immediate supervision of a fully qualified law enforcement officer.

(c) This subsection does not permit the carrying of firearms or other weapons, nor do traffic infraction enforcement officers have arrest authority other than the authority to issue a traffic citation as provided in this subsection.

(6) MOBILE HOME PARK RECREATION DISTRICTS.—Notwithstanding subsection (2) or subsection (3), the sheriff's office of each of the several counties of this state and the police department of each chartered municipality have authority, but are not required, to enforce the traffic laws of this state on any way or place used for vehicular traffic on a controlled access basis within a mobile home park recreation district which has been created under § 418.30 and the recreational facilities of which district are open to the general public.

(7) CONSTRUCTION OF CHAPTER 87-88, LAWS OF FLORIDA.—For purposes of traffic control and enforcement, nothing in chapter 87-88, Laws of Florida, shall be construed to classify any road which has been dedicated or impliedly dedicated for public use, and which has been constructed and is open to the use of the public for vehicular traffic, as a private road or driveway.

(8) TRAFFIC ENFORCEMENT AGENCY.—Any agency or governmental entity designated in subsection (1), subsection (2), or subsection (3), including a university, a Florida College System institution, a school board, or an airport authority, is a traffic enforcement agency for purposes of § 316.650.

316.645. Arrest authority of officer at scene of a traffic crash.

A police officer who makes an investigation at the scene of a traffic crash may arrest any driver of a vehicle involved in the crash when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of this chapter, chapter 320, or chapter 322 in connection with the crash.

316.646. Security required; proof of security and display thereof.

(1) Any person required by § 324.022 to maintain property damage liability security, required by § 324.023 to maintain liability security for bodily injury or death, or required by § 627.733 to maintain personal injury protection security on a motor vehicle shall have in his or her immediate possession at all times while operating such motor vehicle proper proof of maintenance of the required security.

(a) Such proof shall be in a uniform paper or electronic format, as prescribed by the department, a valid insurance policy, an insurance policy binder, a certificate of insurance, or such other proof as may be prescribed by the department.

(b) 1. The act of presenting to a law enforcement officer an electronic device displaying proof of insurance in an electronic format does not constitute consent for the officer to access any information on the device other than the displayed proof of insurance.

2. The person who presents the device to the officer assumes the liability for any resulting damage to the device.

(2) If, upon a comparison of the vehicle registration certificate or other evidence of registration or ownership with the operator's driver license or other evidence of personal identity, it appears to a law enforcement officer or other person authorized to issue traffic citations that the operator is also the owner or registrant of the vehicle, upon demand of the law enforcement officer or other person authorized to issue traffic citations the operator shall display proper proof of maintenance of security as specified by subsection (1).

(3) Any person who violates this section commits a nonmoving traffic infraction subject to the penalty provided in chapter 318 and shall be required to furnish proof of security as provided in this section. If any person charged with a violation of this section fails to furnish proof at or before the scheduled court appearance date that security was in effect at the time of the violation, the court shall, upon conviction, notify the department to suspend the registration and driver license of such person. If the court fails to order the suspension of the person's registration and driver license for a conviction of this section at the time of sentencing, the department shall, upon receiving notice of the conviction from the court, suspend the person's

registration and driver license for the violation of this section. Such license and registration may be reinstated only as provided in § 324.0221.

(4) Any person presenting proof of insurance as required in subsection (1) who knows that the insurance as represented by such proof of insurance is not currently in force is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(5) The department shall adopt rules to administer this section.

316.650. Traffic citations.

(1) (a) The department shall prepare and supply to every traffic enforcement agency in this state an appropriate form traffic citation that contains a notice to appear, is issued in prenumbered books, meets the requirements of this chapter or any laws of this state regulating traffic, and is consistent with the state traffic court rules and the procedures established by the department. The form shall include a box that is to be checked by the law enforcement officer when the officer believes that the traffic violation or crash was due to aggressive careless driving as defined in § 316.1923. The form shall also include a box that is to be checked by the law enforcement officer when the officer writes a uniform traffic citation for a violation of § 316.074(1) or § 316.075(1)(c)1. as a result of the driver failing to stop at a traffic signal.

(b) The department shall prepare, and supply to every traffic enforcement agency in the state, an appropriate affidavit-of-compliance form that shall be issued along with the form traffic citation for any violation of § 316.610 and that indicates the specific defect needing to be corrected. However, such affidavit of compliance shall not be issued in the case of a violation of § 316.610 by a commercial motor vehicle as defined in § 316.003(66). Such affidavit-of-compliance form shall be distributed in the same manner and to the same parties as is the form traffic citation.

(c) Notwithstanding paragraphs (a) and (b), a traffic enforcement agency may produce uniform traffic citations by electronic means. Such citations must be consistent with the state traffic court rules and the procedures established by the department and must be appropriately numbered and inventoried. Affidavit-of-compliance forms may also be produced by electronic means.

(d) The department must distribute to every traffic enforcement agency and to any others who request it, a traffic infraction reference guide describing the class of the traffic infraction, the penalty for the infraction, the points to be assessed on a driver's record, and any other information necessary to describe a violation and the penalties therefor.

(2) Courts, enforcement agencies, and the department are jointly responsible to account for all uniform traffic citations in accordance with rules and procedures promulgated by the department.

(3) (a) Except for a traffic citation issued pursuant to § 316.1001 or § 316.0083, each traffic enforcement officer, upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any municipality or town, shall deposit the original traffic citation or, in the case of a traffic enforcement agency that has an automated citation issuance system, the chief administrative officer shall provide by an electronic transmission a replica of the citation data to a court having jurisdiction over the alleged offense or with its traffic violations bureau within 5 days after issuance to the violator.

(b) If a traffic citation is issued pursuant to § 316.1001, a traffic enforcement officer may deposit the original traffic citation or, in the case of a traffic enforcement agency that has an automated citation system, may provide by an electronic transmission a replica of the citation data to a court having jurisdiction over the alleged offense or with its traffic violations bureau within 45 days after the date of issuance of the citation to the violator. If the person cited for the violation of § 316.1001 makes the election provided by § 318.14(12) and pays the $25 fine, or such other amount as imposed by the governmental entity owning the applicable toll facility, plus the amount of the unpaid toll that is shown on the traffic citation directly to the governmental entity that issued the citation, or on whose behalf the citation was issued, in accordance with § 318.14(12), the traffic citation will not be submitted to the court, the disposition will be reported to the department by the governmental entity that issued the citation, or on whose behalf the citation was issued, and no points will be assessed against the person's driver license.

(c) If a traffic citation is issued under § 316.0083, the traffic infraction enforcement officer shall provide by electronic transmission a replica of the traffic citation data to the court having jurisdiction over the alleged offense or its traffic violations bureau within 5 days after the date of issuance of the traffic citation to the violator. If a hearing is re-

quested, the traffic infraction enforcement officer shall provide a replica of the traffic notice of violation data to the clerk for the local hearing officer having jurisdiction over the alleged offense within 14 days.

(4) The chief administrative officer of every traffic enforcement agency shall require the return to him or her of the officer-agency copy of every traffic citation issued by an officer under the chief administrative officer's supervision to an alleged violator of any traffic law or ordinance and all copies of every traffic citation that has been spoiled or upon which any entry has been made and not issued to an alleged violator. In the case of a traffic enforcement agency that has an automated citation issuance system, the chief administrative officer shall require the return of all electronic traffic citation records.

(5) Upon the deposit of the original traffic citation or upon an electronic transmission of a replica of citation data of the traffic citation with respect to traffic enforcement agencies that have an automated citation issuance system with a court having jurisdiction over the alleged offense or with its traffic violations bureau, the original citation, the electronic citation containing a replica of citation data, or a copy of such traffic citation may be disposed of only by trial in the court or other official action by a judge of the court, including forfeiture of the bail, or by the deposit of sufficient bail with, or payment of a fine to, the traffic violations bureau by the person to whom such traffic citation has been issued by the traffic enforcement officer.

(6) The chief administrative officer shall transmit, on a form approved by the department, within 5 days after submission of the original, groups of issued citations and transmittal data to the court. Batches of electronic citations containing a replica of citation data may be transmitted to the court in an electronic fashion, in a format prescribed by the department within 5 days after issuance to the violator.

(7) The chief administrative officer shall also maintain or cause to be maintained in connection with every traffic citation issued by an officer under his or her supervision a record of the disposition of the charge by the court or its traffic violations bureau in which the original or copy of the traffic citation or electronic citation was deposited.

(8) It is unlawful and official misconduct for any traffic enforcement officer or other officer or public employee to dispose of a traffic citation or copies thereof or of the record of the issuance of the same in a manner other than as required herein.

(9) Such citations shall not be admissible evidence in any trial, except when used as evidence of falsification, forgery, uttering, fraud, or perjury, or when used as physical evidence resulting from a forensic examination of the citation.

(10) If a uniform traffic citation has not been issued with respect to a criminal traffic offense, or with respect to an offense that requires mandatory revocation of the driver license or driving privilege pursuant to § 322.26 upon conviction of such offense, and the prosecution is by affidavit, information, or indictment, the prosecutor shall direct the arresting officer to prepare a citation. In the absence of an arresting officer, the prosecutor shall prepare the citation. For the purpose of this subsection, the term "arresting officer" means the law enforcement officer who apprehended or took into custody the alleged offender.

(11) Driver information contained in a uniform traffic citation, which includes but is not limited to, the accused person's name and address, shall not be used for commercial solicitation purposes. However, the use of such driver information contained in a uniform traffic citation shall not be considered a commercial purpose when used for publication in a newspaper or other news periodical, when used for broadcast by radio or television, or when used to inform a person of the availability of driver safety training.

316.655. Penalties.

(1) A violation of any of the provisions of this chapter, except those violations with a specific criminal charge, as enumerated in § 318.17, are infractions, as defined in § 318.13(3). Except for violations of § 316.302, infractions of this chapter are punishable as provided in chapter 318. Any person convicted of a violation of or otherwise found to be in violation of § 316.063, § 316.3025, § 316.516, § 316.545, or § 316.550 shall be punished as specifically provided in that section.

(2) A driver convicted of a violation of any offense prohibited by this chapter or any other law of this state regulating motor vehicles, which resulted in an accident, may have his or her driving privileges revoked or suspended by the court if the court finds such revocation or suspension warranted by the totality of the circumstances resulting in the conviction and the need to provide for the maximum safety for all persons who travel on or who are otherwise affected by the use of the highways of the state. In determining

whether suspension or revocation is appropriate, the court shall consider all pertinent factors, including, but not limited to, such factors as the extent and nature of the driver's violation of this chapter, the number of persons killed or injured as the result of the driver's violation of this chapter, and the extent of any property damage resulting from the driver's violation of this chapter.

316.656. Mandatory adjudication; prohibition against accepting plea to lesser included offense.

(1) Notwithstanding the provisions of § 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of § 316.193, for manslaughter resulting from the operation of a motor vehicle, or for vehicular homicide.

(2) (a) No trial judge may accept a plea of guilty to a lesser offense from a person charged under the provisions of this act who has been given a breath or blood test to determine blood or breath alcohol content, the results of which show a blood or breath alcohol content by weight of 0.15 percent or more.

(b) No trial judge may accept a plea of guilty to a lesser offense from a person charged with a violation of § 316.193(3), manslaughter resulting from the operation of a motor vehicle, or vehicular homicide.

CHAPTER 318
DISPOSITION OF TRAFFIC INFRACTIONS

318.13. Definitions.

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

(1) "Department" means Department of Highway Safety and Motor Vehicles, defined in § 20.24, or the appropriate division thereof.

(2) "Suspension" means that a licensee's privilege to drive a motor vehicle is temporarily withdrawn.

(3) "Infraction" means a noncriminal violation that may require community service hours under § 316.027(4), but is not punishable by incarceration and for which there is no right to a trial by jury or a right to court-appointed counsel.

(4) "Official" means any judge authorized by law to preside over a court or hearing adjudicating traffic infractions.

(5) "Officer" means any law enforcement officer charged with and acting under his or her authority to arrest persons suspected of, or known to be, violating statutes or ordinances regulating traffic or the operation or equipment of vehicles. "Officer" includes any individual employed by a sheriff's department or the police department of a chartered municipality who is acting as a traffic infraction enforcement officer as provided in § 316.640.

318.14. Noncriminal traffic infractions; exception; procedures.

(1) Except as provided in §§ 318.17 and 320.07(3)(c), any person cited for a violation of chapter 316, § 320.0605, § 320.07(3)(a) or (b), § 322.065, § 322.15(1), § 322.16(2) or (3), § 322.1615, § 322.19, or § 1006.66(3) is charged with a noncriminal infraction and must be cited for such an infraction and cited to appear before an official. If another person dies as a result of the noncriminal infraction, the person cited may be required to perform 120 community service hours under § 316.027(4), in addition to any other penalties.

(2) Except as provided in §§ 316.1001(2) and 316.0083, any person cited for a violation requiring a mandatory hearing listed in § 318.19 or any other criminal traffic violation listed in chapter 316 must sign and accept a citation indicating a promise to appear. The officer may indicate on the traffic citation the time and location of the scheduled hearing and must indicate the applicable civil penalty established in § 318.18. For all other infractions under this section, except for infractions under § 316.1001, the officer must certify by electronic, electronic facsimile, or written signature that the citation was delivered to the person cited. This certification is prima facie evidence that the person cited was served with the citation.

(3) Any person who willfully refuses to accept and sign a summons as provided in subsection (2) commits a misdemeanor of the second degree.

(4) (a) Except as provided in subsection (12), any person charged with a noncriminal infraction under this section who does not elect to appear shall, within 30 days after the date of issuance of the citation:

1. Pay the civil penalty and delinquent fee, if applicable, either by mail or in person; or

2. Enter into a payment plan in accordance with § 28.246 with the clerk of the court to pay the civil penalty and delinquent fee, if applicable.

(b) If the person cited follows the procedures in paragraph (a), he or she shall be

deemed to have admitted the infraction and to have waived his or her right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings. Any person who is cited for a violation of § 320.0605 or § 322.15(1), or subject to a penalty under § 320.07(3)(a) or (b) or § 322.065, and who makes an election under this subsection shall submit proof of compliance with the applicable section to the clerk of the court. For the purposes of this subsection, proof of compliance consists of a valid driver's license or a valid registration certificate.

(5) Any person electing to appear before the designated official or who is required so to appear shall be deemed to have waived his or her right to the civil penalty provisions of § 318.18. The official, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the official may impose a civil penalty not to exceed $500, except that in cases involving unlawful speed in a school zone or involving unlawful speed in a construction zone, the civil penalty may not exceed $1,000; or require attendance at a driver improvement school, or both. If the person is required to appear before the designated official pursuant to § 318.19(1) and is found to have committed the infraction, the designated official shall impose a civil penalty of $1,000 in addition to any other penalties and the person's driver's license shall be suspended for 6 months. If the person is required to appear before the designated official pursuant to § 318.19(2) and is found to have committed the infraction, the designated official shall impose a civil penalty of $500 in addition to any other penalties and the person's driver's license shall be suspended for 3 months. If the official determines that no infraction has been committed, no costs or penalties shall be imposed and any costs or penalties that have been paid shall be returned. Moneys received from the mandatory civil penalties imposed pursuant to this subsection upon persons required to appear before a designated official pursuant to § 318.19(1) or (2) shall be remitted to the Department of Revenue and deposited into the Department of Health Emergency Medical Services Trust Fund to provide financial support to certified trauma centers to assure the availability and accessibility of trauma services throughout the state. Funds deposited into the Emergency Medical Services Trust Fund under this section shall be allocated as follows:

(a) Fifty percent shall be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services.

(b) Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as reported in the Department of Health Trauma Registry.

(6) The commission of a charged infraction at a hearing under this chapter must be proved beyond a reasonable doubt.

(7) (a) The official having jurisdiction over the infraction shall certify to the department within 10 days after payment of the civil penalty that the defendant has admitted to the infraction. If the charge results in a hearing, the official having jurisdiction shall certify to the department the final disposition within 10 days after the hearing. All dispositions returned to the county requiring a correction shall be resubmitted to the department within 10 days after the notification of the error.

(b) If the official having jurisdiction over the traffic infraction submits the final disposition to the department more than 180 days after the final hearing or after payment of the civil penalty, the department may modify any resulting suspension or revocation action to begin as if the citation were reported in a timely manner.

(8) When a report of a determination or admission of an infraction is received by the department, it shall proceed to enter the proper number of points on the licensee's driving record in accordance with § 322.27.

(9) Any person who does not hold a commercial driver license or commercial learner's permit and who is cited while driving a noncommercial motor vehicle for an infraction under this section other than a violation of § 316.183(2), § 316.187, or § 316.189 when the driver exceeds the posted limit by 30 miles per hour or more, § 320.0605, § 320.07(3)(a) or (b), § 322.065, § 322.15(1), § 322.61, or § 322.62 may, in lieu of a court appearance, elect to attend in the location of his or her choice within this state a basic driver improvement course approved by the Department of Highway Safety and Motor Vehicles. In such a case, adjudication must be withheld and points, as provided by § 322.27, may not be assessed. However, a person may not make an election under this subsection if the person has made an election under this subsection in the preceding 12 months. A person may not make more than five elections within his or her lifetime

under this subsection. The requirement for community service under § 318.18(8) is not waived by a plea of nolo contendere or by the withholding of adjudication of guilt by a court. If a person makes an election to attend a basic driver improvement course under this subsection, 18 percent of the civil penalty imposed under § 318.18(3) shall be deposited in the State Courts Revenue Trust Fund; however, that portion is not revenue for purposes of § 28.36 and may not be used in establishing the budget of the clerk of the court under that section or § 28.35.

(10) (a) Any person who does not hold a commercial driver license or commercial learner's permit and who is cited while driving a noncommercial motor vehicle for an offense listed under this subsection may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau. In such case, adjudication shall be withheld; however, a person may not make an election under this subsection if the person has made an election under this subsection in the preceding 12 months. A person may not make more than three elections under this subsection. This subsection applies to the following offenses:

1. Operating a motor vehicle without a valid driver license in violation of § 322.03, § 322.065, or § 322.15(1), or operating a motor vehicle with a license that has been suspended for failure to appear, failure to pay civil penalty, or failure to attend a driver improvement course pursuant to § 322.291.

2. Operating a motor vehicle without a valid registration in violation of § 320.0605, § 320.07, or § 320.131.

3. Operating a motor vehicle in violation of § 316.646.

4. Operating a motor vehicle with a license that has been suspended under § 61.13016 or § 322.245 for failure to pay child support or for failure to pay any other financial obligation as provided in § 322.245; however, this subparagraph does not apply if the license has been suspended pursuant to § 322.245(1).

5. Operating a motor vehicle with a license that has been suspended under § 322.091 for failure to meet school attendance requirements.

(b) Any person cited for an offense listed in this subsection shall present proof of compliance before the scheduled court appearance date. For the purposes of this subsection, proof of compliance shall consist of a valid, renewed, or reinstated driver license or registration certificate and proper proof of maintenance of security as required by § 316.646. Notwithstanding waiver of fine, any person establishing proof of compliance shall be assessed court costs of $25, except that a person charged with violation of § 316.646(1)-(3) may be assessed court costs of $8. One dollar of such costs shall be remitted to the Department of Revenue for deposit into the Child Welfare Training Trust Fund of the Department of Children and Family Services. One dollar of such costs shall be distributed to the Department of Juvenile Justice for deposit into the Juvenile Justice Training Trust Fund. Fourteen dollars of such costs shall be distributed to the municipality and $9 shall be deposited by the clerk of the court into the fine and forfeiture fund established pursuant to § 142.01, if the offense was committed within the municipality. If the offense was committed in an unincorporated area of a county or if the citation was for a violation of § 316.646(1)-(3), the entire amount shall be deposited by the clerk of the court into the fine and forfeiture fund established pursuant to § 142.01, except for the moneys to be deposited into the Child Welfare Training Trust Fund and the Juvenile Justice Training Trust Fund. This subsection does not authorize the operation of a vehicle without a valid driver license, without a valid vehicle tag and registration, or without the maintenance of required security.

(11) If adjudication is withheld for any person charged or cited under this section, such action is not a conviction.

(12) Any person cited for a violation of § 316.1001 may, in lieu of making an election as set forth in subsection (4) or [1]s. 318.18(7), elect to pay a fine of $25, or such other amount as imposed by the governmental entity owning the applicable toll facility, plus the amount of the unpaid toll that is shown on the traffic citation directly to the governmental entity that issued the citation, or on whose behalf the citation was issued, within 30 days after the date of issuance of the citation. Any person cited for a violation of § 316.1001 who does not elect to pay the fine imposed by the governmental entity owning the applicable toll facility plus the amount of the unpaid toll that is shown on the traffic citation directly to the governmental entity that issued the citation, or on whose behalf the citation was issued, as described in this subsection shall have an additional 45 days after the date of the issuance of the citation

in which to request a court hearing or to pay the civil penalty and delinquent fee, if applicable, as provided in § 318.18(7), either by mail or in person, in accordance with subsection (4).

(13) (a) A person cited for a violation of § 316.1926 shall, in addition to any other requirements provided in this section, pay a fine of $1,000. This fine is in lieu of the fine required under § 318.18(3)(b), if the person was cited for violation of § 316.1926(2).

(b) A person cited for a second violation of § 316.1926 shall, in addition to any other requirements provided in this section, pay a fine of $2,500. This fine is in lieu of the fine required under § 318.18(3)(b), if the person was cited for violation of § 316.1926(2). In addition, the court shall revoke the person's authorization and privilege to operate a motor vehicle for a period of 1 year and order the person to surrender his or her driver's license.

(c) A person cited for a third violation of § 316.1926 commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Upon conviction, the court shall impose a fine of $5,000, revoke the person's authorization and privilege to operate a motor vehicle for a period of 10 years, and order the person to surrender his or her driver's license.

318.15. Failure to comply with civil penalty or to appear; penalty.

(1) (a) If a person fails to comply with the civil penalties provided in § 318.18 within the time period specified in § 318.14(4), fails to enter into or comply with the terms of a penalty payment plan with the clerk of the court in accordance with §§ 318.14 and 28.246, fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of the court shall notify the Department of Highway Safety and Motor Vehicles of such failure within 10 days after such failure. Upon receipt of such notice, the department shall immediately issue an order suspending the driver's license and privilege to drive of such person effective 20 days after the date the order of suspension is mailed in accordance with § 322.251(1), (2), and (6). Any such suspension of the driving privilege which has not been reinstated, including a similar suspension imposed outside Florida, shall remain on the records of the department for a period of 7 years from the date imposed and shall be removed from the records after the expiration of 7 years from the date it is imposed.

(b) However, a person who elects to attend driver improvement school and has paid the civil penalty as provided in § 318.14(9), but who subsequently fails to attend the driver improvement school within the time specified by the court shall be deemed to have admitted the infraction and shall be adjudicated guilty. In such a case in which there was an 18-percent reduction pursuant to § 318.14(9) as it existed before February 1, 2009, the person must pay the clerk of the court that amount and a processing fee of up to $18, after which no additional penalties, court costs, or surcharges shall be imposed for the violation. In all other such cases, the person must pay the clerk a processing fee of up to $18, after which no additional penalties, court costs, or surcharges shall be imposed for the violation. The clerk of the court shall notify the department of the person's failure to attend driver improvement school and points shall be assessed pursuant to § 322.27.

(c) A person who is charged with a traffic infraction may request a hearing within 180 days after the date upon which the violation occurred, regardless of any action taken by the court or the department to suspend the person's driving privilege, and, upon request, the clerk must set the case for hearing. The person shall be given a form for requesting that his or her driving privilege be reinstated. If the 180th day after the date upon which the violation occurred is a Saturday, Sunday, or legal holiday, the person who is charged must request a hearing within 177 days after the date upon which the violation occurred; however, the court may grant a request for a hearing made more than 180 days after the date upon which the violation occurred. This paragraph does not affect the assessment of late fees as otherwise provided in this chapter.

(2) After the suspension of a person's driver's license and privilege to drive under subsection (1), the license and privilege may not be reinstated until the person complies with the terms of a periodic payment plan or a revised payment plan with the clerk of the court pursuant to §§ 318.14 and 28.246 or with all obligations and penalties imposed under § 318.18 and presents to a driver license office a certificate of compliance issued by the court, together with a nonrefundable service charge of $60 imposed under § 322.29, or presents a certificate of compliance and pays the service charge to the clerk of the court or a driver licensing agent authorized under § 322.135 clearing such suspen-

sion. Of the charge collected, $22.50 shall be remitted to the Department of Revenue to be deposited into the Highway Safety Operating Trust Fund. Such person must also be in compliance with requirements of chapter 322 before reinstatement.

(3) The clerk shall notify the department of persons who were mailed a notice of violation of § 316.074(1) or § 316.075(1)(c)1. pursuant to § 316.0083 and who failed to enter into, or comply with the terms of, a penalty payment plan, or order with the clerk to the local hearing officer or failed to appear at a scheduled hearing within 10 days after such failure, and shall reference the person's driver license number, or in the case of a business entity, vehicle registration number.

(a) Upon receipt of such notice, the department, or authorized agent thereof, may not issue a license plate or revalidation sticker for any motor vehicle owned or coowned by that person pursuant to § 320.03(8) until the amounts assessed have been fully paid.

(b) After the issuance of the person's license plate or revalidation sticker is withheld pursuant to paragraph (a), the person may challenge the withholding of the license plate or revalidation sticker only on the basis that the outstanding fines and civil penalties have been paid pursuant to § 320.03(8).

318.16. Appeals; stay orders; procedures.

(1) If a person is found to have committed an infraction by the hearing official, he or she may appeal that finding to the circuit court. An appeal under this subsection shall not operate to stay the reporting requirements of § 318.14(7) or to stay appropriate action by the department upon receipt of that report.

(2) The circuit court, upon application by the appellant, may:

(a) Order a stay of any action by the department during pendency of the appeal, but not to exceed a period of 60 days. A copy of the order shall be forwarded to the department.

(b) Deny the application.

318.17. Offenses excepted.

No provision of this chapter is available to a person who is charged with any of the following offenses:

(1) Fleeing or attempting to elude a police officer, in violation of § 316.1935;

(2) Leaving the scene of a crash, in violation of §§ 316.027 and 316.061;

(3) Driving, or being in actual physical control of, any vehicle while under the influence of alcoholic beverages, any chemical substance set forth in § 877.111, or any substance controlled under chapter 893, in violation of § 316.193, or driving with an unlawful blood-alcohol level;

(4) Reckless driving, in violation of § 316.192;

(5) Making false crash reports, in violation of § 316.067;

(6) Willfully failing or refusing to comply with any lawful order or direction of any police officer or member of the fire department, in violation of § 316.072(3);

(7) Obstructing an officer, in violation of § 316.545(1); or

(8) Any other offense in chapter 316 which is classified as a criminal violation.

318.19. Infractions requiring a mandatory hearing.

Any person cited for the infractions listed in this section shall not have the provisions of § 318.14(2), (4), and (9) available to him or her but must appear before the designated official at the time and location of the scheduled hearing:

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

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

(3) Any infraction of § 316.172(1)(b);

(4) Any infraction of § 316.520(1) or (2); or

(5) Any infraction of § 316.183(2), § 316.187, or § 316.189 of exceeding the speed limit by 30 m.p.h. or more.

CHAPTER 319
TITLE CERTIFICATES

319.001. Definitions.

As used in this chapter, the term:

(1) "Certificate of title" means the record that is evidence of ownership of a vehicle, whether a paper certificate authorized by the department or a certificate consisting of information that is stored in an electronic form in the department's database.

(2) "Department" means the Department of Highway Safety and Motor Vehicles.

(3) "Front-end assembly" means fenders, hood, grill, and bumper.

(4) "Licensed dealer," unless otherwise specifically provided, means a motor vehicle dealer licensed under § 320.27, a mobile home dealer licensed under § 320.77, or a recreational vehicle dealer licensed under § 320.771.

(5) "Motorcycle body assembly" means frame, fenders, and gas tanks.

(6) "Motorcycle engine" means cylinder block, heads, engine case, and crank case.

(7) "Motorcycle transmission" means drive train.

(8) "New mobile home" means a mobile home the equitable or legal title to which has never been transferred by a manufacturer, distributor, importer, or dealer to an ultimate purchaser.

(9) "New motor vehicle" means a motor vehicle the equitable or legal title to which has never been transferred by a manufacturer, distributor, importer, or dealer to an ultimate purchaser; however, when legal title is not transferred but possession of a motor vehicle is transferred pursuant to a conditional sales contract or lease and the conditions are not satisfied and the vehicle is returned to the motor vehicle dealer, the motor vehicle may be resold by the motor vehicle dealer as a new motor vehicle, provided the selling motor vehicle dealer gives the following written notice to the purchaser: "THIS VEHICLE WAS DELIVERED TO A PREVIOUS PURCHASER." The purchaser shall sign an acknowledgment, a copy of which is kept in the selling dealer's file.

(10) "Rear body section" means both quarter panels, decklid, bumper, and floor pan.

(11) "Satisfaction of lien" means full payment of a debt or release of a debtor from a lien by the lienholder.

(12) "Used motor vehicle" means any motor vehicle that is not a "new motor vehicle" as defined in subsection (9).

319.14. Sale of motor vehicles registered or used as taxicabs, police vehicles, lease vehicles, rebuilt vehicles, nonconforming vehicles, custom vehicles, or street rod vehicles; conversion of low-speed vehicles.

(1) (a) A person may not knowingly offer for sale, sell, or exchange any vehicle that has been licensed, registered, or used as a taxicab, police vehicle, or short-term-lease vehicle, or a vehicle that has been repurchased by a manufacturer pursuant to a settlement, determination, or decision under chapter 681, until the department has stamped in a conspicuous place on the certificate of title of the vehicle, or its duplicate, words stating the nature of the previous use of the vehicle or the title has been stamped "Manufacturer's Buy Back" to reflect that the vehicle is a nonconforming vehicle. If the certificate of title or duplicate was not so stamped upon initial issuance thereof or if, subsequent to initial issuance of the title, the use of the vehicle is changed to a use requiring the notation provided for in this section, the owner or lienholder of the vehicle shall surrender the certificate of title or duplicate to the department prior to offering the vehicle for sale, and the department shall stamp the certificate or duplicate as required herein. When a vehicle has been repurchased by a manufacturer pursuant to a settlement, determination, or decision under chapter 681, the title shall be stamped "Manufacturer's Buy Back" to reflect that the vehicle is a nonconforming vehicle.

(b) A person may not knowingly offer for sale, sell, or exchange a rebuilt vehicle until the department has stamped in a conspicuous place on the certificate of title for the vehicle words stating that the vehicle has been rebuilt or assembled from parts, or is a kit car, glider kit, replica, flood vehicle, custom vehicle, or street rod vehicle unless proper application for a certificate of title for a vehicle that is rebuilt or assembled from parts, or is a kit car, glider kit, replica, flood vehicle, custom vehicle, or street rod vehicle has been made to the department in accordance with this chapter and the department has conducted the physical examination of the vehicle to assure the identity of the vehicle and all major component parts, as defined in § 319.30(1), which have been repaired or replaced. Thereafter, the department shall affix a decal to the vehicle, in the manner prescribed by the department, showing the vehicle to be rebuilt.

(c) As used in this section, the term:

1. "Police vehicle" means a motor vehicle owned or leased by the state or a county or municipality and used in law enforcement.

2. a. "Short-term-lease vehicle" means a motor vehicle leased without a driver and under a written agreement to one or more persons from time to time for a period of less than 12 months.

b. "Long-term-lease vehicle" means a motor vehicle leased without a driver and under a written agreement to one person for a period of 12 months or longer.

c. "Lease vehicle" includes both short-term-lease vehicles and long-term-lease vehicles.

3. "Rebuilt vehicle" means a motor vehicle or mobile home built from salvage or junk, as defined in § 319.30(1).

4. "Assembled from parts" means a motor vehicle or mobile home assembled from parts or combined from parts of motor vehicles or mobile homes, new or used. "Assembled from parts" does not mean a motor vehicle defined as a "rebuilt vehicle" in subparagraph 3.,

which has been declared a total loss pursuant to § 319.30.

5. "Kit car" means a motor vehicle assembled with a kit supplied by a manufacturer to rebuild a wrecked or outdated motor vehicle with a new body kit.

6. "Glider kit" means a vehicle assembled with a kit supplied by a manufacturer to rebuild a wrecked or outdated truck or truck tractor.

7. "Replica" means a complete new motor vehicle manufactured to look like an old vehicle.

8. "Flood vehicle" means a motor vehicle or mobile home that has been declared to be a total loss pursuant to § 319.30(3)(a) resulting from damage caused by water.

9. "Nonconforming vehicle" means a motor vehicle which has been purchased by a manufacturer pursuant to a settlement, determination, or decision under chapter 681.

10. "Settlement" means an agreement entered into between a manufacturer and a consumer that occurs after a dispute is submitted to a program, or an informal dispute settlement procedure established by a manufacturer or is approved for arbitration before the New Motor Vehicle Arbitration Board as defined in § 681.102.

11. "Custom vehicle" means a motor vehicle that:

a. Is 25 years of age or older and of a model year after 1948 or was manufactured to resemble a vehicle that is 25 years of age or older and of a model year after 1948; and

b. Has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

The model year and year of manufacture that the body of a custom vehicle resembles is the model year and year of manufacture listed on the certificate of title, regardless of when the vehicle was actually manufactured.

12. "Street rod" means a motor vehicle that:

a. Is of a model year of 1948 or older or was manufactured after 1948 to resemble a vehicle of a model year of 1948 or older; and

b. Has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

The model year and year of manufacture that the body of a street rod resembles is the model year and year of manufacture listed on the certificate of title, regardless of when the vehicle was actually manufactured.

(2) A person may not knowingly sell, exchange, or transfer a vehicle referred to in subsection (1) without, before consummating the sale, exchange, or transfer, disclosing in writing to the purchaser, customer, or transferee the fact that the vehicle has previously been titled, registered, or used as a taxicab, police vehicle, or short-term-lease vehicle, is a vehicle that is rebuilt or assembled from parts, is a kit car, glider kit, replica, or flood vehicle, or is a nonconforming vehicle, custom vehicle, or street rod vehicle, as the case may be.

(3) Any person who, with intent to offer for sale or exchange any vehicle referred to in subsection (1), knowingly or intentionally advertises, publishes, disseminates, circulates, or places before the public in any communications medium, whether directly or indirectly, any offer to sell or exchange the vehicle shall clearly and precisely state in each such offer that the vehicle has previously been titled, registered, or used as a taxicab, police vehicle, or short-term-lease vehicle or that the vehicle or mobile home is a vehicle that is rebuilt or assembled from parts, is a kit car, glider kit, replica, or flood vehicle, or is a nonconforming vehicle, custom vehicle, or street rod vehicle, as the case may be. A person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(4) If a certificate of title, including a foreign certificate, is branded to reflect a condition or prior use of the titled vehicle, the brand must be noted on the registration certificate of the vehicle and such brand shall be carried forward on all subsequent certificates of title and registration certificates issued for the life of the vehicle.

(5) A person who knowingly sells, exchanges, or offers to sell or exchange a motor vehicle or mobile home contrary to this section or any officer, agent, or employee of a person who knowingly authorizes, directs, aids in, or consents to the sale, exchange, or offer to sell or exchange a motor vehicle or mobile home contrary to this section commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(6) A person who removes a rebuilt decal from a rebuilt vehicle with the intent to conceal the rebuilt status of the vehicle commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(7) This section applies to a mobile home, travel trailer, camping trailer, truck camper, or fifth-wheel recreation trailer only when the mobile home or vehicle is a rebuilt vehicle or is assembled from parts.

(8) A person is not liable or accountable in any civil action arising out of a violation of this section if the designation of the previous use or condition of the motor vehicle is not noted on the certificate of title and registration certificate of the vehicle which was received by, or delivered to, such person, unless the person has actively concealed the prior use or condition of the vehicle from the purchaser.

(9) Subsections (1), (2), and (3) do not apply to the transfer of ownership of a motor vehicle after the motor vehicle has ceased to be used as a lease vehicle and the ownership has been transferred to an owner for private use or to the transfer of ownership of a nonconforming vehicle with 36,000 or more miles on its odometer, or 34 months whichever is later and the ownership has been transferred to an owner for private use. Such owner, as shown on the title certificate, may request the department to issue a corrected certificate of title that does not contain the statement of the previous use of the vehicle as a lease vehicle or condition as a nonconforming vehicle.

(10) (a) A vehicle titled or branded and registered as a low-speed vehicle may be converted to a golf cart pursuant to the following:

1. The owner of the converted vehicle must contact the regional office of the department to verify the conversion, surrender the registration license plate and the current certificate of title, and pay the appropriate fee established under paragraph (b).

2. The owner of the converted vehicle must provide an affidavit to the department attesting that the vehicle has been modified to comply with the speed restrictions provided in § 320.01(22) and acknowledging that the vehicle must be operated in accordance with § 316.212, § 316.2125, § 316.2126, or § 316.21265.

3. Upon verification of the conversion, the department shall note in the vehicle record that the low-speed vehicle has been converted to a golf cart and shall cancel the certificate of title and registration of the vehicle.

(b) The department shall establish a fee of $40 to cover the cost of verification and associated administrative costs for carrying out its responsibilities under this subsection.

(c) The department shall issue a decal reflecting the conversion of the vehicle to a golf cart, upon which is clearly legible the following text: "CONVERTED VEHICLE. Max speed 20 mph." The decal must be displayed on the rear of the vehicle, so that the decal is plainly visible.

319.30. Definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.

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

(a) "Certificate of destruction" means the certificate issued pursuant to § 713.78(11) or § 713.785(7)(a).

(b) "Certificate of registration number" means the certificate of registration number issued by the Department of Revenue of the State of Florida pursuant to § 538.25.

(c) "Certificate of title" means a record that serves as evidence of ownership of a vehicle, whether such record is a paper certificate authorized by the department or by a motor vehicle department authorized to issue titles in another state or a certificate consisting of information stored in electronic form in the department's database.

(d) "Derelict" means any material which is or may have been a motor vehicle or mobile home, which is not a major part or major component part, which is inoperable, and which is in such condition that its highest or primary value is in its sale or transfer as scrap metal.

(e) "Derelict motor vehicle" means:

1. Any motor vehicle as defined in § 320.01(1) or mobile home as defined in § 320.01(2), with or without all parts, major parts, or major component parts, which is valued under $1,000, is at least 10 model years old, beginning with the model year of the vehicle as year one, and is in such condition that its highest or primary value is for sale, transport, or delivery to a licensed salvage motor vehicle dealer or registered secondary metals recycler for dismantling its component parts or conversion to scrap metal; or

2. Any trailer as defined in § 320.01(1), with or without all parts, major parts, or major component parts, which is valued under $5,000, is at least 10 model years old, beginning with the model year of the vehicle as year one, and is in such condition that its highest or primary value is for sale, transport, or delivery to a licensed salvage motor vehicle dealer or registered secondary metals recycler for conversion to scrap metal.

(f) "Derelict motor vehicle certificate" means a certificate issued by the department which serves as evidence that a derelict motor vehicle will be dismantled or converted to scrap metal. This certificate may be obtained by completing a derelict motor vehicle certificate application authorized by the de-

partment. A derelict motor vehicle certificate may be reassigned only one time if the derelict motor vehicle certificate was completed by a licensed salvage motor vehicle dealer and the derelict motor vehicle was sold to another licensed salvage motor vehicle dealer or a secondary metals recycler.

(g) "Independent entity" means a business or entity that may temporarily store damaged or dismantled motor vehicles pursuant to an agreement with an insurance company and is engaged in the sale or resale of damaged or dismantled motor vehicles. The term does not include a wrecker operator, a towing company, or a repair facility.

(h) "Junk" means any material which is or may have been a motor vehicle or mobile home, with or without all component parts, which is inoperable and which material is in such condition that its highest or primary value is either in its sale or transfer as scrap metal or for its component parts, or a combination of the two, except when sold or delivered to or when purchased, possessed, or received by a secondary metals recycler or salvage motor vehicle dealer.

(i) "Major component parts" means:

1. For motor vehicles other than motorcycles, any fender, hood, bumper, cowl assembly, rear quarter panel, trunk lid, door, decklid, floor pan, engine, frame, transmission, catalytic converter, or airbag.

2. For trucks, in addition to those parts listed in subparagraph 1., any truck bed, including dump, wrecker, crane, mixer, cargo box, or any bed which mounts to a truck frame.

3. For motorcycles, the body assembly, frame, fenders, gas tanks, engine, cylinder block, heads, engine case, crank case, transmission, drive train, front fork assembly, and wheels.

4. For mobile homes, the frame.

(j) "Major part" means the front-end assembly, cowl assembly, or rear body section.

(k) "Materials" means motor vehicles, derelicts, and major parts that are not prepared materials.

(l) "Mobile home" means mobile home as defined in § 320.01(2).

(m) "Motor vehicle" means motor vehicle as defined in § 320.01(1).

(n) "National Motor Vehicle Title Information System" means the national mandated vehicle history database maintained by the United States Department of Justice to link the states' motor vehicle title records, including Florida's Department of Highway Safety and Motor Vehicles' title records, and ensure that states, law enforcement agencies, and consumers have access to vehicle titling, branding, and other information that enables them to verify the accuracy and legality of a motor vehicle title before purchase or title transfer of the vehicle occurs.

(o) "Parts" means parts of motor vehicles or combinations thereof that do not constitute materials or prepared materials.

(p) "Prepared materials" means motor vehicles, mobile homes, derelict motor vehicles, major parts, or parts that have been processed by mechanically flattening or crushing, or otherwise processed such that they are not the motor vehicle or mobile home described in the certificate of title, or their only value is as scrap metal.

(q) "Processing" means the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, or the purchase of materials, prepared materials, or parts therefor.

(r) "Recreational vehicle" means a motor vehicle as defined in § 320.01(1).

(s) "Salvage" means a motor vehicle or mobile home which is a total loss as defined in paragraph (3)(a).

(t) "Salvage certificate of title" means a salvage certificate of title issued by the department or by another motor vehicle department authorized to issue titles in another state.

(u) "Salvage motor vehicle dealer" means salvage motor vehicle dealer as defined in § 320.27(1)(c)5.

(v) "Secondary metals recycler" means secondary metals recycler as defined in § 538.18.

(w) "Seller" means the owner of record or a person who has physical possession and responsibility for a derelict motor vehicle and attests that possession of the vehicle was obtained through lawful means along with all ownership rights. A seller does not include a towing company, repair shop, or landlord unless the towing company, repair shop, or landlord has obtained title, salvage title, or a certificate of destruction in the name of the towing company, repair shop, or landlord.

(2) (a) Each person mentioned as owner in the last issued certificate of title, when such motor vehicle or mobile home is dismantled, destroyed, or changed in such manner that it is not the motor vehicle or mobile home described in the certificate of title, shall surrender his or her certificate of

title to the department, and thereupon the department shall, with the consent of any lienholders noted thereon, enter a cancellation upon its records. Upon cancellation of a certificate of title in the manner prescribed by this section, the department may cancel and destroy all certificates in that chain of title. Any person who knowingly violates this paragraph commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(b) 1. When a motor vehicle, recreational vehicle, or mobile home is sold, transported, delivered to, or received by a salvage motor vehicle dealer, the purchaser shall make the required notification to the National Motor Vehicle Title Information System and it shall be accompanied by:

a. A valid certificate of title issued in the name of the seller or properly endorsed, as required in § 319.22, over to the seller;

b. A valid salvage certificate of title issued in the name of the seller or properly endorsed, as required in § 319.22, over to the seller; or

c. A valid certificate of destruction issued in the name of the seller or properly endorsed over to the seller.

2. Any person who knowingly violates this paragraph by selling, transporting, delivering, purchasing, or receiving a motor vehicle, recreational vehicle, or mobile home without obtaining a properly endorsed certificate of title, salvage certificate of title, or certificate of destruction from the owner or does not make the required notification to the National Motor Vehicle Title Information System commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) 1. When a derelict motor vehicle is sold, transported, or delivered to a licensed salvage motor vehicle dealer, the purchaser shall make the required notification of the derelict motor vehicle to the National Motor Vehicle Title Information System and record the date of purchase and the name, address, and valid Florida driver license number or valid Florida identification card number, or a valid driver license number or identification card number issued by another state, of the person selling the derelict motor vehicle, and it shall be accompanied by:

a. A valid certificate of title issued in the name of the seller or properly endorsed over to the seller;

b. A valid salvage certificate of title issued in the name of the seller or properly endorsed over to the seller; or

c. A valid certificate of destruction issued in the name of the seller or properly endorsed over to the seller.

2. If a valid certificate of title, salvage certificate of title, or certificate of destruction is not available, a derelict motor vehicle certificate application shall be completed by the seller or owner of the motor vehicle or mobile home, the seller's or owner's authorized transporter, and the licensed salvage motor vehicle dealer at the time of sale, transport, or delivery to the licensed salvage motor vehicle dealer. The derelict motor vehicle certificate application shall be used by the seller or owner, the seller's or owner's authorized transporter, and the licensed salvage motor vehicle dealer to obtain a derelict motor vehicle certificate from the department. The derelict motor vehicle certificate application must be accompanied by a legible copy of the seller's or owner's valid Florida driver license or Florida identification card, or a valid driver license or identification card issued by another state. If the seller is not the owner of record of the vehicle being sold, the dealer shall, at the time of sale, ensure that a smudge-free right thumbprint, or other digit if the seller has no right thumb, of the seller is imprinted upon the derelict motor vehicle certificate application and that a legible copy of the seller's driver license or identification card is affixed to the application and transmitted to the department. The licensed salvage motor vehicle dealer shall make the required notification of the derelict motor vehicle to the National Motor Vehicle Title Information System and secure the derelict motor vehicle for 3 full business days, excluding weekends and holidays, if there is no active lien or a lien of 3 years or more on the department's records before destroying or dismantling the derelict motor vehicle and shall follow all reporting procedures established by the department, including electronic notification to the department or delivery of the original derelict motor vehicle certificate application to an agent of the department within 24 hours after receiving the derelict motor vehicle. If there is an active lien of less than 3 years on the derelict motor vehicle, the licensed salvage motor vehicle dealer shall secure the derelict motor vehicle for 10 days. The department shall notify the lienholder that a derelict motor vehicle certificate has been issued and shall notify the lienholder of its intention to remove the lien. Ten days after receipt of the motor vehicle derelict certificate application, the department may remove the lien from its records

if a written statement protesting removal of the lien is not received by the department from the lienholder within the 10-day period. However, if the lienholder files with the department and the licensed salvage motor vehicle dealer within the 10-day period a written statement that the lien is still outstanding, the department shall not remove the lien and shall place an administrative hold on the record for 30 days to allow the lienholder to apply for title to the vehicle or a repossession certificate under § 319.28. The licensed salvage motor vehicle dealer must secure the derelict motor vehicle until the department's administrative stop is removed, the lienholder submits a lien satisfaction, or the lienholder takes possession of the vehicle.

3. Any person who knowingly violates this paragraph by selling, transporting, delivering, purchasing, or receiving a derelict motor vehicle without obtaining a certificate of title, salvage certificate of title, certificate of destruction, or derelict motor vehicle certificate application; enters false or fictitious information on a derelict motor vehicle certificate application; does not complete the derelict motor vehicle certificate application as required; does not obtain a legible copy of the seller's or owner's valid driver license or identification card when required; does not make the required notification to the department; does not make the required notification to the National Motor Vehicle Title Information System; or destroys or dismantles a derelict motor vehicle without waiting the required time as set forth in subparagraph 2. commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) (a) 1. As used in this section, a motor vehicle or mobile home is a "total loss":

a. When an insurance company pays the vehicle owner to replace the wrecked or damaged vehicle with one of like kind and quality or when an insurance company pays the owner upon the theft of the motor vehicle or mobile home; or

b. When an uninsured motor vehicle or mobile home is wrecked or damaged and the cost, at the time of loss, of repairing or rebuilding the vehicle is 80 percent or more of the cost to the owner of replacing the wrecked or damaged motor vehicle or mobile home with one of like kind and quality.

2. A motor vehicle or mobile home shall not be considered a "total loss" if the insurance company and owner of a motor vehicle or mobile home agree to repair, rather than to replace, the motor vehicle or mobile home. However, if the actual cost to repair the motor vehicle or mobile home to the insurance company exceeds 100 percent of the cost of replacing the wrecked or damaged motor vehicle or mobile home with one of like kind and quality, the owner shall forward to the department, within 72 hours after the agreement, a request to brand the certificate of title with the words "Total Loss Vehicle." Such a brand shall become a part of the vehicle's title history.

(b) The owner, including persons who are self-insured, of any motor vehicle or mobile home which is considered to be salvage shall, within 72 hours after the motor vehicle or mobile home becomes salvage, forward the title to the motor vehicle or mobile home to the department for processing. However, an insurance company which pays money as compensation for total loss of a motor vehicle or mobile home shall obtain the certificate of title for the motor vehicle or mobile home, make the required notification to the National Motor Vehicle Title Information System, and, within 72 hours after receiving such certificate of title, shall forward such title to the department for processing. The owner or insurance company, as the case may be, may not dispose of a vehicle or mobile home that is a total loss before it has obtained a salvage certificate of title or certificate of destruction from the department. When applying for a salvage certificate of title or certificate of destruction, the owner or insurance company must provide the department with an estimate of the costs of repairing the physical and mechanical damage suffered by the vehicle for which a salvage certificate of title or certificate of destruction is sought. If the estimated costs of repairing the physical and mechanical damage to the vehicle are equal to 80 percent or more of the current retail cost of the vehicle, as established in any official used car or used mobile home guide, the department shall declare the vehicle unrebuildable and print a certificate of destruction, which authorizes the dismantling or destruction of the motor vehicle or mobile home described therein. However, if the damaged motor vehicle is equipped with custom-lowered floors for wheelchair access or a wheelchair lift, the insurance company may, upon determining that the vehicle is repairable to a condition that is safe for operation on public roads, submit the certificate of title to the department for reissuance as a salvage rebuildable title and the addition of a title brand of "insurance-declared total loss." The certificate of destruction shall be reas-

signable a maximum of two times before dismantling or destruction of the vehicle shall be required, and shall accompany the motor vehicle or mobile home for which it is issued, when such motor vehicle or mobile home is sold for such purposes, in lieu of a certificate of title, and, thereafter, the department shall refuse issuance of any certificate of title for that vehicle. Nothing in this subsection shall be applicable when a vehicle is worth less than $1,500 retail in undamaged condition in any official used motor vehicle guide or used mobile home guide or when a stolen motor vehicle or mobile home is recovered in substantially intact condition and is readily resalable without extensive repairs to or replacement of the frame or engine. Any person who knowingly violates this paragraph or falsifies any document to avoid the requirements of this paragraph commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(4) It is unlawful for any person to have in his or her possession any motor vehicle or mobile home when the manufacturer's or state-assigned identification number plate or serial plate has been removed therefrom.

(a) Nothing in this subsection shall be applicable when a vehicle defined in this section as a derelict or salvage was purchased or acquired from a foreign state requiring such vehicle's identification number plate to be surrendered to such state, provided the person shall have an affidavit from the seller describing the vehicle by manufacturer's serial number and the state to which such vehicle's identification number plate was surrendered.

(b) Nothing in this subsection shall be applicable if a certificate of destruction has been obtained for the vehicle.

(5) (a) It is unlawful for any person to knowingly possess, sell, or exchange, offer to sell or exchange, or give away any certificate of title or manufacturer's or state-assigned identification number plate or serial plate of any motor vehicle, mobile home, or derelict that has been sold as salvage contrary to the provisions of this section, and it is unlawful for any person to authorize, direct, aid in, or consent to the possession, sale, or exchange or to offer to sell, exchange, or give away such certificate of title or manufacturer's or state-assigned identification number plate or serial plate.

(b) It is unlawful for any person to knowingly possess, sell, or exchange, offer to sell or exchange, or give away any manufacturer's or state-assigned identification number plate or serial plate of any motor vehicle or mobile home that has been removed from the motor vehicle or mobile home for which it was manufactured, and it is unlawful for any person to authorize, direct, aid in, or consent to the possession, sale, or exchange or to offer to sell, exchange, or give away such manufacturer's or state-assigned identification number plate or serial plate.

(c) This chapter does not apply to anyone who removes, possesses, or replaces a manufacturer's or state-assigned identification number plate, in the course of performing repairs on a vehicle, that require such removal or replacement. If the repair requires replacement of a vehicle part that contains the manufacturer's or state-assigned identification number plate, the manufacturer's or state-assigned identification number plate that is assigned to the vehicle being repaired will be installed on the replacement part. The manufacturer's or state-assigned identification number plate that was removed from this replacement part will be installed on the part that was removed from the vehicle being repaired.

(6) (a) In the event of a purchase by a salvage motor vehicle dealer of materials or major component parts for any reason, the purchaser shall:

1. For each item of materials or major component parts purchased, the salvage motor vehicle dealer shall record the date of purchase and the name, address, and personal identification card number of the person selling such items, as well as the vehicle identification number, if available.

2. With respect to each item of materials or major component parts purchased, obtain such documentation as may be required by subsection (2).

(b) Any person who violates this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(7) (a) In the event of a purchase by a secondary metals recycler, that has been issued a certificate of registration number, of:

1. Materials, prepared materials, or parts from any seller for purposes other than the processing of such materials, prepared materials, or parts, the purchaser shall obtain such documentation as may be required by this section and shall record the seller's name and address, date of purchase, and the personal identification card number of the person delivering such items.

2. Parts or prepared materials from any seller for purposes of the processing of such

parts or prepared materials, the purchaser shall record the seller's name and address and date of purchase and, in the event of a purchase transaction consisting primarily of parts or prepared materials, the personal identification card number of the person delivering such items.

3. Materials from another secondary metals recycler for purposes of the processing of such materials, the purchaser shall record the seller's name and address and date of purchase.

4. a. Motor vehicles, recreational vehicles, mobile homes, or derelict motor vehicles from other than a secondary metals recycler for purposes of the processing of such motor vehicles, recreational vehicles, mobile homes, or derelict motor vehicles, the purchaser shall make the required notification to the National Motor Vehicle Title Information [1]System and record the date of purchase and the name, address, and personal identification card number of the person selling such items and shall obtain the following documentation from the seller with respect to each item purchased:

I. A valid certificate of title issued in the name of the seller or properly endorsed, as required in § 319.22, over to the seller;

II. A valid salvage certificate of title issued in the name of the seller or properly endorsed, as required in § 319.22, over to the seller;

III. A valid certificate of destruction issued in the name of the seller or properly endorsed over to the seller; or

IV. A valid derelict motor vehicle certificate obtained from the department by a licensed salvage motor vehicle dealer and properly reassigned to the secondary metals recycler.

b. If a valid certificate of title, salvage certificate of title, certificate of destruction, or derelict motor vehicle certificate is not available and the motor vehicle or mobile home is a derelict motor vehicle, a derelict motor vehicle certificate application shall be completed by the seller or owner of the motor vehicle or mobile home, the seller's or owner's authorized transporter, and the registered secondary metals recycler at the time of sale, transport, or delivery to the registered secondary metals recycler to obtain a derelict motor vehicle certificate from the department. The derelict motor vehicle certificate application must be accompanied by a legible copy of the seller's or owner's valid Florida driver license or Florida identification card, or a valid driver license or identification card from another state. If the seller is not the owner of record of the vehicle being sold, the recycler shall, at the time of sale, ensure that a smudge-free right thumbprint, or other digit if the seller has no right thumb, of the seller is imprinted upon the derelict motor vehicle certificate application and that the legible copy of the seller's driver license or identification card is affixed to the application and transmitted to the department. The derelict motor vehicle certificate shall be used by the owner, the owner's authorized transporter, and the registered secondary metals recycler. The registered secondary metals recycler shall make the required notification of the derelict motor vehicle to the National Motor Vehicle Title Information System and shall secure the derelict motor vehicle for 3 full business days, excluding weekends and holidays, if there is no active lien or a lien of 3 years or more on the department's records before destroying or dismantling the derelict motor vehicle and shall follow all reporting procedures established by the department, including electronic notification to the department or delivery of the original derelict motor vehicle certificate application to an agent of the department within 24 hours after receiving the derelict motor vehicle. If there is an active lien of less than 3 years on the derelict motor vehicle, the registered secondary metals recycler shall secure the derelict motor vehicle for 10 days. The department shall notify the lienholder of the application for a derelict motor vehicle certificate and shall notify the lienholder of its intention to remove the lien. Ten days after receipt of the motor vehicle derelict application, the department may remove the lien from its records if a written statement protesting removal of the lien is not received by the department from the lienholder within the 10-day period. However, if the lienholder files with the department and the registered secondary metals recycler within the 10-day period a written statement that the lien is still outstanding, the department shall not remove the lien and shall place an administrative hold on the record for 30 days to allow the lienholder to apply for title to the vehicle or a repossession certificate under § 319.28. The registered secondary metals recycler must secure the derelict motor vehicle until the department's administrative stop is removed, the lienholder submits a lien satisfaction, or the lienholder takes possession of the vehicle.

c. Any person who knowingly violates this subparagraph by selling, transporting, delivering, purchasing, or receiving a motor vehi-

cle, recreational motor vehicle, mobile home, or derelict motor vehicle without obtaining a certificate of title, salvage certificate of title, certificate of destruction, or derelict motor vehicle certificate; enters false or fictitious information on a derelict motor vehicle certificate application; does not complete the derelict motor vehicle certificate application as required or does not make the required notification to the department; does not make the required notification to the National Motor Vehicle Title Information System; does not obtain a legible copy of the seller's or owner's driver license or identification card when required; or destroys or dismantles a derelict motor vehicle without waiting the required time as set forth in sub-subparagraph b. commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

5. Major parts from other than a secondary metals recycler for purposes of the processing of such major parts, the purchaser shall record the seller's name, address, date of purchase, and the personal identification card number of the person delivering such items, as well as the vehicle identification number, if available, of each major part purchased.

(b) Any person who violates this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(8) (a) Secondary metals recyclers and salvage motor vehicle dealers shall return to the department on a monthly basis all certificates of title and salvage certificates of title that are required by this section to be obtained. Secondary metals recyclers and salvage motor vehicle dealers may elect to notify the department electronically through procedures established by the department when they receive each motor vehicle or mobile home, salvage motor vehicle or mobile home, or derelict motor vehicle with a certificate of title or salvage certificate of title through procedures established by the department. The department may adopt rules and establish fees as it deems necessary or proper for the administration of the electronic notification service.

(b) Secondary metals recyclers and salvage motor vehicle dealers shall keep originals, or a copy in the event the original was returned to the department, of all certificates of title, salvage certificates of title, certificates of destruction, derelict motor vehicle certificates, and all other information required by this section to be recorded or obtained, on file in the offices of such secondary metals recyclers or salvage motor vehicle dealers for a period of 3 years after the date of purchase of the items reflected in such certificates of title, salvage certificates of title, certificates of destruction, or derelict motor vehicle certificates. These records shall be maintained in chronological order.

(c) For the purpose of enforcement of this section, the department or its agents and employees have the same right of inspection as law enforcement officers as provided in § 812.055.

(d) Whenever the department, its agent or employee, or any law enforcement officer has reason to believe that a stolen or fraudulently titled motor vehicle, mobile home, recreational vehicle, salvage motor vehicle, or derelict motor vehicle is in the possession of a salvage motor vehicle dealer or secondary metals recycler, the department, its agent or employee, or the law enforcement officer may issue an extended hold notice, not to exceed 5 additional business days, excluding weekends and holidays, to the salvage motor vehicle dealer or registered secondary metals recycler.

(e) Whenever a salvage motor vehicle dealer or registered secondary metals recycler is notified by the department, its agent or employee, or any law enforcement officer to hold a motor vehicle, mobile home, recreational vehicle, salvage motor vehicle, or derelict motor vehicle that is believed to be stolen or fraudulently titled, the salvage motor vehicle dealer or registered secondary metals recycler shall hold the motor vehicle, mobile home, recreational vehicle, salvage motor vehicle, or derelict motor vehicle and may not dismantle or destroy the motor vehicle, mobile home, recreational vehicle, salvage motor vehicle, or derelict motor vehicle until it is recovered by a law enforcement officer, the hold is released by the department or the law enforcement officer placing the hold, or the 5 additional business days have passed since being notified of the hold.

(f) This section does not authorize any person who is engaged in the business of recovering, towing, or storing vehicles pursuant to § 713.78, and who is claiming a lien for performing labor or services on a motor vehicle or mobile home pursuant to § 713.58, or is claiming that a motor vehicle or mobile home has remained on any premises after tenancy has terminated pursuant to § 715.104, to use a derelict motor vehicle certificate application for the purpose of transporting, selling, disposing of, or delivering a motor vehicle to

a salvage motor vehicle dealer or secondary metals recycler without obtaining the title or certificate of destruction required under § 713.58, § 713.78, or § 715.104.

(g) The department shall accept all properly endorsed and completed derelict motor vehicle certificate applications and shall issue a derelict motor vehicle certificate having an effective date that authorizes when a derelict motor vehicle is eligible for dismantling or destruction. The electronic information obtained from the derelict motor vehicle certificate application shall be stored electronically and shall be made available to authorized persons after issuance of the derelict motor vehicle certificate in the Florida Real Time Vehicle Information System.

(h) The department is authorized to adopt rules pursuant to §§ 120.536(1) and 120.54 establishing policies and procedures to administer and enforce this section.

(i) The department shall charge a fee of $3 for each derelict motor vehicle certificate delivered to the department or one of its agents for processing and shall mark the title record canceled. A service charge may be collected under § 320.04.

(j) The licensed salvage motor vehicle dealer or registered secondary metals recycler shall make all payments for the purchase of any derelict motor vehicle that is sold by a seller who is not the owner of record on file with the department by check or money order made payable to the seller and may not make payment to the authorized transporter. The licensed salvage motor vehicle dealer or registered secondary metals recycler may not cash the check that such dealer or recycler issued to the seller.

(9) (a) An insurance company may notify an independent entity that obtains possession of a damaged or dismantled motor vehicle to release the vehicle to the owner. The insurance company shall provide the independent entity a release statement on a form prescribed by the department authorizing the independent entity to release the vehicle to the owner. The form shall, at a minimum, contain the following:

1. The policy and claim number.
2. The name and address of the insured.
3. The vehicle identification number.
4. The signature of an authorized representative of the insurance company.

(b) The independent entity in possession of a motor vehicle must send a notice to the owner that the vehicle is available for pick up when it receives a release statement from the insurance company. The notice shall be sent by certified mail to the owner at the owner's address reflected in the department's records. The notice must inform the owner that the owner has 30 days after receipt of the notice to pick up the vehicle from the independent entity. If the motor vehicle is not claimed within 30 days after the owner receives the notice, the independent entity may apply for a certificate of destruction or a certificate of title.

(c) The independent entity shall make the required notification to the National Motor Vehicle Title Information System before releasing any damaged or dismantled motor vehicle to the owner or before applying for a certificate of destruction or salvage certificate of title.

(d) Upon applying for a certificate of destruction or salvage certificate of title, the independent entity shall provide a copy of the release statement from the insurance company to the independent entity, proof of providing the 30-day notice to the owner, proof of notification to the National Motor Vehicle Title Information System, and applicable fees.

(e) The independent entity may not charge an owner of the vehicle storage fees or apply for a title under § 713.585 or § 713.78.

(10) The department may adopt rules to implement an electronic system for issuing salvage certificates of title and certificates of destruction.

(11) Except as otherwise provided in this section, any person who violates this section commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

319.33. Offenses involving vehicle identification numbers, applications, certificates, papers; penalty.

(1) It is unlawful:

(a) To alter or forge any certificate of title to a motor vehicle or mobile home or any assignment thereof or any cancellation of any lien on a motor vehicle or mobile home.

(b) To retain or use such certificate, assignment, or cancellation knowing that it has been altered or forged.

(c) To procure or attempt to procure a certificate of title to a motor vehicle or mobile home, or pass or attempt to pass a certificate of title or any assignment thereof to a motor vehicle or mobile home, knowing or having reason to believe that such motor vehicle or mobile home has been stolen.

(d) To possess, sell or offer for sale, conceal, or dispose of in this state a motor vehicle or mobile home, or major component part thereof, on which any motor number or

vehicle identification number that has been affixed by the manufacturer or by a state agency, such as the Department of Highway Safety and Motor Vehicles, which regulates motor vehicles has been destroyed, removed, covered, altered, or defaced, with knowledge of such destruction, removal, covering, alteration, or defacement, except as provided in § 319.30(4).

(e) To use a false or fictitious name, give a false or fictitious address, or make any false statement in any application or affidavit required under the provisions of this chapter or in a bill of sale or sworn statement of ownership or otherwise commit a fraud in any application.

(2) It is unlawful for any person knowingly to obtain goods, services, credit, or money by means of an invalid, duplicate, fictitious, forged, counterfeit, stolen, or unlawfully obtained certificate of title, registration, bill of sale, or other indicia of ownership of a motor vehicle or mobile home.

(3) It is unlawful for any person knowingly to obtain goods, services, credit, or money by means of a certificate of title to a motor vehicle or mobile home, which certificate is required by law to be surrendered to the department.

(4) It is unlawful for any person knowingly and with intent to defraud to have in his or her possession, sell, offer to sell, counterfeit, or supply a blank, forged, fictitious, counterfeit, stolen, or fraudulently or unlawfully obtained certificate of title, registration, bill of sale, or other indicia of ownership of a motor vehicle or mobile home or to conspire to do any of the foregoing.

(5) It is unlawful for any person, firm, or corporation to knowingly possess, manufacture, sell or exchange, offer to sell or exchange, supply in blank, or give away any counterfeit manufacturer's or state-assigned identification number plates or serial plates or any decal used for the purpose of identification of any motor vehicle; or for any officer, agent, or employee of any person, firm, or corporation, or any person who shall authorize, direct, aid in exchange, or give away such counterfeit manufacturer's or state-assigned identification number plates or serial plates or any decal; or conspire to do any of the foregoing. However, nothing in this subsection shall be applicable to any approved replacement manufacturer's or state-assigned identification number plates or serial plates or any decal issued by the department or any state.

(6) Any person who violates any provision of this section is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Any motor vehicle used in violation of this section shall constitute contraband which may be seized by a law enforcement agency and shall be subject to forfeiture proceedings pursuant to §§ 932.701-932.704. This section is not exclusive of any other penalties prescribed by any existing or future laws for the larceny or unauthorized taking of motor vehicles or mobile homes, but is supplementary thereto.

(7) (a) If all identifying numbers of a motor vehicle or mobile home do not exist or have been destroyed, removed, covered, altered, or defaced, or if the real identity of the motor vehicle or mobile home cannot be determined, the motor vehicle or mobile home shall constitute contraband and shall be subject to forfeiture by a seizing law enforcement agency, pursuant to applicable provisions of §§ 932.701-932.704. Such motor vehicle shall not be operated on the streets and highways of the state unless, by written order of a court of competent jurisdiction, the department is directed to assign to the vehicle a replacement vehicle identification number which shall thereafter be used for identification purposes. If the motor vehicle is confiscated from a licensed motor vehicle dealer as defined in § 320.27, the dealer's license shall be revoked.

(b) If all numbers or other identifying marks manufactured on a major component part have been altered, defaced, destroyed, or otherwise removed for the purpose of concealing the identity of the major component part, the part shall constitute contraband and shall be subject to forfeiture by a seizing law enforcement agency, pursuant to applicable provisions of §§ 932.701-932.704. Any major component part forfeited under this subsection shall be destroyed or disposed of in a manner so as to make it unusable.

319.34. Transfer without delivery of certificate; operation or use without certificate; failure to surrender; other violations.

Whoever, except as otherwise provided for in this chapter, purports to sell or transfer a motor vehicle or mobile home without delivering to the purchaser or transferee thereof a certificate of title thereto duly assigned to such purchaser as provided in this chapter or operates or uses in this state a motor vehicle or mobile home for which a certificate of title is required without such certificate having been obtained in accordance with the

provisions of this chapter, or upon which the certificate of title has been canceled; whoever fails to surrender any certificate of title, certificate of registration, license plate, or sticker upon cancellation of the same by the department and notice thereof as prescribed in this chapter; whoever fails to surrender the certificate of title to the department as provided in this chapter in case of the destruction or dismantling or change of a motor vehicle or mobile home in such respect that it is not the motor vehicle or mobile home described in the certificate of title; or whoever violates any of the other provisions of this chapter, or any lawful rule adopted pursuant to the provisions of this chapter, shall be fined not more than $500 or imprisoned for not more than 6 months, or both, for each offense.

319.35. Unlawful acts in connection with motor vehicle odometer readings; penalties.

(1) (a) It is unlawful for any person knowingly to tamper with, adjust, alter, set back, disconnect, or fail to connect an odometer of a motor vehicle, or to cause any of the foregoing to occur to an odometer of a motor vehicle, so as to reflect a lower mileage than the motor vehicle has actually been driven, or to supply any written odometer statement knowing such statement to be false or based on mileage figures reflected by an odometer that has been tampered with or altered, except as hereinafter provided. It is unlawful for any person to knowingly bring into this state a motor vehicle which has an odometer that has been illegally altered.

(b) It is unlawful for any person to knowingly provide false information on the odometer readings required pursuant to §§ 319.23(3) and 320.02(2)(b).

(c) It is unlawful for any person to knowingly possess, sell, or offer for sale, conceal, or dispose of in this state a motor vehicle with an odometer that has been tampered with so as to reflect a lower mileage than the motor vehicle has actually been driven, except as provided in paragraph (2)(a) and subsection (3).

(2) (a) This section does not prevent the service, repair, or replacement of an odometer if the mileage indicated thereon remains the same as before the service, repair, or replacement. If the odometer is incapable of registering the same mileage as before such service, repair, or replacement, the odometer must be adjusted to read zero and a notice in writing must be attached to the door frame of the vehicle by the owner or his or her agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced.

(b) A person may not fail to adjust an odometer or affix a notice regarding such adjustment as required by paragraph (a).

(c) A person may not, with intent to defraud, remove or alter any notice affixed to a motor vehicle under paragraph (a).

(3) Any motor vehicle with an odometer that has been tampered with so as to reflect a lower mileage than the motor vehicle has actually been driven may not be knowingly operated on the streets and highways of the state in such condition unless the certificate of title and registration certificate of the vehicle have been conspicuously stamped so as to indicate the displayed mileage is inaccurate and written notice has been placed on the vehicle as described in paragraph (2)(a).

(4) If any person, with intent to defraud, possesses, sells, or offers to sell any motor vehicle with an odometer that has been illegally adjusted, altered, set back, or tampered with so as to reflect a lower mileage than the vehicle has actually been driven, such motor vehicle is contraband and is subject to seizure and forfeiture by a law enforcement agency or the department pursuant to §§ 932.701-932.704.

(5) Any person who intentionally violates the provisions of this section is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

CHAPTER 320
MOTOR VEHICLE LICENSES

320.01. Definitions, general.

As used in the Florida Statutes, except as otherwise provided, the term:

(1) "Motor vehicle" means:

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

(b) A recreational vehicle-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. Recreational vehicle-type units, when traveling on the public roadways of this state, must

comply with the length and width provisions of § 316.515, as that section may hereafter be amended. As defined below, the basic entities are:

1. The "travel trailer," which is a vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle. It is primarily designed and constructed to provide temporary living quarters for recreational, camping, or travel use. It has a body width of no more than 81/2 feet and an overall body length of no more than 40 feet when factory-equipped for the road.

2. The "camping trailer," which is a vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

3. The "truck camper," which is a truck equipped with a portable unit designed to be loaded onto, or affixed to, the bed or chassis of the truck and constructed to provide temporary living quarters for recreational, camping, or travel use.

4. The "motor home," which is a vehicular unit which does not exceed the length, height, and width limitations provided in § 316.515, is a self-propelled motor vehicle, and is primarily designed to provide temporary living quarters for recreational, camping, or travel use.

5. The "private motor coach," which is a vehicular unit which does not exceed the length, width, and height limitations provided in § 316.515(9), is built on a self-propelled bus type chassis having no fewer than three load-bearing axles, and is primarily designed to provide temporary living quarters for recreational, camping, or travel use.

6. The "van conversion," which is a vehicular unit which does not exceed the length and width limitations provided in § 316.515, is built on a self-propelled motor vehicle chassis, and is designed for recreation, camping, and travel use.

7. The "park trailer," which is a transportable unit which has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. The total area of the unit in a setup mode, when measured from the exterior surface of the exterior stud walls at the level of maximum dimensions, not including any bay window, does not exceed 400 square feet when constructed to ANSI A-119.5 standards, and 500 square feet when constructed to United States Department of Housing and Urban Development Standards. The length of a park trailer means the distance from the exterior of the front of the body (nearest to the drawbar and coupling mechanism) to the exterior of the rear of the body (at the opposite end of the body), including any protrusions.

8. The "fifth-wheel trailer," which is a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit, of gross trailer area not to exceed 400 square feet in the setup mode, and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

(2) (a) "Mobile home" means a structure, transportable in one or more sections, which is 8 body feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. For tax purposes, the length of a mobile home is the distance from the exterior of the wall nearest to the drawbar and coupling mechanism to the exterior of the wall at the opposite end of the home where such walls enclose living or other interior space. Such distance includes expandable rooms, but excludes bay windows, porches, drawbars, couplings, hitches, wall and roof extensions, or other attachments that do not enclose interior space. In the event that the mobile home owner has no proof of the length of the drawbar, coupling, or hitch, then the tax collector may in his or her discretion either inspect the home to determine the actual length or may assume 4 feet to be the length of the drawbar, coupling, or hitch.

(b) "Manufactured home" means a mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act.

(3) "Owner" means any person, firm, corporation, or association controlling any motor vehicle or mobile home by right of purchase, gift, lease, or otherwise.

(4) "Trailer" means any vehicle without motive power designed to be coupled to or drawn by a motor vehicle and constructed so that no part of its weight or that of its load rests upon the towing vehicle.

(5) "Semitrailer" means any vehicle without motive power designed to be coupled to or drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

(6) "Net weight" means the actual scale weight in pounds with complete catalog equipment.

(7) "Gross weight" means the net weight of a motor vehicle in pounds plus the weight of the load carried by it.

(8) "Cwt" means the weight per hundred pounds, or major fraction thereof, of a motor vehicle.

(9) "Truck" means any motor vehicle with a net vehicle weight of 5,000 pounds or less and which is designed or used principally for the carriage of goods and includes a motor vehicle to which has been added a cabinet box, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers.

(10) "Heavy truck" means any motor vehicle with a net vehicle weight of more than 5,000 pounds, which is registered on the basis of gross vehicle weight in accordance with § 320.08(4), and which is designed or used for the carriage of goods or designed or equipped with a connecting device for the purpose of drawing a trailer that is attached or coupled thereto by means of such connecting device and includes any such motor vehicle to which has been added a cabinet box, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers.

(11) "Truck tractor" means a motor vehicle which has four or more wheels and is designed and equipped with a fifth wheel for the primary purpose of drawing a semitrailer that is attached or coupled thereto by means of such fifth wheel and which has no provision for carrying loads independently.

(12) "Gross vehicle weight" means:

(a) For heavy trucks with a net weight of more than 5,000 pounds, but less than 8,000 pounds, the gross weight of the heavy truck. The gross vehicle weight is calculated by adding to the net weight of the heavy truck the weight of the load carried by it, which is the maximum gross weight as declared by the owner or person applying for registration.

(b) For heavy trucks with a net weight of 8,000 pounds or more, the gross weight of the heavy truck, including the gross weight of any trailer coupled thereto. The gross vehicle weight is calculated by adding to the gross weight of the heavy truck the gross weight of the trailer, which is the maximum gross weight as declared by the owner or person applying for registration.

(c) The gross weight of a truck tractor and semitrailer combination is calculated by adding to the net weight of the truck tractor the gross weight of the semitrailer, which is the maximum gross weight as declared by the owner or person applying for registration; such vehicles are together by means of a fifth-wheel arrangement whereby part of the weight of the semitrailer and load rests upon the truck tractor.

(13) "Passenger," or any abbreviation thereof, does not include a driver.

(14) "Private use" means the use of any vehicle which is not properly classified as a for-hire vehicle.

(15) (a) "For-hire vehicle" means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire."

(b) The following are not included in the term "for-hire vehicle": a motor vehicle used for transporting school children to and from school under contract with school officials; a hearse or ambulance when operated by a licensed embalmer or mortician or his or her agent or employee in this state; a motor vehicle used in the transportation of agricultural or horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of such supplies or to associations of such growers or consumers; a motor vehicle temporarily used by a farmer for the transportation of agricultur-

al or horticultural products from any farm or grove to a packinghouse or to a point of shipment by a transportation company; or a motor vehicle not exceeding 11/2 tons under contract with the Government of the United States to carry United States mail, provided such vehicle is not used for commercial purposes.

(16) "Road" means the entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic.

(17) "Brake horsepower" means the actual unit of torque developed per unit of time at the output shaft of an engine, as measured by a dynamometer.

(18) "Department" means the Department of Highway Safety and Motor Vehicles.

(19) (a) "Registration period" means a period of 12 months or 24 months during which a motor vehicle or mobile home registration is valid.

(b) "Extended registration period" means a period of 24 months during which a motor vehicle or mobile home registration is valid.

(20) "Marine boat trailer dealer" means any person engaged in:

(a) The business of buying, selling, manufacturing, or dealing in trailers specifically designed to be drawn by another vehicle and used for the transportation on land of vessels, as defined in § 327.02; or

(b) The offering or displaying of such trailers for sale.

(21) "Renewal period" means the period during which renewal of a motor vehicle registration or mobile home registration is required, as provided in § 320.055.

(22) "Golf cart" means a motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

(23) "International Registration Plan" means a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of fleet miles operated in various jurisdictions.

(24) "Apportionable vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles, which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a power unit having a gross vehicle weight in excess of 26,000 pounds;

(b) Is a power unit having three or more axles, regardless of weight; or

(c) Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Vehicles, or combinations thereof, having a gross vehicle weight of 26,000 pounds or less and two-axle vehicles may be proportionally registered.

(25) "Commercial motor vehicle" means any vehicle which is not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,001 pounds gross vehicle weight. A vehicle that occasionally transports personal property to and from a closed-course motorsport facility, as defined in § 549.09(1)(a), is not a commercial motor vehicle if the use is not for profit and corporate sponsorship is not involved. As used in this subsection, the term "corporate sponsorship" means a payment, donation, gratuity, in-kind service, or other benefit provided to or derived by a person in relation to the underlying activity, other than the display of product or corporate names, logos, or other graphic information on the property being transported.

(26) "Motorcycle" means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, excluding a vehicle in which the operator is enclosed by a cabin unless it meets the requirements set forth by the National Highway Traffic Safety Administration for a motorcycle. The term "motorcycle" does not include a tractor or a moped.

(27) "Moped" means any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground, and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine

is used, the displacement may not exceed 50 cubic centimeters.

(28) "Interstate" means vehicle movement between or through two or more states.

(29) "Intrastate" means vehicle movement from one point within a state to another point within the same state.

(30) "Person" means and includes natural persons, corporations, copartnerships, firms, companies, agencies, or associations, singular or plural.

(31) "Registrant" means a person in whose name or names a vehicle is properly registered.

(32) "Motor carrier" means any person owning, controlling, operating, or managing any motor vehicle used to transport persons or property over any public highway.

(33) "Motorized disability access vehicle" means a vehicle designed primarily for handicapped individuals with normal upper body abilities and designed to be fueled by gasoline, travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground, and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters.

(34) "Resident" means a person who has his or her principal place of domicile in this state for a period of more than 6 consecutive months, who has registered to vote in this state, who has made a statement of domicile pursuant to § 222.17, or who has filed for homestead tax exemption on property in this state.

(35) "Nonresident" means a person who is not a resident.

(36) "Electric vehicle" means a motor vehicle that is powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current.

(37) "Disabled motor vehicle" means any motor vehicle as defined in subsection (1) which is not operable under its own motive power, excluding a nondisabled trailer or semitrailer, or any motor vehicle that is unsafe for operation upon the highways of this state.

(38) "Replacement motor vehicle" means any motor vehicle as defined in subsection (1) under tow by a wrecker to the location of a disabled motor vehicle for the purpose of replacing the disabled motor vehicle, thereby permitting the transfer of the disabled motor vehicle's operator, passengers, and load to an operable motor vehicle.

(39) "Wrecker" means any motor vehicle that is used to tow, carry, or otherwise transport motor vehicles and that is equipped for that purpose with a boom, winch, car carrier, or other similar equipment.

(40) "Tow" means to pull or draw any motor vehicle with a power unit by means of a direct attachment, drawbar, or other connection or to carry a motor vehicle on a power unit designed to transport such vehicle from one location to another.

(41) "Low-speed vehicle" means any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 49 C.F.R. § 571.500 and § 316.2122.

(42) "Utility vehicle" means a motor vehicle designed and manufactured for general maintenance, security, and landscaping purposes, but the term does not include any vehicle designed or used primarily for the transportation of persons or property on a street or highway, or a golf cart, or an all-terrain vehicle as defined in § 316.2074.

(43) For purposes of this chapter, the term "agricultural products" means any food product; any agricultural, horticultural, or livestock product; any raw material used in plant food formulation; and any plant food used to produce food and fiber.

(44) "Mini truck" means any four-wheeled, reduced-dimension truck that does not have a National Highway Traffic Safety Administration truck classification, with a top speed of 55 miles per hour, and which is equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, and seat belts.

(45) "Swamp buggy" means a motorized off-road vehicle that is designed or modified to travel over swampy or varied terrain and that may use large tires or tracks operated from an elevated platform. The term does not include any vehicle defined in chapter 261 or otherwise defined or classified in this chapter.

320.0605. Certificate of registration; possession required; exception.

(1) The registration certificate or an official copy thereof, a true copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in

the same registration period, a temporary receipt printed upon self-initiated electronic renewal of a registration via the Internet, or a cab card issued for a vehicle registered under the International Registration Plan shall, at all times while the vehicle is being used or operated on the roads of this state, be in the possession of the operator thereof or be carried in the vehicle for which issued and shall be exhibited upon demand of any authorized law enforcement officer or any agent of the department, except for a vehicle registered under § 320.0657. The provisions of this section do not apply during the first 30 days after purchase of a replacement vehicle. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(2) Rental or lease documentation that is sufficient to satisfy the requirement in subsection (1) includes the following:

(a) Date of rental and time of exit from rental facility;

(b) Rental station identification;

(c) Rental agreement number;

(d) Rental vehicle identification number;

(e) Rental vehicle license plate number and state of registration;

(f) Vehicle's make, model, and color;

(g) Vehicle's mileage; and

(h) Authorized renter's name.

320.0607. Replacement license plates, validation decal, or mobile home sticker.

(1) Any law enforcement officer or department license and registration inspector may at any time inspect a license plate or validation decal for proper display and legibility as prescribed by chapter 316. A damaged or defaced plate or decal may be required to be replaced.

(2) When a license plate, mobile home sticker, or validation decal has been lost, stolen, or destroyed, the owner of the motor vehicle or mobile home for which the plate, sticker, or decal was issued shall make application to the department for a replacement. The application shall contain the plate, sticker, or decal number being replaced and a statement that the item was lost, stolen, or destroyed. If the application includes a copy of the police report prepared in response to a report of a stolen plate, sticker, or decal, such plate, sticker, or decal must be replaced at no charge.

(3) Except as provided in subsection (2), upon filing of an application accompanied by a fee of $28 plus applicable service charges, the department shall issue a replacement plate, sticker, or decal, as applicable, if it is satisfied that the information reported in the application is true. The replacement fee shall be deposited into the Highway Safety Operating Trust Fund.

(4) Any license plate, sticker, or decal lost in the mail may be replaced at no charge. Neither the service charge nor the replacement fee shall be applied to this replacement. However, the application for a replacement shall contain a statement of such fact, the audit number of the lost item, and the date issued.

(5) Upon the issuance of an original license plate, the applicant shall pay a fee of $28 to be deposited in the Highway Safety Operating Trust Fund.

(6) All funds derived from the sale of temporary tags under the provisions of § 320.131 shall be deposited in the Highway Safety Operating Trust Fund.

320.061. Unlawful to alter motor vehicle registration certificates, license plates, temporary license plates, mobile home stickers, or validation stickers or to obscure license plates; penalty.

A person may not alter the original appearance of a vehicle registration certificate, license plate, temporary license plate, mobile home sticker, or validation sticker issued for and assigned to a motor vehicle or mobile home, whether by mutilation, alteration, defacement, or change of color or in any other manner. A person may not apply or attach a substance, reflective matter, illuminated device, spray, coating, covering, or other material onto or around any license plate which interferes with the legibility, angular visibility, or detectability of any feature or detail on the license plate or interferes with the ability to record any feature or detail on the license plate. A person who violates this section commits a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

320.07. Expiration of registration; renewal required; penalties.

(1) The registration of a motor vehicle or mobile home expires at midnight on the last day of the registration or extended registration period, or for a motor vehicle or mobile home owner who is a natural person, at midnight on the owner's birthday. A vehicle may not be operated on the roads of this state after expiration of the renewal period, or, for a natural person, at midnight on the owner's birthday, unless the registration has been renewed according to law.

(2) Registration shall be renewed semiannually, annually, or biennially, as provided in this subsection, during the applicable renewal period, upon payment of the applicable license tax amounts required by § 320.08, service charges required by § 320.04, and any additional fees required by law.

(a) Any person who owns a motor vehicle registered under § 320.08(4), (6)(b), or (13) may register semiannually as provided in § 320.0705.

(b) Any person who owns a motor vehicle or mobile home registered under § 320.08(1), (2), (3), (4)(a) or (b), (6), (7), (8), (9), (10), or (11) may renew the vehicle registration biennially during the applicable renewal period upon payment of the 2-year cumulative total of all applicable license tax amounts required by § 320.08 and service charges or surcharges required by §§ 320.03, 320.04, 320.0801, 320.08015, 320.0802, 320.0804, 320.0805, 320.08046, and 320.08056 and payment of the 2-year cumulative total of any additional fees required by law for an annual registration.

(3) The operation of any motor vehicle without having attached thereto a registration license plate and validation stickers, or the use of any mobile home without having attached thereto a mobile home sticker, for the current registration period shall subject the owner thereof, if he or she is present, or, if the owner is not present, the operator thereof to the following penalty provisions:

(a) Any person whose motor vehicle or mobile home registration has been expired for a period of 6 months or less commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b) Any person whose motor vehicle or mobile home registration has been expired for more than 6 months, upon a first offense, is subject to the penalty provided in § 318.14.

(c) Any person whose motor vehicle or mobile home registration has been expired for more than 6 months, upon a second or subsequent offense, commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(d) However, an operator shall not be charged with a violation of this subsection if the operator can show, pursuant to a valid lease agreement, that the vehicle had been leased for a period of 30 days or less at the time of the offense.

(e) Any servicemember, as defined in § 250.01, whose mobile home registration expired while he or she was serving on active duty or state active duty shall not be charged with a violation of this subsection if, at the time of the offense, the servicemember was serving on active duty or state active duty 35 miles or more from the mobile home. The servicemember must present to the department either a copy of the official military orders or a written verification signed by the servicemember's commanding officer to receive a waiver of charges.

(f) The owner of a leased motor vehicle is not responsible for any penalty specified in this subsection if the motor vehicle is registered in the name of the lessee of the motor vehicle.

(4) (a) In addition to a penalty provided in subsection (3), a delinquent fee based on the following schedule of license taxes shall be imposed on any applicant who fails to renew a registration prior to the end of the month in which renewal registration is due. The delinquent fee shall be applied beginning on the 11th calendar day of the month succeeding the renewal period. The delinquent fee does not apply to those vehicles that have not been required to be registered during the preceding registration period or as provided in § 320.18(2). The delinquent fee shall be imposed as follows:

1. License tax of $5 but not more than $25: $5 flat.

2. License tax over $25 but not more than $50: $10 flat.

3. License tax over $50 but not more than $100: $15 flat.

4. License tax over $100 but not more than $400: $50 flat.

5. License tax over $400 but not more than $600: $100 flat.

6. License tax over $600 and up: $250 flat.

(b) A person who has been assessed a penalty pursuant to § 316.545(2)(b) for failure to have a valid vehicle registration certificate is not subject to the delinquent fee authorized by this subsection if such person obtains a valid registration certificate within 10 working days after such penalty was assessed. The official receipt authorized by [1]s. 316.545(6) constitutes proof of payment of the penalty authorized in § 316.545(2)(b).

(c) The owner of a leased motor vehicle is not responsible for any delinquent fee specified in this subsection if the motor vehicle is registered in the name of the lessee of the motor vehicle.

(5) Any servicemember, as defined in § 250.01, whose motor vehicle or mobile home registration has expired while he or she was serving on active duty or state active

duty may renew his or her registration upon return from active duty or state active duty without penalty, if the servicemember served on active duty or state active duty 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty. The servicemember must provide to the department either a copy of the official military orders or a written verification signed by the servicemember's commanding officer to receive a waiver of delinquent fees.

(6) Delinquent fees imposed under this section are not apportionable under the International Registration Plan.

320.0706. Display of license plates on trucks.

The owner of any commercial truck of gross vehicle weight of 26,001 pounds or more shall display the registration license plate on both the front and rear of the truck in conformance with all the requirements of § 316.605 that do not conflict with this section. The owner of a dump truck may place the rear license plate on the gate no higher than 60 inches to allow for better visibility. However, the owner of a truck tractor shall be required to display the registration license plate only on the front of such vehicle. A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

320.0803. Moped license plates.

(1) Any other provision of law to the contrary notwithstanding, registration and payment of license taxes in accordance with these requirements and for the purposes stated herein shall in no way be construed as placing any requirements upon mopeds other than the requirements of registration and payment of license taxes.

(2) Each request for a license plate for a moped shall be submitted to the department or its agent on an application form supplied by the department, accompanied by the license tax required in § 320.08.

(3) The license plate for a moped shall be 4 inches wide by 7 inches long.

(4) A license plate for a moped shall be of the same material as license plates issued pursuant to § 320.06; however, the word "Florida" shall be stamped across the top of the plate in small letters.

320.0848. Persons who have disabilities; issuance of disabled parking permits; temporary permits; permits for certain providers of transportation services to persons who have disabilities.

(1) (a) The Department of Highway Safety and Motor Vehicles or its authorized agents shall, upon application and receipt of the fee, issue a disabled parking permit for a period of up to 4 years, which period ends on the applicant's birthday, to any person who has long-term mobility impairment, or a temporary disabled parking permit not to exceed 6 months to any person who has a temporary mobility impairment. No person will be required to pay a fee for a parking permit for disabled persons more than once in a 12-month period from the date of the prior fee payment.

(b) 1. The person must be currently certified as being legally blind or as having any of the following disabilities that render him or her unable to walk 200 feet without stopping to rest:

a. Inability to walk without the use of or assistance from a brace, cane, crutch, prosthetic device, or other assistive device, or without the assistance of another person. If the assistive device significantly restores the person's ability to walk to the extent that the person can walk without severe limitation, the person is not eligible for the exemption parking permit.

b. The need to permanently use a wheelchair.

c. Restriction by lung disease to the extent that the person's forced (respiratory) expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or the person's arterial oxygen is less than 60 mm/hg on room air at rest.

d. Use of portable oxygen.

e. Restriction by cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association.

f. Severe limitation in the person's ability to walk due to an arthritic, neurological, or orthopedic condition.

2. The certification of disability which is required under subparagraph 1. must be provided by a physician licensed under chapter 458, chapter 459, or chapter 460, by a podiatric physician licensed under chapter 461, by an optometrist licensed under chapter 463, by an advanced registered nurse practitioner licensed under chapter 464 under the

protocol of a licensed physician as stated in this subparagraph, by a physician assistant licensed under chapter 458 or chapter 459, or by a similarly licensed physician from another state if the application is accompanied by documentation of the physician's licensure in the other state and a form signed by the out-of-state physician verifying his or her knowledge of this state's eligibility guidelines.

(c) The certificate of disability must include, but need not be limited to:

1. The disability of the applicant; the certifying practitioner's name and address; the practitioner's certification number; the eligibility criteria for the permit; the penalty for falsification by either the certifying practitioner or the applicant; the duration of the condition that entitles the person to the permit; and justification for the additional placard pursuant to subsection (2).

2. The statement, in bold letters: "A disabled parking permit may be issued only for a medical necessity that severely affects mobility."

3. The signatures of:

a. The applicant's physician or other certifying practitioner.

b. The applicant or the applicant's parent or guardian.

c. The employee of the department's authorized agent which employee is processing the application.

(d) Beginning October 1, 2012, the department shall renew the disabled parking permit of any person certified as permanently disabled on the application if the person provides a certificate of disability issued within the last 12 months pursuant to this subsection.

(e) The Department of Highway Safety and Motor Vehicles shall, in consultation with the Commission for the Transportation Disadvantaged, adopt rules, in accordance with chapter 120, for the issuance of a disabled parking permit to any organization that can adequately demonstrate a bona fide need for such a permit because the organization provides regular transportation services to persons who have disabilities and are certified as provided in this subsection.

(2) DISABLED PARKING PERMIT; PERSONS WITH LONG-TERM MOBILITY PROBLEMS.—

(a) The disabled parking permit is a placard that can be placed in a motor vehicle so as to be visible from the front and rear of the vehicle. Each side of the placard must have the international symbol of accessibility in a contrasting color in the center so as to be visible. One side of the placard must display the applicant's driver's license number or state identification card number along with a warning that the applicant must have such identification at all times while using the parking permit. In those cases where the severity of the disability prevents a disabled person from physically visiting or being transported to a driver license or tax collector office to obtain a driver's license or identification card, a certifying physician may sign the exemption section of the department's parking permit application to exempt the disabled person from being issued a driver's license or identification card for the number to be displayed on the parking permit. A validation sticker must also be issued with each disabled parking permit, showing the month and year of expiration on each side of the placard. Validation stickers must be of the size specified by the Department of Highway Safety and Motor Vehicles and must be affixed to the disabled parking permits. The disabled parking permits must use the same colors as license plate validations.

(b) License plates issued under §§ 320.084, 320.0842, 320.0843, and 320.0845 are valid for the same parking privileges and other privileges provided under §§ 316.1955, 316.1964, and 526.141(5)(a).

(c) The department shall not issue an additional disabled parking permit unless the applicant states that he or she is a frequent traveler or a quadriplegic. The department may not issue to any one eligible applicant more than two disabled parking permits except to an organization in accordance with paragraph (1)(e). Subsections (1), (5), (6), and (7) apply to this subsection.

(d) If an applicant who is a disabled veteran, is a resident of this state, has been honorably discharged, and either has been determined by the Department of Defense or the United States Department of Veterans Affairs or its predecessor to have a service-connected disability rating for compensation of 50 percent or greater or has been determined to have a service-connected disability rating of 50 percent or greater and is in receipt of both disability retirement pay from the United States Department of Veterans Affairs, he or she must still provide a signed physician's statement of qualification for the disabled parking permits.

(e) To obtain a replacement for a disabled parking permit that has been lost or stolen, a person must submit an application on a form prescribed by the department, provide a certificate of disability issued within the last 12

months pursuant to subsection (1), and pay a replacement fee in the amount of $1, to be retained by the issuing agency. If the person submits with the application a police report documenting that the permit was stolen, there is no replacement fee.

(f) A person who qualifies for a disabled parking permit under this section may be issued an international wheelchair user symbol license plate under § 320.0843 in lieu of the disabled parking permit; or, if the person qualifies for a "DV" license plate under § 320.084, such a license plate may be issued to him or her in lieu of a disabled parking permit.

(3) DISABLED PARKING PERMIT; TEMPORARY.—

(a) The temporary disabled parking permit is a placard of a different color from the color of the long-term disabled parking permit placard, and must clearly display the date of expiration in large print and with color coding, but is identical to the long-term disabled parking permit placard in all other respects, including, but not limited to, the inclusion of a state identification card number or driver's license number on one side of the temporary permit. The temporary disabled parking permit placard must be designed to conspicuously display the expiration date of the permit on the front and back of the placard.

(b) The department shall issue the temporary disabled parking permit for the period of the disability as stated by the certifying physician, but not to exceed 6 months.

(c) The fee for a temporary disabled parking permit is $15.

(4) From the proceeds of the temporary disabled parking permit fees:

(a) The Department of Highway Safety and Motor Vehicles must receive $3.50 for each temporary permit, to be deposited into the Highway Safety Operating Trust Fund and used for implementing the real-time disabled parking permit database and for administering the disabled parking permit program.

(b) The tax collector, for processing, must receive $2.50 for each temporary permit.

(c) The remainder must be distributed monthly as follows:

1. To the Florida Endowment Foundation for Vocational Rehabilitation, known as "The Able Trust," for the purpose of improving employment and training opportunities for persons who have disabilities, with special emphasis on removing transportation barriers, $4. These fees must be directly deposited into the Florida Endowment Foundation for Vocational Rehabilitation as established in § 413.615.

2. To the Transportation Disadvantaged Trust Fund to be used for funding matching grants to counties for the purpose of improving transportation of persons who have disabilities, $5.

(5) The applications for disabled parking permits and temporary disabled parking permits are official state documents. The following statement must appear on each application form immediately below the physician's signature and immediately below the applicant's signature: "Knowingly providing false information on this application is a misdemeanor of the first degree, punishable as provided in § 775.082, Florida Statutes, or § 775.083, Florida Statutes. The penalty is up to 1 year in jail or a fine of $1,000, or both."

(6) Any person who knowingly makes a false or misleading statement in an application or certification under this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(7) Any person who fraudulently obtains or unlawfully displays a disabled parking permit that belongs to another person while occupying a disabled parking space or an access aisle as defined in § 553.5041 while the owner of the permit is not being transported in the vehicle or who uses an unauthorized replica of such a disabled parking permit with the intent to deceive is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(8) A law enforcement officer or a parking enforcement specialist may confiscate the disabled parking permit from any person who fraudulently obtains or unlawfully uses such a permit. A law enforcement officer or a parking enforcement specialist may confiscate any disabled parking permit that is expired, reported as lost or stolen, or defaced or that does not display a personal identification number.

(a) The permit number of each confiscated permit must be submitted to the department, and the fact that the permit has been confiscated must be noted on the permitholder's record. If two permits issued to the same person have been confiscated, the department shall refer the information to the central abuse hotline of the Department of Children and Family Services for an investigation of potential abuse, neglect, or exploitation of the permit owner.

(b) A confiscated permit must be held as evidence until a judicial decision about the violation has been made. After a finding of guilt has been made or a plea of nolo contendere has been entered, the charging agency shall destroy the confiscated permit. A confiscated permit may not, under any circumstances, be returned to its registered owner after a finding of guilt has been made or a plea of nolo contendere has been entered in court. If a finding of guilt has been made or a plea of nolo contendere has been entered for fraudulent or other unlawful use of a disabled parking permit after a prior finding of guilt or plea of nolo contendere for fraudulent or other unlawful use of a disabled parking permit issued to the same registered permitholder, the permitholder may not apply for a new disabled parking permit for 4 years. The permit number of each destroyed permit must be reported to the department, and the department must record in the real-time disabled parking permit database that the permit has been invalidated.

(9) (a) At least once every 6 months, the department shall randomly review disabled parking permitholders to ensure that all required criteria for the ownership and possession of such permit remain valid. As a component of the review, the department shall, at a minimum:

1. Review death records maintained by the Department of Health to ensure that the permitholder has not died.

2. Review the number of times the permit has been confiscated for fraudulent or unlawful use, if at all.

3. Determine if the permit has ever been reported lost or stolen and, if so, determine the current status of the permit.

(b) At least annually, the department shall verify that the owner of each disabled parking permit has not died. Such verification shall include, but need not be limited to, consultation of death records maintained by the Department of Health. If a disabled parking permitholder is found to be deceased, the department shall promptly invalidate the decedent's disabled parking permit.

(10) The department shall develop and implement a means by which persons can report abuse of disabled parking permits by telephone hotline or by submitting a form online or by mail.

(11) A violation of this section is grounds for disciplinary action under § 458.331, § 459.015, § 460.413, § 461.013, § 463.016, or § 464.018, as applicable.

320.105. Golf carts and utility vehicles; exemption.

Golf carts and utility vehicles, as defined in § 320.01, when operated in accordance with § 316.212 or § 316.2126, are exempt from provisions of this chapter which require the registration of vehicles or the display of license plates.

320.131. Temporary tags.

(1) The department is authorized and empowered to design, issue, and regulate the use of temporary tags to be designated "temporary tags" for use in the following cases:

(a) Where a dealer license plate may not be lawfully used.

(b) For a casual or private sale, including the sale of a marine boat trailer by a marine boat trailer dealer. A "casual or private sale" means any sale other than that by a licensed dealer.

(c) For certified common carriers or driveaway companies who transport motor vehicles, mobile homes, or recreational vehicles from one place to another for persons other than themselves.

(d) For banks, credit unions, and other financial institutions which are not required to be licensed under the provisions of § 320.27, § 320.77, or § 320.771, but need temporary tags for the purpose of demonstrating repossessions for sale.

(e) Where a motor vehicle is sold in this state to a resident of another state for registration therein and the motor vehicle is not required to be registered under the provisions of § 320.38.

(f) Where a motor vehicle is required to be weighed or emission tested prior to registration or have a vehicle identification number verified. A temporary tag issued for any of these purposes shall be valid for 10 days.

(g) Where an out-of-state resident, subject to registration in this state, must secure ownership documentation from the home state.

(h) For a rental car company which possesses a motor vehicle dealer license and which may use temporary tags on vehicles offered for lease by such company in accordance with the provisions of rules established by the department. However, the original issuance date of a temporary tag shall be the date which determines the applicable license plate fee.

(i) In the resolution of a consumer complaint where there is a need to issue more than two temporary tags, the department may do so.

(j) While a personalized prestige or specialty license plate is being manufactured for use upon the motor vehicle. A temporary tag issued for this purpose shall be valid for 90 days.

(k) In any case where a permanent license plate cannot legally be issued to an applicant and a temporary license plate is not specifically authorized under the provisions of this section, the department shall have the discretion to issue or authorize agents or Florida licensed dealers to issue temporary license plates to applicants demonstrating a need for such temporary use.

(l) For use by licensed dealers to transport motor vehicles and recreational vehicles from the dealer's licensed location to an off-premise sales location and return. Temporary tags used for such purposes shall be issued to the licensed dealer who owns the vehicles.

Further, the department is authorized to disallow the purchase of temporary tags by licensed dealers, common carriers, or financial institutions in those cases where abuse has occurred.

(2) The department is authorized to sell temporary tags, in addition to those listed above, to their agents and where need is demonstrated by a consumer complainant. The fee shall be $2 each. One dollar from each tag sold shall be deposited into the Brain and Spinal Cord Injury Program Trust Fund, with the remaining proceeds being deposited into the Highway Safety Operating Trust Fund. Agents of the department shall sell temporary tags for $2 each and shall charge the service charge authorized by § 320.04 per transaction, regardless of the quantity sold. Requests for purchase of temporary tags to the department or its agents shall be made, where applicable, on letterhead stationery and notarized. Except as specifically provided otherwise, a temporary tag shall be valid for 30 days, and no more than two shall be issued to the same person for the same vehicle.

(3) Any person or corporation who unlawfully issues or uses a temporary tag or violates this section or any rule adopted by the department to implement this section commits a noncriminal infraction, punishable as a moving violation as provided in chapter 318 in addition to other administrative action by the department. Using a temporary tag that has been expired for a period of 7 days or less is a noncriminal infraction, and is a nonmoving violation punishable as provided for in chapter 318.

(4) (a) Temporary tags shall be conspicuously displayed in the rear license plate bracket or, on vehicles requiring front display of license plates, on the front of the vehicle in the location where the metal license plate would normally be displayed.

(b) The department shall designate specifications for the media upon which the temporary tag is printed. Such media shall be either nonpermeable or subject to weatherproofing so that it maintains its structural integrity, including graphic and data adhesion, in all weather conditions after being placed on a vehicle.

(5) Any person who knowingly and willfully abuses or misuses temporary tag issuance to avoid registering a vehicle requiring registration pursuant to this chapter or chapter 319 commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(6) Any person who knowingly and willfully issues a temporary tag or causes another to issue a temporary tag to a fictitious person or entity to avoid disclosure of the true owner of a vehicle commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(7) Any person authorized by this section to purchase and issue a temporary tag shall maintain records as required by this chapter or departmental rules, and such records shall be open to inspection by the department or its agents during reasonable business hours. Any person who knowingly and willfully fails to comply with this subsection commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(8) The department shall administer an electronic system for licensed motor vehicle dealers to use for issuing temporary tags. If a dealer fails to comply with the department's requirements for issuing temporary tags using the electronic system, the department may deny, suspend, or revoke a license under § 320.27(9)(b)16. upon proof that the licensee has failed to comply with the department's requirements. The department may adopt rules to administer this section.

(9) (a) The department shall implement a secure print-on-demand electronic temporary tag registration, record retention, and issue system required for use by every department-authorized issuer of temporary tags by the end of the 2007-2008 fiscal year. Such system shall enable the department to issue, on demand, a temporary tag number in response to a request from the issuer by way of a secure electronic exchange of data

and then enable the issuer to print the temporary tag [1]that has all required information. A motor vehicle dealer licensed under this chapter [2]may charge a fee to comply with this subsection.

(b) To ensure the continuation of operations for issuers if a system outage occurs, the department shall allow the limited use of a backup manual issuance method during an outage which requires recordkeeping of information as determined by the department and which requires the timely electronic reporting of this information to the department.

(c) The department may adopt rules necessary to [3]administer this subsection. Such rules may include exemptions from the requirements of this subsection as feasibly required to [3]administer the program, as well as exemptions for issuers who do not require a dealer license under this chapter because of the type or size of vehicle being sold.

320.1325. Registration required for the temporarily employed.

Motor vehicles owned or leased by persons who are temporarily employed within the state but are not residents are required to be registered. Upon payment of the fees prescribed in this section and proof of insurance coverage as required by the applicant's resident state, the department shall provide a temporary registration plate and a registration certificate valid for 90 days to an applicant who is temporarily employed in this state. The temporary registration plate may be renewed one time for an additional 90-day period. At the end of the 180-day period of temporary registration, the applicant shall apply for a permanent registration if there is a further need to remain in this state. A temporary license registration plate may not be issued for any commercial motor vehicle as defined in § 320.01. The fee for the 90-day temporary registration plate shall be $40 plus the applicable service charge required by § 320.04. Subsequent permanent registration and titling of a vehicle registered hereunder shall subject the applicant to providing proof of Florida insurance coverage as specified in § 320.02 and payment of the fees required by § 320.072, in addition to all other taxes and fees required.

320.26. Counterfeiting license plates, validation stickers, mobile home stickers, cab cards, trip permits, or special temporary operational permits prohibited; penalty.

(1) (a) No person shall counterfeit registration license plates, validation stickers, or mobile home stickers, or have in his or her possession any such plates or stickers; nor shall any person manufacture, sell, or dispose of registration license plates, validation stickers, or mobile home stickers in the state without first having obtained the permission and authority of the department in writing.

(b) No person shall counterfeit, alter, or manufacture International Registration Plan cab cards, trip permits, special temporary permits, or temporary operational permits; nor shall any person sell or dispose of International Registration Plan cab cards, trip permits, special temporary permits, or temporary operational permits without first having obtained the permission and authority of the department in writing.

(2) Any person who violates this section is guilty of a felony of the third degree.

(a) If the violator is a natural person, he or she is punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) If the violator is an association or corporation, it is punishable as provided in § 775.083, and the official of the association or corporation under whose direction or with whose knowledge, consent, or acquiescence such violation occurred may be punished as provided in § 775.082, in addition to the fine which may be imposed upon such association or corporation.

320.37. Registration not to apply to nonresidents.

(1) The provisions of this chapter relative to the requirement for registration of motor vehicles and display of license number plates do not apply to a motor vehicle owned by a nonresident of this state if the owner thereof has complied with the provisions of the motor vehicle registration or licensing law of the foreign country, state, territory, or federal district of the owner's residence and conspicuously displays his or her registration number as required thereby.

(2) The exemption granted by this section does not apply to:

(a) A foreign corporation doing business in this state;

(b) Motor vehicles operated for hire, including any motor vehicle used in transporting agricultural or horticultural products or

supplies if such vehicle otherwise meets the definition of a "for-hire vehicle";

(c) Recreational vehicles or mobile homes located in this state for at least 6 consecutive months; or

(d) Commercial vehicles as defined in § 316.003.

320.371. Registration not to apply to certain manufacturers and others.

The provisions of this chapter which relate to registration and display of license number plates do not apply to any new automobile or truck, the equitable or legal title to which is vested in a manufacturer, distributor, importer, or exporter and which has never been transferred to an ultimate purchaser, if the vehicle is in the care, custody, and control of a vehicle servicing, processing, and handling agency or organization for the performance of such services and the export of such vehicle from the state or its distribution in the state, provided such agency or organization conspicuously displays on the vehicle its name and address on a temporary 5-inch by 12-inch sign that includes the legend "has custody of this vehicle." Nothing in this section may be construed to relieve such vehicle servicing, processing, and handling agency or organization which has such custody and control of such vehicle from complying with and abiding by all other applicable laws, rules, and regulations relating to safety of operation of motor vehicles and the preservation of the highways of this state.

320.38. When nonresident exemption not allowed.

The provisions of § 320.37 authorizing the operation of motor vehicles over the roads of this state by nonresidents of this state when such vehicles are duly registered or licensed under the laws of some other state or foreign country do not apply to any nonresident who accepts employment or engages in any trade, profession, or occupation in this state, except a nonresident migrant or seasonal farm worker as defined in § 316.003(61). In every case in which a nonresident, except a nonresident migrant or seasonal farm worker as defined in § 316.003(61), accepts employment or engages in any trade, profession, or occupation in this state or enters his or her children to be educated in the public schools of this state, such nonresident shall, within 10 days after the commencement of such employment or education, register his or her motor vehicles in this state if such motor vehicles are proposed to be operated on the roads of this state. Any person who is enrolled as a student in a college or university and who is a nonresident but who is in this state for a period of up to 6 months engaged in a work-study program for which academic credits are earned from a college whose credits or degrees are accepted for credit by at least three accredited institutions of higher learning, as defined in § 1005.02, is not required to have a Florida registration for the duration of the work-study program if the person's vehicle is properly registered in another jurisdiction. Any nonresident who is enrolled as a full-time student in such institution of higher learning is also exempt for the duration of such enrollment.

320.57. Penalties for violations of this chapter.

(1) Any person convicted of violating any of the provisions of this chapter is, unless otherwise provided herein, guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(2) The owner of a truck tractor and semitrailer combination or commercial truck and trailer combination, the actual gross vehicle weight of which exceeds the declared weight for registration purposes, is required to pay to the department the difference between the license tax amount paid and the required license tax due for the proper gross vehicle weight prescribed by § 320.08(4), plus a civil penalty of $50.

CHAPTER 321
HIGHWAY PATROL

321.03. Imitations prohibited; penalty.

Unless specifically authorized by the Florida Highway Patrol, a person in the state shall not color or cause to be colored any motor vehicle or motorcycle the same or similar color as the color or colors so prescribed for the Florida Highway Patrol. A person who violates this section or § 321.02 with respect to uniforms, emblems, motor vehicles and motorcycles commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. The Department of Highway Safety and Motor Vehicles shall employ such clerical help and mechanics as may be necessary for the economical and efficient operation of such department.

CHAPTER 322
DRIVER LICENSES

322.01. Definitions.

As used in this chapter:

(1) "Actual weight" means the weight of a motor vehicle or motor vehicle combination plus the weight of the load carried on it, as determined at a fixed scale operated by the state or as determined by use of a portable scale operated by a law enforcement officer.

(2) "Alcohol" means any substance containing any form of alcohol including, but not limited to, ethanol, methanol, propanol, and isopropanol.

(3) "Alcohol concentration" means:

(a) The number of grams of alcohol per 100 milliliters of blood;

(b) The number of grams of alcohol per 210 liters of breath; or

(c) The number of grams of alcohol per 67 milliliters of urine.

(4) "Authorized emergency vehicle" means a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized by § 316.2397 to display red or blue lights, and that is on call to respond to emergencies. The term includes, but is not limited to, ambulances, law enforcement vehicles, fire trucks, and other rescue vehicles. The term does not include wreckers, utility trucks, or other vehicles that are used only incidentally for emergency purposes.

(5) "Cancellation" means the act of declaring a driver's license void and terminated.

(6) "Color photographic driver's license" means a color photograph of a completed driver's license form meeting the requirements prescribed in § 322.14.

(7) "Commercial driver's license" means a Class A, Class B, or Class C driver's license issued in accordance with the requirements of this chapter.

(8) "Commercial motor vehicle" means any motor vehicle or motor vehicle combination used on the streets or highways, which:

(a) Has a gross vehicle weight rating of 26,001 pounds or more;

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

(c) Is transporting hazardous materials and is required to be placarded in accordance with Title 49 C.F.R. part 172, subpart F.

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

(9) "Controlled substance" means any substance classified as such under 21 U.S.C. § 802(6), Schedules I-V of Title 21 C.F.R. part 1308, or chapter 893.

(10) "Convenience service" means any means whereby an individual conducts a transaction with the department other than in person.

(11) (a) "Conviction" means a conviction of an offense relating to the operation of motor vehicles on highways which is a violation of this chapter or any other such law of this state or any other state, including an admission or determination of a noncriminal traffic infraction pursuant to § 318.14, or a judicial disposition of an offense committed under any federal law substantially conforming to the aforesaid state statutory provisions.

(b) Notwithstanding any other provisions of this chapter, the definition of "conviction" provided in 49 C.F.R. part 383.5 applies to offenses committed in a commercial motor vehicle or by a person holding a commercial driver's license.

(12) "Court" means any tribunal in this state or any other state, or any federal tribunal, which has jurisdiction over any civil, criminal, traffic, or administrative action.

(13) "Declared weight" means the maximum loaded weight declared for purposes of registration, pursuant to chapter 320.

(14) "Department" means the Department of Highway Safety and Motor Vehicles acting directly or through its duly authorized representatives.

(15) "Disqualification" means a prohibition, other than an out-of-service order, that precludes a person from driving a commercial motor vehicle.

(16) "Drive" means to operate or be in actual physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic.

(17) "Driver's license" means a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle and denotes an operator's license as defined in 49 U.S.C. § 30301.

(18) "Endorsement" means a special authorization which permits a driver to drive certain types of vehicles or to transport cer-

tain types of property or a certain number of passengers.

(19) "Farmer" means a person who grows agricultural products, including aquacultural, horticultural, and forestry products, and, except as provided herein, employees of such persons. The term does not include employees whose primary purpose of employment is the operation of motor vehicles.

(20) "Farm tractor" means a motor vehicle that is:

(a) Operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally for transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another; or

(b) Designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(21) "Felony" means any offense under state or federal law that is punishable by death or by a term of imprisonment exceeding 1 year.

(22) "Foreign jurisdiction" means any jurisdiction other than a state of the United States.

(23) "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single, combination, or articulated vehicle.

(24) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. § 5103 and is required to be placarded under subpart F of 49 C.F.R. part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. part 73.

(25) "Medical examiner's certificate" means a document substantially in accordance with the requirements of Title 49 C.F.R. § 391.43.

(26) "Motorcycle" means a motor vehicle powered by a motor with a displacement of more than 50 cubic centimeters, having a seat or saddle for the use of the rider, and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor, tri-vehicle, or moped.

(27) "Motor vehicle" means any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles as defined in § 316.003.

(28) "Motor vehicle combination" means a motor vehicle operated in conjunction with one or more other vehicles.

(29) "Narcotic drugs" means coca leaves, opium, isonipecaine, cannabis, and every substance neither chemically nor physically distinguishable from them, and any and all derivatives of same, and any other drug to which the narcotics laws of the United States apply, and includes all drugs and derivatives thereof known as barbiturates.

(30) "Out-of-service order" means a prohibition issued by an authorized local, state, or Federal Government official which precludes a person from driving a commercial motor vehicle.

(31) "Owner" means the person who holds the legal title to a vehicle. However, if a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, such conditional vendee, lessee, or mortgagor is the owner for the purpose of this chapter.

(32) "Passenger vehicle" means a motor vehicle designed to transport more than 15 persons, including the driver, or a school bus designed to transport more than 15 persons, including the driver.

(33) "Permit" means a document authorizing the temporary operation of a motor vehicle within this state subject to conditions established in this chapter.

(34) "Resident" means a person who has his or her principal place of domicile in this state for a period of more than 6 consecutive months, has registered to vote, has made a statement of domicile pursuant to § 222.17, or has filed for homestead tax exemption on property in this state.

(35) "Restriction" means a prohibition against operating certain types of motor vehicles or a requirement that a driver comply with certain conditions when driving a motor vehicle.

(36) "Revocation" means the termination of a licensee's privilege to drive.

(37) "School bus" means a motor vehicle that is designed to transport more than 15 persons, including the driver, and that is used to transport students to and from a public or private school or in connection with school activities, but does not include a bus operated by a common carrier in the urban transportation of school children. The term "school" includes all preelementary, elementary, secondary, and postsecondary schools.

(38) "State" means a state or possession of the United States, and, for the purposes

of this chapter, includes the District of Columbia.

(39) "Street or highway" means the entire width between the boundary lines of a way or place if any part of that way or place is open to public use for purposes of vehicular traffic.

(40) "Suspension" means the temporary withdrawal of a licensee's privilege to drive a motor vehicle.

(41) "Tank vehicle" means a vehicle that is designed to transport any liquid or gaseous material within a tank either permanently or temporarily attached to the vehicle, if such tank has a designed capacity of 1,000 gallons or more.

(42) "United States" means the 50 states and the District of Columbia.

(43) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway or operated upon rails or guideway, except a bicycle, motorized wheelchair, or motorized bicycle.

(44) "Identification card" means a personal identification card issued by the department which conforms to the definition in 18 U.S.C. § 1028(d).

(45) "Temporary driver's license" or "temporary identification card" means a certificate issued by the department which, subject to all other requirements of law, authorizes an individual to drive a motor vehicle and denotes an operator's license, as defined in 49 U.S.C. § 30301, or a personal identification card issued by the department which conforms to the definition in 18 U.S.C. § 1028(d) and denotes that the holder is permitted to stay for a short duration of time, as specified on the temporary identification card, and is not a permanent resident of the United States.

(46) "Tri-vehicle" means an enclosed three-wheeled passenger vehicle that:

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

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

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

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

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

(f) Is equipped with:

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

2. A steering wheel used to maneuver the vehicle;

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

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

5. A windshield and an appropriate windshield wiper and washer system that are certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 205, "Glazing Materials" (49 C.F.R. § 571.205) and Federal Motor Vehicle Safety Standard No. 104, "Windshield Wiping and Washing Systems" (49 C.F.R. § 571.104); and

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

322.03. Drivers must be licensed; penalties.

(1) Except as otherwise authorized in this chapter, a person may not drive any motor vehicle upon a highway in this state unless such person has a valid driver's license issued under this chapter.

(a) A person who drives a commercial motor vehicle may not receive a driver's license unless and until he or she surrenders to the department all driver's licenses in his or her possession issued to him or her by any other jurisdiction or makes an affidavit that he or she does not possess a driver's license. Any such person who fails to surrender such licenses commits a noncriminal infraction, punishable as a moving violation as set forth in chapter 318. Any such person who makes a false affidavit concerning such licenses commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(b) All surrendered licenses may be returned by the department to the issuing jurisdiction together with information that the licensee is now licensed in a new jurisdiction or may be destroyed by the department, which shall notify the issuing jurisdiction of such destruction. A person may not have more than one valid driver's license at any time.

(c) Part-time residents of this state issued a license that is valid within this state only under paragraph (b) as that paragraph existed before November 1, 2009, may continue to hold such license until the next issuance of a Florida driver's license or identification card. Licenses that are identified as "Valid in

Florida Only" may not be issued or renewed effective November 1, 2009. This paragraph expires June 30, 2017.

(2) Prior to issuing a driver's license, the department shall require any person who has been convicted two or more times of a violation of § 316.193 or of a substantially similar alcohol-related or drug-related offense outside this state within the preceding 5 years, or who has been convicted of three or more such offenses within the preceding 10 years, to present proof of successful completion of or enrollment in a department-approved substance abuse education course. If the person fails to complete such education course within 90 days after issuance, the department shall cancel the license. Further, prior to issuing the driver's license the department shall require such person to present proof of financial responsibility as provided in § 324.031. For the purposes of this paragraph, a previous conviction for violation of former § 316.028, former § 316.1931, or former § 860.01 shall be considered a previous conviction for violation of § 316.193.

(3) (a) The department may not issue a commercial driver's license to any person who is not a resident of this state.

(b) A resident of this state who is required by the laws of this state to possess a commercial driver's license may not operate a commercial motor vehicle in this state unless he or she possesses a valid commercial driver's license issued by this state. Except as provided in paragraph (c), any person who violates this paragraph is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(c) Any person whose commercial driver's license has been expired for a period of 30 days or less and who drives a commercial motor vehicle within this state is guilty of a nonmoving violation, punishable as provided in § 318.18.

(4) A person may not operate a motorcycle unless he or she holds a driver's license that authorizes such operation, subject to the appropriate restrictions and endorsements.

(5) It is a violation of this section for any person whose driver's license has been expired for more than 6 months to operate a motor vehicle on the highways of this state.

(6) A person who is charged with a violation of this section, other than a violation of paragraph (a) of subsection (1), may not be convicted if, prior to or at the time of his or her court or hearing appearance, the person produces in court or to the clerk of the court in which the charge is pending a driver's license issued to him or her and valid at the time of his or her arrest. The clerk of the court is authorized to dismiss such case at any time prior to the defendant's appearance in court. The clerk of the court may assess a fee of $5 for dismissing the case under this subsection.

322.031. Nonresident; when license required.

(1) In every case in which a nonresident, except a nonresident migrant or seasonal farm worker as defined in § 316.003(61), accepts employment or engages in any trade, profession, or occupation in this state or enters his or her children to be educated in the public schools of this state, such nonresident shall, within 30 days after the commencement of such employment or education, be required to obtain a Florida driver's license if such nonresident operates a motor vehicle on the highways of this state. The spouse or dependent child of such nonresident shall also be required to obtain a Florida driver's license within that 30-day period prior to operating a motor vehicle on the highways of this state.

(2) A member of the United States Armed Forces on active duty in this state shall not be required to obtain a Florida driver's license under this section solely because he or she enters his or her children to be educated in the public schools of this state if he or she has a valid military driving permit or a valid driver's license issued by another state.

(3) A nonresident who is domiciled in another state and who commutes into this state in order to work shall not be required to obtain a Florida driver's license under this section solely because he or she has accepted employment or engages in any trade, profession, or occupation in this state if he or she has a valid driver's license issued by another state. Further, any person who is enrolled as a student in a college or university and who is a nonresident but is in this state for a period of up to 6 months engaged in a work-study program for which academic credits are earned from a college whose credits or degrees are accepted for credit by at least three accredited institutions of higher learning, as defined in § 1005.02, shall not be required to obtain a Florida driver's license for the duration of the work-study program if such person has a valid driver's license issued by another state. Any nonresident who is enrolled as a full-time student in any such institution of higher learning is also exempt from the requirement of obtaining a Florida

driver's license for the duration of such enrollment.

(4) A nonresident who is at least 21 years of age and who has in his or her immediate possession a valid commercial driver's license issued in substantial compliance with the Commercial Motor Vehicle Safety Act of 1986 may operate a motor vehicle of the type permitted by his or her license to be operated in this state.

322.04. Persons exempt from obtaining driver license.

(1) The following persons are exempt from obtaining a driver license:

(a) Any employee of the United States Government, while operating a noncommercial motor vehicle owned by or leased to the United States Government and being operated on official business.

(b) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway.

(c) A nonresident who is at least 16 years of age and who has in his or her immediate possession a valid noncommercial driver license issued to the nonresident in his or her home state or country operating a motor vehicle of the type for which a Class E driver license is required in this state.

(d) A nonresident who is at least 18 years of age and who has in his or her immediate possession a valid noncommercial driver license issued to the nonresident in his or her home state or country operating a motor vehicle, other than a commercial motor vehicle, in this state.

(e) Any person operating a golf cart, as defined in § 320.01, which is operated in accordance with the provisions of § 316.212.

(2) This section does not apply to any person to whom § 322.031 applies.

(3) Any person working for a firm under contract to the United States Government whose residence is outside this state and whose main point of employment is outside this state may drive a noncommercial vehicle on the public roads of this state for periods up to 60 days while in this state on temporary duty, if the person has a valid driver license from the state of the person's residence.

322.05. Persons not to be licensed.

The department may not issue a license:

(1) To a person who is under the age of 16 years, except that the department may issue a learner's driver's license to a person who is at least 15 years of age and who meets the requirements of §§ 322.091 and 322.1615 and of any other applicable law or rule.

(2) To a person who is at least 16 years of age but is under 18 years of age unless the person meets the requirements of § 322.091 and holds a valid:

(a) Learner's driver's license for at least 12 months, with no moving traffic convictions, before applying for a license;

(b) Learner's driver's license for at least 12 months and who has a moving traffic conviction but elects to attend a traffic driving school for which adjudication must be withheld pursuant to § 318.14; or

(c) License that was issued in another state or in a foreign jurisdiction and that would not be subject to suspension or revocation under the laws of this state.

(3) To a person who is at least 16 years of age but who is under 18 years of age, unless the parent, guardian, or other responsible adult meeting the requirements of § 322.09 certifies that he or she, or another licensed driver 21 years of age or older, has accompanied the applicant for a total of not less than 50 hours' behind-the-wheel experience, of which not less than 10 hours must be at night. This subsection is not intended to create a private cause of action as a result of the certification. The certification is inadmissible for any purpose in any civil proceeding.

(4) Except as provided by this subsection, to any person, as a Class A licensee, Class B licensee, or Class C licensee, who is under the age of 18 years.

(5) To any person whose license has been suspended, during such suspension, nor to any person whose license has been revoked, until the expiration of the period of revocation imposed under the provisions of this chapter.

(6) To any person, as a commercial motor vehicle operator, whose privilege to operate a commercial motor vehicle has been disqualified, until the expiration of the period of disqualification.

(7) To any person who is an habitual drunkard, or is an habitual user of narcotic drugs, or is an habitual user of any other drug to a degree which renders him or her incapable of safely driving a motor vehicle.

(8) To any person who has been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law.

(9) To any person who is required by this chapter to take an examination, unless such

person shall have successfully passed such examination.

(10) To any person, when the department has good cause to believe that the operation of a motor vehicle on the highways by such person would be detrimental to public safety or welfare. Deafness alone shall not prevent the person afflicted from being issued a Class E driver's license.

(11) To any person who is ineligible under § 322.056.

322.051. Identification cards.

(1) Any person who is 5 years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking permit under § 320.0848, may be issued an identification card by the department upon completion of an application and payment of an application fee.

(a) The application must include the following information regarding the applicant:

1. Full name (first, middle or maiden, and last), gender, proof of social security card number satisfactory to the department, county of residence, mailing address, proof of residential address satisfactory to the department, country of birth, and a brief description.

2. Proof of birth date satisfactory to the department.

3. Proof of identity satisfactory to the department. Such proof must include one of the following documents issued to the applicant:

a. A driver license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to a document required under sub-subparagraph b., sub-subparagraph c., sub-subparagraph d., sub-subparagraph e., sub-subparagraph f., sub-subparagraph g., or sub-subparagraph h.;

b. A certified copy of a United States birth certificate;

c. A valid, unexpired United States passport;

d. A naturalization certificate issued by the United States Department of Homeland Security;

e. A valid, unexpired alien registration receipt card (green card);

f. A Consular Report of Birth Abroad provided by the United States Department of State;

g. An unexpired employment authorization card issued by the United States Department of Homeland Security; or

h. Proof of nonimmigrant classification provided by the United States Department of Homeland Security, for an original identification card. In order to prove nonimmigrant classification, an applicant must provide at least one of the following documents. In addition, the department may require applicants to produce United States Department of Homeland Security documents for the sole purpose of establishing the maintenance of, or efforts to maintain, continuous lawful presence:

I. A notice of hearing from an immigration court scheduling a hearing on any proceeding.

II. A notice from the Board of Immigration Appeals acknowledging pendency of an appeal.

III. A notice of the approval of an application for adjustment of status issued by the United States Bureau of Citizenship and Immigration Services.

IV. An official documentation confirming the filing of a petition for asylum or refugee status or any other relief issued by the United States Bureau of Citizenship and Immigration Services.

V. A notice of action transferring any pending matter from another jurisdiction to Florida, issued by the United States Bureau of Citizenship and Immigration Services.

VI. An order of an immigration judge or immigration officer granting relief that authorizes the alien to live and work in the United States, including, but not limited to, asylum.

VII. Evidence that an application is pending for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States, if a visa number is available having a current priority date for processing by the United States Bureau of Citizenship and Immigration Services.

VIII. On or after January 1, 2010, an unexpired foreign passport with an unexpired United States Visa affixed, accompanied by an approved I-94, documenting the most recent admittance into the United States.

An identification card issued based on documents required in sub-subparagraph g. or sub-subparagraph h. is valid for a period not to exceed the expiration date of the document presented or 1 year, whichever occurs first.

(b) An application for an identification card must be signed and verified by the applicant in a format designated by the department before a person authorized to adminis-

ter oaths and payment of the applicable fee pursuant to § 322.21.

(c) Each such applicant may include fingerprints and any other unique biometric means of identity.

(2) (a) Every identification card:

1. Issued to a person 5 years of age to 14 years of age shall expire, unless canceled earlier, on the fourth birthday of the applicant following the date of original issue.

2. Issued to a person 15 years of age and older shall expire, unless canceled earlier, on the eighth birthday of the applicant following the date of original issue.

Renewal of an identification card shall be made for the applicable term enumerated in this paragraph. Any application for renewal received later than 90 days after expiration of the identification card shall be considered the same as an application for an original identification card.

(b) Notwithstanding any other provision of this chapter, if an applicant establishes his or her identity for an identification card using a document authorized under sub-subparagraph (1)(a)3.e., the identification card shall expire on the eighth birthday of the applicant following the date of original issue or upon first renewal or duplicate issued after implementation of this section. After an initial showing of such documentation, he or she is exempted from having to renew or obtain a duplicate in person.

(c) Notwithstanding any other provisions of this chapter, if an applicant establishes his or her identity for an identification card using an identification document authorized under sub-subparagraph (1)(a)3.g. or sub-subparagraph (1)(a)3.h., the identification card shall expire 1 year after the date of issuance or upon the expiration date cited on the United States Department of Homeland Security documents, whichever date first occurs, and may not be renewed or obtain a duplicate except in person.

(3) If an identification card issued under this section is lost, destroyed, or mutilated or a new name is acquired, the person to whom it was issued may obtain a duplicate upon furnishing satisfactory proof of such fact to the department and upon payment of a fee as provided in § 322.21. The fee must include payment for the color photograph or digital image of the applicant. Any person who loses an identification card and who, after obtaining a duplicate, finds the original card shall immediately surrender the original card to the department. The same documentary evidence shall be furnished for a duplicate as for an original identification card.

(4) When used with reference to identification cards, "cancellation" means that an identification card is terminated without prejudice and must be surrendered. Cancellation of the card may be made when a card has been issued through error or when voluntarily surrendered to the department.

(5) No public entity shall be liable for any loss or injury resulting directly or indirectly from false or inaccurate information contained in identification cards provided for in this section.

(6) It is unlawful for any person:

(a) To display, cause or permit to be displayed, or have in his or her possession any fictitious, fraudulently altered, or fraudulently obtained identification card.

(b) To lend his or her identification card to any other person or knowingly permit the use thereof by another.

(c) To display or represent any identification card not issued to him or her as being his or her card.

(d) To permit any unlawful use of an identification card issued to him or her.

(e) To do any act forbidden, or fail to perform any act required, by this section.

(f) To photograph, photostat, duplicate, or in any way reproduce any identification card or facsimile thereof in such a manner that it could be mistaken for a valid identification card, or to display or have in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this section.

(7) Any person accepting the Florida driver's license as proof of identification must accept a Florida identification card as proof of identification when the bearer of the identification card does not also have a driver's license.

(8) (a) The department shall, upon receipt of the required fee, issue to each qualified applicant for an identification card a color photographic or digital image identification card bearing a fullface photograph or digital image of the identification cardholder. Notwithstanding chapter 761 or § 761.05, the requirement for a fullface photograph or digital image of the identification cardholder may not be waived. A space shall be provided upon which the identification cardholder shall affix his or her usual signature, as required in § 322.14, in the presence of an authorized agent of the department so as to ensure that such signature becomes a part of the identification card.

(b) A capital "V" shall be exhibited on the identification card of a veteran upon the payment of an additional $1 fee for the license and the presentation of a copy of the person's DD Form 214, issued by the United States Department of Defense, or another acceptable form specified by the Department of Veterans' Affairs. Until a veteran's identification card is next renewed, the veteran may have the capital "V" designation added to his or her identification card upon surrender of his or her current identification card, payment of a $2 fee to be deposited into the Highway Safety Operating Trust Fund, and presentation of a copy of his or her DD Form 214 or another acceptable form specified by the Department of Veterans' Affairs. If the applicant is not conducting any other transaction affecting the identification card, a replacement identification card may be issued with the capital "V" designation without payment of the fee required in § 322.21(1)(f)3.

(9) Notwithstanding any other provision of this section or § 322.21 to the contrary, the department shall issue or renew a card at no charge to a person who presents evidence satisfactory to the department that he or she is homeless as defined in § 414.0252(7).

322.055. Revocation or suspension of, or delay of eligibility for, driver's license for persons 18 years of age or older convicted of certain drug offenses.

(1) Notwithstanding the provisions of § 322.28, upon the conviction of a person 18 years of age or older for possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance, the court shall direct the department to revoke the driver's license or driving privilege of the person. The period of such revocation shall be 2 years or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Family Services. However, the court may, in its sound discretion, direct the department to issue a license for driving privileges restricted to business or employment purposes only, as defined by § 322.271, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under this section or § 322.056 may, upon the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on length of suspension or revocation. In no case shall a restricted license be available until 6 months of the suspension or revocation period has expired.

(2) If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person is eligible by reason of age for a driver's license or privilege, the court shall direct the department to withhold issuance of such person's driver's license or driving privilege for a period of 2 years after the date the person was convicted or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Family Services. However, the court may, in its sound discretion, direct the department to issue a license for driving privileges restricted to business or employment purposes only, as defined by § 322.271, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under this section or § 322.056 may, upon the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case shall a restricted license be available until 6 months of the suspension or revocation period has expired.

(3) If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person's driver's license or driving privilege is already under suspension or revocation for any reason, the court shall direct the department to extend the period of such suspension or revocation by an additional period of 2 years or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Family Services. However, the court may, in its sound discretion, direct the department to issue a license for driving privileges restricted to business or employment purposes only, as defined by § 322.271, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under this section or § 322.056 may, upon the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of

suspension or revocation. In no case shall a restricted license be available until 6 months of the suspension or revocation period has expired.

(4) If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person is ineligible by reason of age for a driver's license or driving privilege, the court shall direct the department to withhold issuance of such person's driver's license or driving privilege for a period of 2 years after the date that he or she would otherwise have become eligible or until he or she becomes eligible by reason of age for a driver's license and is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Family Services. However, the court may, in its sound discretion, direct the department to issue a license for driving privileges restricted to business or employment purposes only, as defined by § 322.271, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under this section or § 322.056 may, upon the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case shall a restricted license be available until 6 months of the suspension or revocation period has expired.

(5) Each clerk of court shall promptly report to the department each conviction for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance.

322.056. Mandatory revocation or suspension of, or delay of eligibility for, driver's license for persons under age 18 found guilty of certain alcohol, drug, or tobacco offenses; prohibition.

(1) Notwithstanding the provisions of § 322.055, if a person under 18 years of age is found guilty of or delinquent for a violation of § 562.11(2), § 562.111, or chapter 893, and:

(a) The person is eligible by reason of age for a driver's license or driving privilege, the court shall direct the department to revoke or to withhold issuance of his or her driver's license or driving privilege for a period of:

1. Not less than 6 months and not more than 1 year for the first violation.

2. Two years, for a subsequent violation.

(b) The person's driver's license or driving privilege is under suspension or revocation for any reason, the court shall direct the department to extend the period of suspension or revocation by an additional period of:

1. Not less than 6 months and not more than 1 year for the first violation.

2. Two years, for a subsequent violation.

(c) The person is ineligible by reason of age for a driver's license or driving privilege, the court shall direct the department to withhold issuance of his or her driver's license or driving privilege for a period of:

1. Not less than 6 months and not more than 1 year after the date on which he or she would otherwise have become eligible, for the first violation.

2. Two years after the date on which he or she would otherwise have become eligible, for a subsequent violation.

However, the court may, in its sound discretion, direct the department to issue a license for driving privileges restricted to business or employment purposes only, as defined in § 322.271, if the person is otherwise qualified for such a license.

(2) If a person under 18 years of age is found by the court to have committed a noncriminal violation under § 569.11 and that person has failed to comply with the procedures established in that section by failing to fulfill community service requirements, failing to pay the applicable fine, or failing to attend a locally available school-approved anti-tobacco program, and:

(a) The person is eligible by reason of age for a driver's license or driving privilege, the court shall direct the department to revoke or to withhold issuance of his or her driver's license or driving privilege as follows:

1. For the first violation, for 30 days.

2. For the second violation within 12 weeks of the first violation, for 45 days.

(b) The person's driver's license or driving privilege is under suspension or revocation for any reason, the court shall direct the department to extend the period of suspension or revocation by an additional period as follows:

1. For the first violation, for 30 days.

2. For the second violation within 12 weeks of the first violation, for 45 days.

(c) The person is ineligible by reason of age for a driver's license or driving privilege, the court shall direct the department to withhold issuance of his or her driver's license or driving privilege as follows:

1. For the first violation, for 30 days.

2. For the second violation within 12 weeks of the first violation, for 45 days.

Any second violation of § 569.11 not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in this subsection.

(3) If a person under 18 years of age is found by the court to have committed a third violation of § 569.11 within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to suspend or withhold issuance of his or her driver's license or driving privilege for 60 consecutive days. Any third violation of § 569.11 not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in subsection (2).

(4) A penalty imposed under this section shall be in addition to any other penalty imposed by law.

(5) The suspension or revocation of a person's driver's license imposed pursuant to subsection (2) or subsection (3), shall not result in or be cause for an increase of the convicted person's, or his or her parent's or legal guardian's, automobile insurance rate or premium or result in points assessed against the person's driving record.

322.065. Driver license expired for 6 months or less; penalties.

A person whose driver license has been expired for 6 months or less and who drives a motor vehicle upon the highways of this state commits an infraction and is subject to the penalty provided in § 318.18.

HIST: § 4, ch. 88-50; § 401, ch. 95-148; § 53, ch. 96-350; § 48, ch. 2012-181.

322.07. Instruction permits and temporary licenses.

(1) Any person who is at least 18 years of age and who, except for his or her lack of instruction in operating a motor vehicle, would otherwise be qualified to obtain a Class E driver's license under this chapter, may apply for a temporary instruction permit. The department shall issue such a permit entitling the applicant, while having the permit in his or her immediate possession, to drive a motor vehicle of the type for which a Class E driver's license is required upon the highways for a period of 90 days, but, except when operating a motorcycle or moped as defined in § 316.003, the person must be accompanied by a licensed driver who is 21 years of age or older, who is licensed to operate the class of vehicle being operated, and who is actually occupying the closest seat to the right of the driver.

(2) The department may, in its discretion, issue a temporary permit to an applicant for a Class E driver's license permitting him or her to operate a motor vehicle of the type for which a Class E driver's license is required while the department is completing its investigation and determination of all facts relative to such applicant's right to receive a driver's license. Such permit must be in his or her immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

(3) Any person who, except for his or her lack of instruction in operating a commercial motor vehicle, would otherwise be qualified to obtain a commercial driver license under this chapter, may apply for a temporary commercial instruction permit. The department shall issue such a permit entitling the applicant, while having the permit in his or her immediate possession, to drive a commercial motor vehicle on the highways, if:

(a) The applicant possesses a valid Florida driver license; and

(b) The applicant, while operating a commercial motor vehicle, is accompanied by a licensed driver who is 21 years of age or older, who is licensed to operate the class of vehicle being operated, and who is occupying the closest seat to the right of the driver.

322.14. Licenses issued to drivers.

(1) (a) The department shall, upon successful completion of all required examinations and payment of the required fee, issue to every qualified applicant a driver license that must bear a color photograph or digital image of the licensee; the name of the state; a distinguishing number assigned to the licensee; and the licensee's full name, date of birth, and residence address; a brief description of the licensee, including, but not limited to, the licensee's gender and height; and the dates of issuance and expiration of the license. A space shall be provided upon which the licensee shall affix his or her usual signature. A license is invalid until it has been signed by the licensee except that the signature of the licensee is not required if it appears thereon in facsimile or if the licensee is not present within the state at the time of issuance.

(b) In addition to the requirements of paragraph (a), each license must exhibit the class of vehicle which the licensee is authorized to operate and any applicable endorsements or restrictions. If the license is a com-

mercial driver's license, such fact must be exhibited thereon.

(c) A capital "V" shall be exhibited on the driver license of a veteran upon the payment of an additional $1 fee for the license and the presentation of a copy of the person's DD Form 214, issued by the United States Department of Defense, or another acceptable form specified by the Department of Veterans' Affairs. Until a veteran's license is next renewed, the veteran may have the capital "V" designation added to his or her license upon surrender of his or her current license, payment of a $2 fee to be deposited into the Highway Safety Operating Trust Fund, and presentation of a copy of his or her DD Form 214 or another acceptable form specified by the Department of Veterans' Affairs. If the applicant is not conducting any other transaction affecting the driver license, a replacement license may be issued with the capital "V" designation without payment of the fee required in § 322.21(1)(e).

(2) The department may require other pertinent information to be exhibited on a driver's license.

322.15. License to be carried and exhibited on demand; fingerprint to be imprinted upon a citation.

(1) Every licensee shall have his or her driver's license, which must be fully legible with no portion of such license faded, altered, mutilated, or defaced, in his or her immediate possession at all times when operating a motor vehicle and shall display the same upon the demand of a law enforcement officer or an authorized representative of the department.

(2) Upon the failure of any person to display a driver's license as required by subsection (1), the law enforcement officer or authorized representative of the department stopping the person shall require the person to imprint his or her fingerprints upon any citation issued by the officer or authorized representative, or the officer or authorized representative shall collect the fingerprints electronically.

(3) In relation to violations of subsection (1) or § 322.03(5), persons who cannot supply proof of a valid driver's license for the reason that the license was suspended for failure to comply with that citation shall be issued a suspension clearance by the clerk of the court for that citation upon payment of the applicable penalty and fee for that citation. If proof of a valid driver's license is not provided to the clerk of the court within 30 days, the person's driver's license shall again be suspended for failure to comply.

(4) A violation of subsection (1) is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

322.16. License restrictions.

(1) (a) The department, upon issuing a driver's license, may, whenever good cause appears, impose restrictions suitable to the licensee's driving ability with respect to the type of special mechanical control devices required on a motor vehicle that the licensee may operate, including, but not limited to, restricting the licensee to operating only vehicles equipped with air brakes, or imposing upon the licensee such other restrictions as the department determines are appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The department may further impose other suitable restrictions on use of the license with respect to time and purpose of use, including, but not limited to, a restriction providing for intrastate operation only, or may impose any other condition or restriction that the department considers necessary for driver improvement, safety, or control of drivers in this state.

(c) The department may further, at any time, impose other restrictions on the use of the license with respect to time and purpose of use or may impose any other condition or restriction upon recommendation of any court, of the Parole Commission, or of the Department of Corrections with respect to any individual who is under the jurisdiction, supervision, or control of the entity that made the recommendation.

(d) The department may impose a restriction upon the use of the license requiring that the licensee wear a medical identification bracelet when operating a motor vehicle. Medical identification bracelet restrictions must be coded on the license of the restricted operator. There is no penalty for violating this paragraph.

(2) A person who holds a driver's license and who is under 17 years of age, when operating a motor vehicle after 11 p.m. and before 6 a.m., must be accompanied by a driver who holds a valid license to operate the type of vehicle being operated and is at least 21 years of age unless that person is driving directly to or from work.

(3) A person who holds a driver's license who is 17 years of age, when operating a motor vehicle after 1 a.m. and before 5 a.m., must be accompanied by a driver who holds

a valid license to operate the type of vehicle being operated, and is at least 21 years of age unless that person is driving directly to or from work.

(4) The department may, upon receiving satisfactory evidence of any violation of the restriction upon such a license, except a violation of paragraph (1)(d), subsection (2), or subsection (3), suspend or revoke the license, but the licensee is entitled to a hearing as upon a suspension or revocation under this chapter.

(5) It is a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, for any person to operate a motor vehicle in any manner in violation of the restrictions imposed under paragraph (1)(c).

(6) Any person who operates a motor vehicle in violation of the restrictions imposed under paragraph (1)(a), paragraph (1)(b), subsection (2), or subsection (3) will be charged with a moving violation and fined in accordance with chapter 318.

322.1615. Learner's driver's license.

(1) The department may issue a learner's driver's license to a person who is at least 15 years of age and who:

(a) Has passed the written examination for a learner's driver's license;

(b) Has passed the vision and hearing examination administered under § 322.12;

(c) Has completed the traffic law and substance abuse education course prescribed in § 322.095; and

(d) Meets all other requirements set forth in law and by rule of the department.

(2) When operating a motor vehicle, the holder of a learner's driver's license must be accompanied at all times by a driver who:

(a) Holds a valid license to operate the type of vehicle being operated;

(b) Is at least 21 years of age; and

(c) Occupies the closest seat to the right of the driver of the motor vehicle.

(3) A person who holds a learner's driver's license may operate a vehicle only during daylight hours, except that the holder of a learner's driver's license may operate a vehicle until 10 p.m. after 3 months following the issuance of the learner's driver's license.

(4) A licensee who violates subsection (2) or subsection (3) is subject to the civil penalty imposed for a moving violation as set forth in chapter 318.

322.201. Records as evidence.

A copy, computer copy, or transcript of all abstracts of crash reports and all abstracts of court records of convictions received by the department and the complete driving record of any individual certified by the department or by the clerk of a court shall be received as evidence in all courts of this state without further authentication, if the same is otherwise admissible in evidence. Further, any court or the office of the clerk of any court of this state which is electronically connected by a terminal device to the computer data center of the department may use as evidence in any case the information obtained by this device from the records of the department without need of such certification; however, if a genuine issue as to the authenticity of such information is raised by a party or by the court, the court may require that a record certified by the department be submitted for admission into evidence. For computer copies generated by a terminal device of a court or clerk of court, entry in a driver's record that the notice required by § 322.251 was given constitutes sufficient evidence that such notice was given.

322.212. Unauthorized possession of, and other unlawful acts in relation to, driver license or identification card.

(1) It is unlawful for any person to:

(a) Knowingly have in his or her possession or to display any blank, forged, stolen, fictitious, counterfeit, or unlawfully issued driver license or identification card or any instrument in the similitude of a driver license or identification card unless possession by such person has been duly authorized by the department;

(b) Knowingly have in his or her possession any instrument in the similitude of a driver license issued by the department or its duly authorized agents or those of any state or jurisdiction issuing licenses recognized in this state for the operation of a motor vehicle;

(c) Knowingly have in his or her possession any instrument in the similitude of an identification card issued by the department or its duly authorized agents or those of any state or jurisdiction issuing identification cards recognized in this state for the purpose of indicating a person's true name and age; or

(d) Knowingly sell, manufacture, or deliver, or knowingly offer to sell, manufacture, or deliver, a blank, forged, stolen, fictitious, counterfeit, or unlawfully issued driver license or identification card, or an instrument in the similitude of a driver license or identification card, unless that person is authorized to do so by the department. A violation of this section may be investigated by any law enforcement agency, including the Division of Alcoholic Beverages and Tobacco.

The term "driver license" includes a driver license issued by the department or its agents or a driver license issued by any state or jurisdiction that issues licenses recognized in this state for the operation of a motor vehicle. The term "identification card" includes any identification card issued by the department or its agents or any identification card issued by any state or jurisdiction that issues identification cards recognized in this state for the purpose of indicating a person's true name and age. This subsection does not prohibit a person from possessing or displaying another person's driver license or identification card for a lawful purpose.

(2) It is unlawful for any person to barter, trade, sell, or give away any driver license or identification card or to perpetrate a conspiracy to barter, trade, sell, or give away any such license or identification card unless such person has been duly authorized to issue the license or identification card by the department as provided in this chapter or in the adopted rules of the department.

(3) It is unlawful for any employee of the department to allow or permit the issuance of a driver license or identification card when he or she knows that the applicant has not lawfully fulfilled the requirements of this chapter for the issuance of such license or identification card.

(4) It is unlawful for any person to agree to supply or to aid in supplying any person with a driver license or identification card by any means whatsoever not in accordance with the provisions of this chapter.

(5) (a) It is unlawful for any person to use a false or fictitious name in any application for a driver license or identification card or knowingly to make a false statement, knowingly conceal a material fact, or otherwise commit a fraud in any such application.

(b) It is unlawful for any person to have in his or her possession a driver license or identification card upon which the date of birth has been altered.

(c) It is unlawful for any person designated as a sexual predator or sexual offender to have in his or her possession a driver license or identification card upon which the sexual predator or sexual offender markings required by § 322.141 are not displayed or have been altered.

(6) Except as otherwise provided in this subsection, any person who violates any of the provisions of this section is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Any person who violates paragraph (5)(a) by giving a false age in any application for a driver license or identification card or who violates paragraph (5)(b) by possessing a driver license, identification card, or any instrument in the similitude thereof, on which the date of birth has been altered is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Any person who violates paragraph (1)(d) commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(7) In addition to any other penalties provided by this section, any person who provides false information when applying for a commercial driver license or commercial learner's permit or is convicted of fraud in connection with testing for a commercial driver license or commercial learner's permit shall be disqualified from operating a commercial motor vehicle for a period of 1 year.

(8) The provisions of this section are in addition and supplemental to all other provisions of this chapter and of the laws of this state relating to driver licenses and identification cards.

322.25. When court to forward license to department and report convictions.

(1) Whenever any person is convicted of any offense for which this chapter makes mandatory the revocation of the driver license of such person by the department, the court in which such conviction is had shall require the surrender to it of all driver licenses then held by the person so convicted, and the court shall thereupon forward the same, together with a record of such conviction, to the department.

(2) Every court having jurisdiction over offenses committed under this chapter, or any other law of this state regulating the operation of motor vehicles on highways, shall forward to the department a record of the conviction of any person in said court for a violation of any said laws, and shall suspend or revoke in accordance with the provisions of this chapter the driver license of the person so convicted.

(3) There shall be no notation made upon a license of either an arrest or warning until the holder of the license has been duly convicted or has forfeited bond.

(4) For the purpose of this chapter, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

(5) For the purpose of this chapter, the entrance of a plea of nolo contendere by the

defendant to a charge of driving while intoxicated, driving under the influence, driving with an unlawful blood-alcohol level, or any other alcohol-related or drug-related traffic offense similar to the offenses specified in § 316.193, accepted by the court and under which plea the court has entered a fine or sentence, whether in this state or any other state or country, shall be equivalent to a conviction.

(6) The report of a judicial disposition of an offense committed under this chapter or of any traffic violation, including parking on a roadway outside the limits of a municipality, or of a violation of any law of this state regulating the operation of motor vehicles on highways shall be made by the court to the department on a standard form prescribed by the department. In addition, the court shall so report to the department any conviction of a person for felony possession of a controlled substance if such person was driving or in actual physical control of a motor vehicle at the time of such possession. The form shall be a copy of the uniform traffic citation and complaint as prescribed by § 316.650 and shall include a place for the court to indicate clearly whether it recommends suspension or revocation of the offender's driving privilege. The report shall be signed by the judge or by facsimile signature. The clerks of the court may submit disposition data to the department in an automated fashion, in a form prescribed by the department.

322.26. Mandatory revocation of license by department.

The department shall forthwith revoke the license or driving privilege of any person upon receiving a record of such person's conviction of any of the following offenses:

(1) (a) Murder resulting from the operation of a motor vehicle, DUI manslaughter where the conviction represents a subsequent DUI-related conviction, or a fourth violation of § 316.193 or former § 316.1931. For such cases, the revocation of the driver's license or driving privilege shall be permanent.

(b) Manslaughter resulting from the operation of a motor vehicle.

(2) Driving a motor vehicle or being in actual physical control thereof, or entering a plea of nolo contendere, said plea being accepted by the court and said court entering a fine or sentence to a charge of driving, while under the influence of alcoholic beverages or a substance controlled under chapter 893, or being in actual physical control of a motor vehicle while under the influence of alcoholic beverages or a substance controlled under chapter 893. In any case where DUI manslaughter occurs and the person has no prior convictions for DUI-related offenses, the revocation of the license or driving privilege shall be permanent, except as provided for in § 322.271(4).

(3) Any felony in the commission of which a motor vehicle is used.

(4) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle crash resulting in the death or personal injury of another.

(5) Perjury or the making of a false affidavit or statement under oath to the department under this law, or under any other law relating to the ownership or operation of motor vehicles.

(6) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of 12 months.

(7) Any violation of the law against lewdness, assignation, and prostitution where such violation has been effected through the use of a motor vehicle.

(8) Conviction in any court having jurisdiction over offenses committed under this chapter or any other law of this state regulating the operation of a motor vehicle on the highways, upon direction of the court, when the court feels that the seriousness of the offense and the circumstances surrounding the conviction warrant the revocation of the licensee's driving privilege.

(9) Conviction in any court having jurisdiction over offenses committed under § 817.234(8) or (9) or § 817.505.

322.2615. Suspension of license; right to review.

(1) (a) A law enforcement officer or correctional officer shall, on behalf of the department, suspend the driving privilege of a person who is driving or in actual physical control of a motor vehicle and who has an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher, or of a person who has refused to submit to a urine test or a test of his or her breath-alcohol or blood-alcohol level. The officer shall take the person's driver license and issue the person a 10-day temporary permit if the person is otherwise eligible for the driving privilege and shall issue the person a notice of suspension. If a blood test has been administered, the officer or the agency employing the officer shall transmit such results to the department within 5 days after receipt of the results. If the department then determines that the person had a blood-alcohol level or breath-alcohol level of 0.08 or higher, the department shall suspend the

person's driver license pursuant to subsection (3).

(b) The suspension under paragraph (a) shall be pursuant to, and the notice of suspension shall inform the driver of, the following:

1. a. The driver refused to submit to a lawful breath, blood, or urine test and his or her driving privilege is suspended for a period of 1 year for a first refusal or for a period of 18 months if his or her driving privilege has been previously suspended as a result of a refusal to submit to such a test; or

b. The driver was driving or in actual physical control of a motor vehicle and had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher and his or her driving privilege is suspended for a period of 6 months for a first offense or for a period of 1 year if his or her driving privilege has been previously suspended under this section.

2. The suspension period shall commence on the date of issuance of the notice of suspension.

3. The driver may request a formal or informal review of the suspension by the department within 10 days after the date of issuance of the notice of suspension or may request a review of eligibility for a restricted driving privilege under § 322.271(7).

4. The temporary permit issued at the time of suspension expires at midnight of the 10th day following the date of issuance of the notice of suspension.

5. The driver may submit to the department any materials relevant to the suspension.

(2) (a) Except as provided in paragraph (1)(a), the law enforcement officer shall forward to the department, within 5 days after issuing the notice of suspension, the driver license; an affidavit stating the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances; the results of any breath or blood test or an affidavit stating that a breath, blood, or urine test was requested by a law enforcement officer or correctional officer and that the person refused to submit; the officer's description of the person's field sobriety test, if any; and the notice of suspension. The failure of the officer to submit materials within the 5-day period specified in this subsection and in subsection (1) does not affect the department's ability to consider any evidence submitted at or prior to the hearing.

(b) The officer may also submit a copy of the crash report and a copy of a video recording of the field sobriety test or the attempt to administer such test. Materials submitted to the department by a law enforcement agency or correctional agency shall be considered self-authenticating and shall be in the record for consideration by the hearing officer. Notwithstanding § 316.066(4), the crash report shall be considered by the hearing officer.

(3) If the department determines that the license should be suspended pursuant to this section and if the notice of suspension has not already been served upon the person by a law enforcement officer or correctional officer as provided in subsection (1), the department shall issue a notice of suspension and, unless the notice is mailed pursuant to § 322.251, a temporary permit that expires 10 days after the date of issuance if the driver is otherwise eligible.

(4) If the person whose license was suspended requests an informal review pursuant to subparagraph (1)(b)3., the department shall conduct the informal review by a hearing officer designated by the department. Such informal review hearing shall consist solely of an examination by the department of the materials submitted by a law enforcement officer or correctional officer and by the person whose license was suspended, and the presence of an officer or witness is not required.

(5) After completion of the informal review, notice of the department's decision sustaining, amending, or invalidating the suspension of the driver license of the person whose license was suspended must be provided to such person. Such notice must be mailed to the person at the last known address shown on the department's records, or to the address provided in the law enforcement officer's report if such address differs from the address of record, within 21 days after the expiration of the temporary permit issued pursuant to subsection (1) or subsection (3).

(6) (a) If the person whose license was suspended requests a formal review, the department must schedule a hearing within 30 days after such request is received by the department and must notify the person of the date, time, and place of the hearing.

(b) Such formal review hearing shall be held before a hearing officer designated by the department, and the hearing officer shall be authorized to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas for the of-

ficers and witnesses identified in documents provided under paragraph (2)(a), regulate the course and conduct of the hearing, question witnesses, and make a ruling on the suspension. The hearing officer may conduct hearings using communications technology. The party requesting the presence of a witness shall be responsible for the payment of any witness fees and for notifying in writing the state attorney's office in the appropriate circuit of the issuance of the subpoena. If the person who requests a formal review hearing fails to appear and the hearing officer finds such failure to be without just cause, the right to a formal hearing is waived and the suspension shall be sustained.

(c) The failure of a subpoenaed witness to appear at the formal review hearing is not grounds to invalidate the suspension. If a witness fails to appear, a party may seek enforcement of a subpoena under paragraph (b) by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena resides or by filing a motion for enforcement in any criminal court case resulting from the driving or actual physical control of a motor vehicle that gave rise to the suspension under this section. A failure to comply with an order of the court shall result in a finding of contempt of court. However, a person is not in contempt while a subpoena is being challenged.

(d) The department must, within 7 working days after a formal review hearing, send notice to the person of the hearing officer's decision as to whether sufficient cause exists to sustain, amend, or invalidate the suspension.

(7) In a formal review hearing under subsection (6) or an informal review hearing under subsection (4), the hearing officer shall determine by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the suspension. The scope of the review shall be limited to the following issues:

(a) If the license was suspended for driving with an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.

2. Whether the person whose license was suspended had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher as provided in § 316.193.

(b) If the license was suspended for refusal to submit to a breath, blood, or urine test:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.

2. Whether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.

3. Whether the person whose license was suspended was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

(8) Based on the determination of the hearing officer pursuant to subsection (7) for both informal hearings under subsection (4) and formal hearings under subsection (6), the department shall:

(a) Sustain the suspension of the person's driving privilege for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended as a result of a refusal to submit to such tests, if the person refused to submit to a lawful breath, blood, or urine test. The suspension period commences on the date of issuance of the notice of suspension.

(b) Sustain the suspension of the person's driving privilege for a period of 6 months for a blood-alcohol level or breath-alcohol level of 0.08 or higher, or for a period of 1 year if the driving privilege of such person has been previously suspended under this section as a result of driving with an unlawful alcohol level. The suspension period commences on the date of issuance of the notice of suspension.

(9) A request for a formal review hearing or an informal review hearing shall not stay the suspension of the person's driver license. If the department fails to schedule the formal review hearing within 30 days after receipt of the request therefor, the department shall invalidate the suspension. If the scheduled hearing is continued at the department's initiative or the driver enforces the subpoena as provided in subsection (6), the department shall issue a temporary driving permit that shall be valid until the hearing is conducted

if the person is otherwise eligible for the driving privilege. Such permit may not be issued to a person who sought and obtained a continuance of the hearing. The permit issued under this subsection shall authorize driving for business or employment use only.

(10) A person whose driver license is suspended under subsection (1) or subsection (3) may apply for issuance of a license for business or employment purposes only if the person is otherwise eligible for the driving privilege pursuant to § 322.271.

(a) If the suspension of the driver license of the person for failure to submit to a breath, urine, or blood test is sustained, the person is not eligible to receive a license for business or employment purposes only, pursuant to § 322.271, until 90 days have elapsed after the expiration of the last temporary permit issued. If the driver is not issued a 10-day permit pursuant to this section or § 322.64 because he or she is ineligible for the permit and the suspension for failure to submit to a breath, urine, or blood test is not invalidated by the department, the driver is not eligible to receive a business or employment license pursuant to § 322.271 until 90 days have elapsed from the date of the suspension.

(b) If the suspension of the driver license of the person relating to unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher is sustained, the person is not eligible to receive a license for business or employment purposes only pursuant to § 322.271 until 30 days have elapsed after the expiration of the last temporary permit issued. If the driver is not issued a 10-day permit pursuant to this section or § 322.64 because he or she is ineligible for the permit and the suspension relating to unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher is not invalidated by the department, the driver is not eligible to receive a business or employment license pursuant to § 322.271 until 30 days have elapsed from the date of the suspension.

(11) The formal review hearing may be conducted upon a review of the reports of a law enforcement officer or a correctional officer, including documents relating to the administration of a breath test or blood test or the refusal to take either test or the refusal to take a urine test. However, as provided in subsection (6), the driver may subpoena the officer or any person who administered or analyzed a breath or blood test. If the arresting officer or the breath technician fails to appear pursuant to a subpoena as provided in subsection (6), the department shall invalidate the suspension.

(12) The formal review hearing and the informal review hearing are exempt from the provisions of chapter 120. The department may adopt rules for the conduct of reviews under this section.

(13) A person may appeal any decision of the department sustaining a suspension of his or her driver license by a petition for writ of certiorari to the circuit court in the county wherein such person resides or wherein a formal or informal review was conducted pursuant to § 322.31. However, an appeal shall not stay the suspension. A law enforcement agency may appeal any decision of the department invalidating a suspension by a petition for writ of certiorari to the circuit court in the county wherein a formal or informal review was conducted. This subsection shall not be construed to provide for a de novo review.

(14) (a) The decision of the department under this section or any circuit court review thereof may not be considered in any trial for a violation of § 316.193, and a written statement submitted by a person in his or her request for departmental review under this section may not be admitted into evidence against him or her in any such trial.

(b) The disposition of any related criminal proceedings does not affect a suspension for refusal to submit to a blood, breath, or urine test imposed under this section.

(15) If the department suspends a person's license under § 322.2616, it may not also suspend the person's license under this section for the same episode that was the basis for the suspension under § 322.2616.

(16) The department shall invalidate a suspension for driving with an unlawful blood-alcohol level or breath-alcohol level imposed under this section if the suspended person is found not guilty at trial of an underlying violation of § 316.193.

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

(1) (a) Notwithstanding § 316.193, it is unlawful for a person under the age of 21 who has a blood-alcohol or breath-alcohol level of 0.02 or higher to drive or be in actual physical control of a motor vehicle.

(b) A law enforcement officer who has probable cause to believe that a motor vehicle is being driven by or is in the actual physical control of a person who is under the age of 21 while under the influence of alcoholic beverages or who has any blood-alcohol

or breath-alcohol level may lawfully detain such a person and may request that person to submit to a test to determine his or her blood-alcohol or breath-alcohol level.

(2) (a) A law enforcement officer or correctional officer shall, on behalf of the department, suspend the driving privilege of such person if the person has a blood-alcohol or breath-alcohol level of 0.02 or higher. The officer shall also suspend, on behalf of the department, the driving privilege of a person who has refused to submit to a test as provided by paragraph (b). The officer shall take the person's driver license and issue the person a 10-day temporary driving permit if the person is otherwise eligible for the driving privilege and shall issue the person a notice of suspension.

(b) The suspension under paragraph (a) must be pursuant to, and the notice of suspension must inform the driver of, the following:

1. a. The driver refused to submit to a lawful breath test and his or her driving privilege is suspended for a period of 1 year for a first refusal or for a period of 18 months if his or her driving privilege has been previously suspended as provided in this section as a result of a refusal to submit to a test; or

b. The driver was under the age of 21 and was driving or in actual physical control of a motor vehicle while having a blood-alcohol or breath-alcohol level of 0.02 or higher; and the person's driving privilege is suspended for a period of 6 months for a first violation, or for a period of 1 year if his or her driving privilege has been previously suspended as provided in this section for driving or being in actual physical control of a motor vehicle with a blood-alcohol or breath-alcohol level of 0.02 or higher.

2. The suspension period commences on the date of issuance of the notice of suspension.

3. The driver may request a formal or informal review of the suspension by the department within 10 days after the issuance of the notice of suspension.

4. A temporary permit issued at the time of the issuance of the notice of suspension shall not become effective until after 12 hours have elapsed and will expire at midnight of the 10th day following the date of issuance.

5. The driver may submit to the department any materials relevant to the suspension of his or her license.

(c) When a driver subject to this section has a blood-alcohol or breath-alcohol level of 0.05 or higher, the suspension shall remain in effect until such time as the driver has completed a substance abuse course offered by a DUI program licensed by the department. The driver shall assume the reasonable costs for the substance abuse course. As part of the substance abuse course, the program shall conduct a substance abuse evaluation of the driver, and notify the parents or legal guardians of drivers under the age of 19 years of the results of the evaluation. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I through V of § 893.03. If a driver fails to complete the substance abuse education course and evaluation, the driver license shall not be reinstated by the department.

(d) A minor under the age of 18 years proven to be driving with a blood-alcohol or breath-alcohol level of 0.02 or higher may be taken by a law enforcement officer to the addictions receiving facility in the county in which the minor is found to be so driving, if the county makes the addictions receiving facility available for such purpose.

(3) The law enforcement officer shall forward to the department, within 5 days after the date of the issuance of the notice of suspension, a copy of the notice of suspension, the driver license of the person receiving the notice of suspension, and an affidavit stating the officer's grounds for belief that the person was under the age of 21 and was driving or in actual physical control of a motor vehicle with any blood-alcohol or breath-alcohol level, and the results of any blood or breath test or an affidavit stating that a breath test was requested by a law enforcement officer or correctional officer and that the person refused to submit to such test. The failure of the officer to submit materials within the 5-day period specified in this subsection does not bar the department from considering any materials submitted at or before the hearing.

(4) If the department finds that the license of the person should be suspended under this section and if the notice of suspension has not already been served upon the person by a law enforcement officer or correctional officer as provided in subsection (2), the department shall issue a notice of suspension and, unless the notice is mailed under § 322.251, a temporary driving permit that expires 10 days after the date of issuance if the driver is otherwise eligible.

(5) If the person whose license is suspended requests an informal review under subparagraph (2)(b)3., the department shall conduct the informal review by a hearing of-

ficer designated by the department within 30 days after the request is received by the department and shall issue such person a temporary driving permit for business purposes only to expire on the date that such review is scheduled to be conducted if the person is otherwise eligible. The informal review hearing must consist solely of an examination by the department of the materials submitted by a law enforcement officer or correctional officer and by the person whose license is suspended, and the presence of an officer or witness is not required.

(6) After completion of the informal review, notice of the department's decision sustaining, amending, or invalidating the suspension of the driver license must be provided to the person. The notice must be mailed to the person at the last known address shown on the department's records, or to the address provided in the law enforcement officer's report if such address differs from the address of record, within 7 days after completing the review.

(7) (a) If the person whose license is suspended requests a formal review, the department must schedule a hearing to be held within 30 days after the request is received by the department and must notify the person of the date, time, and place of the hearing and shall issue such person a temporary driving permit for business purposes only to expire on the date that such review is scheduled to be conducted if the person is otherwise eligible.

(b) The formal review hearing must be held before a hearing officer designated by the department, and the hearing officer may administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas, regulate the course and conduct of the hearing, and make a ruling on the suspension. The hearing officer may conduct hearings using communications technology. The department and the person whose license was suspended may subpoena witnesses, and the party requesting the presence of a witness is responsible for paying any witness fees and for notifying in writing the state attorney's office in the appropriate circuit of the issuance of the subpoena. If the person who requests a formal review hearing fails to appear and the hearing officer finds the failure to be without just cause, the right to a formal hearing is waived and the suspension is sustained.

(c) The failure of a subpoenaed witness to appear at the formal review hearing shall not be grounds to invalidate the suspension. If a witness fails to appear, a party may seek enforcement of a subpoena under paragraph (b) by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena resides. A failure to comply with an order of the court constitutes contempt of court. However, a person may not be held in contempt while a subpoena is being challenged.

(d) The department must, within 7 working days after a formal review hearing, send notice to the person of the hearing officer's decision as to whether sufficient cause exists to sustain, amend, or invalidate the suspension.

(8) In a formal review hearing under subsection (7) or an informal review hearing under subsection (5), the hearing officer shall determine by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the suspension. The scope of the review is limited to the following issues:

(a) If the license was suspended because the individual, then under the age of 21, drove with a blood-alcohol or breath-alcohol level of 0.02 or higher:

1. Whether the law enforcement officer had probable cause to believe that the person was under the age of 21 and was driving or in actual physical control of a motor vehicle in this state with any blood-alcohol or breath-alcohol level or while under the influence of alcoholic beverages.

2. Whether the person was under the age of 21.

3. Whether the person had a blood-alcohol or breath-alcohol level of 0.02 or higher.

(b) If the license was suspended because of the individual's refusal to submit to a breath test:

1. Whether the law enforcement officer had probable cause to believe that the person was under the age of 21 and was driving or in actual physical control of a motor vehicle in this state with any blood-alcohol or breath-alcohol level or while under the influence of alcoholic beverages.

2. Whether the person was under the age of 21.

3. Whether the person refused to submit to a breath test after being requested to do so by a law enforcement officer or correctional officer.

4. Whether the person was told that if he or she refused to submit to a breath test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or,

in the case of a second or subsequent refusal, for a period of 18 months.

(9) Based on the determination of the hearing officer under subsection (8) for both informal hearings under subsection (5) and formal hearings under subsection (7), the department shall:

(a) Sustain the suspension of the person's driving privilege for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of the person has been previously suspended, as provided in this section, as a result of a refusal to submit to a test. The suspension period commences on the date of the issuance of the notice of suspension.

(b) Sustain the suspension of the person's driving privilege for a period of 6 months for driving or being in actual physical control of a motor vehicle while under the age of 21 with a blood-alcohol or breath-alcohol level of 0.02 or higher, or for a period of 1 year if the driving privilege of such person has been previously suspended under this section. The suspension period commences on the date of the issuance of the notice of suspension.

(10) A request for a formal review hearing or an informal review hearing shall not stay the suspension of the person's driver license. If the department fails to schedule the formal review hearing within 30 days after receipt of the request therefor, the department shall invalidate the suspension. If the scheduled hearing is continued at the department's initiative or the driver enforces the subpoena as provided in subsection (7), the department shall issue a temporary driving permit that is valid until the hearing is conducted if the person is otherwise eligible for the driving privilege. The permit shall not be issued to a person who requested a continuance of the hearing. The permit issued under this subsection authorizes driving for business or employment use only.

(11) A person whose driver license is suspended under subsection (2) or subsection (4) may apply for issuance of a license for business or employment purposes only, pursuant to § 322.271, if the person is otherwise eligible for the driving privilege. However, such a license may not be issued until 30 days have elapsed after the expiration of the last temporary driving permit issued under this section.

(12) The formal review hearing may be conducted upon a review of the reports of a law enforcement officer or correctional officer, including documents relating to the administration of a breath test or the refusal to take a test. However, as provided in subsection (7), the driver may subpoena the officer or any person who administered a breath or blood test. If the officer who suspended the driving privilege fails to appear pursuant to a subpoena as provided in subsection (7), the department shall invalidate the suspension.

(13) The formal review hearing and the informal review hearing are exempt from chapter 120. The department may adopt rules for conducting reviews under this section.

(14) A person may appeal any decision of the department sustaining a suspension of his or her driver license by a petition for writ of certiorari to the circuit court in the county wherein such person resides or wherein a formal or informal review was conducted under § 322.31. However, an appeal does not stay the suspension. This subsection does not provide for a de novo review.

(15) The decision of the department under this section shall not be considered in any trial for a violation of § 316.193, nor shall any written statement submitted by a person in his or her request for departmental review under this section be admissible into evidence against him or her in any such trial. The disposition of any related criminal proceedings shall not affect a suspension imposed under this section.

(16) By applying for and accepting and using a driver license, a person under the age of 21 years who holds the driver license is deemed to have expressed his or her consent to the provisions of this section.

(17) A breath test to determine breath-alcohol level pursuant to this section may be conducted as authorized by § 316.1932 or by a breath-alcohol test device listed in the United States Department of Transportation's conforming-product list of evidential breath-measurement devices. The reading from such a device is presumed accurate and is admissible in evidence in any administrative hearing conducted under this section.

(18) The result of a blood test obtained during an investigation conducted under § 316.1932 or § 316.1933 may be used to suspend the driving privilege of a person under this section.

(19) A violation of this section is neither a traffic infraction nor a criminal offense, nor does being detained pursuant to this section constitute an arrest. A violation of this section is subject to the administrative action provisions of this section, which are administered by the department through its administrative processes. Administrative ac-

tions taken pursuant to this section shall be recorded in the motor vehicle records maintained by the department. This section does not bar prosecution under § 316.193. However, if the department suspends a person's license under § 322.2615 for a violation of § 316.193, it may not also suspend the person's license under this section for the same episode that was the basis for the suspension under § 322.2615.

322.264. "Habitual traffic offender" defined.

A "habitual traffic offender" is any person whose record, as maintained by the Department of Highway Safety and Motor Vehicles, shows that such person has accumulated the specified number of convictions for offenses described in subsection (1) or subsection (2) within a 5-year period:

(1) Three or more convictions of any one or more of the following offenses arising out of separate acts:

(a) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;

(b) Any violation of § 316.193, former § 316.1931, or former § 860.01;

(c) Any felony in the commission of which a motor vehicle is used;

(d) Driving a motor vehicle while his or her license is suspended or revoked;

(e) Failing to stop and render aid as required under the laws of this state in the event of a motor vehicle crash resulting in the death or personal injury of another; or

(f) Driving a commercial motor vehicle while his or her privilege is disqualified.

(2) Fifteen convictions for moving traffic offenses for which points may be assessed as set forth in § 322.27, including those offenses in subsection (1).

Any violation of any federal law, any law of another state or country, or any valid ordinance of a municipality or county of another state similar to a statutory prohibition specified in subsection (1) or subsection (2) shall be counted as a violation of such prohibition. In computing the number of convictions, all convictions during the 5 years previous to July 1, 1972, will be used, provided at least one conviction occurs after that date. The fact that previous convictions may have resulted in suspension, revocation, or disqualification under another section does not exempt them from being used for suspension or revocation under this section as a habitual offender.

322.27. Authority of department to suspend or revoke driver license or identification card.

(1) Notwithstanding any provisions to the contrary in chapter 120, the department may suspend the license or identification card of any person without preliminary hearing upon a showing of its records or other sufficient evidence that the licensee or cardholder:

(a) Has committed an offense for which mandatory revocation of license is required upon conviction. A law enforcement agency must provide information to the department within 24 hours after any traffic fatality or when the law enforcement agency initiates action pursuant to § 316.1933;

(b) Has been convicted of a violation of any traffic law which resulted in a crash that caused the death or personal injury of another or property damage in excess of $500;

(c) Is incompetent to drive a motor vehicle;

(d) Has permitted an unlawful or fraudulent use of the license or identification card or has knowingly been a party to the obtaining of a license or identification card by fraud or misrepresentation or to the display, or representation as one's own, of a driver license or identification card not issued to him or her. This section does not include the provisions of § 322.32(1);

(e) Has committed an offense in another state which, if committed in this state, would be grounds for suspension or revocation; or

(f) Has committed a second or subsequent violation of § 316.172(1) within a 5-year period of any previous violation.

(2) The department shall suspend the license of any person without preliminary hearing upon a showing of its records that the licensee has been convicted in any court having jurisdiction over offenses committed under this chapter or any other law of this state regulating the operation of a motor vehicle on the highways, upon direction of the court, when the court feels that the seriousness of the offense and the circumstances surrounding the conviction warrant the suspension of the licensee's driving privilege.

(3) There is established a point system for evaluation of convictions of violations of motor vehicle laws or ordinances, and violations of applicable provisions of § 403.413(6)(b) when such violations involve the use of motor vehicles, for the determination of the continuing qualification of any person to operate a motor vehicle. The department is authorized to suspend the license of any per-

son upon showing of its records or other good and sufficient evidence that the licensee has been convicted of violation of motor vehicle laws or ordinances, or applicable provisions of § 403.413(6)(b), amounting to 12 or more points as determined by the point system. The suspension shall be for a period of not more than 1 year.

(a) When a licensee accumulates 12 points within a 12-month period, the period of suspension shall be for not more than 30 days.

(b) When a licensee accumulates 18 points, including points upon which suspension action is taken under paragraph (a), within an 18-month period, the suspension shall be for a period of not more than 3 months.

(c) When a licensee accumulates 24 points, including points upon which suspension action is taken under paragraphs (a) and (b), within a 36-month period, the suspension shall be for a period of not more than 1 year.

(d) The point system shall have as its basic element a graduated scale of points assigning relative values to convictions of the following violations:

1. Reckless driving, willful and wanton—4 points.

2. Leaving the scene of a crash resulting in property damage of more than $50—6 points.

3. Unlawful speed, or unlawful use of a wireless communications device, resulting in a crash—6 points.

4. Passing a stopped school bus—4 points.

5. Unlawful speed:

a. Not in excess of 15 miles per hour of lawful or posted speed—3 points.

b. In excess of 15 miles per hour of lawful or posted speed—4 points.

6. A violation of a traffic control signal device as provided in § 316.074(1) or § 316.075(1)(c)1.—4 points. However, no points shall be imposed for a violation of § 316.074(1) or § 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer. In addition, a violation of § 316.074(1) or § 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer may not be used for purposes of setting motor vehicle insurance rates.

7. All other moving violations (including parking on a highway outside the limits of a municipality)—3 points. However, no points shall be imposed for a violation of § 316.0741 or § 316.2065(11); and points shall be imposed for a violation of § 316.1001 only when imposed by the court after a hearing pursuant to § 318.14(5).

8. Any moving violation covered in this paragraph, excluding unlawful speed and unlawful use of a wireless communications device, resulting in a crash—4 points.

9. Any conviction under § 403.413(6)(b)—3 points.

10. Any conviction under § 316.0775(2)—4 points.

11. A moving violation covered in this paragraph which is committed in conjunction with the unlawful use of a wireless communications device within a school safety zone—2 points, in addition to the points assigned for the moving violation.

(e) A conviction in another state of a violation therein which, if committed in this state, would be a violation of the traffic laws of this state, or a conviction of an offense under any federal law substantially conforming to the traffic laws of this state, except a violation of § 322.26, may be recorded against a driver on the basis of the same number of points received had the conviction been made in a court of this state.

(f) In computing the total number of points, when the licensee reaches the danger zone, the department is authorized to send the licensee a warning letter advising that any further convictions may result in suspension of his or her driving privilege.

(g) The department shall administer and enforce the provisions of this law and may make rules and regulations necessary for its administration.

(h) Three points shall be deducted from the driver history record of any person whose driving privilege has been suspended only once pursuant to this subsection and has been reinstated, if such person has complied with all other requirements of this chapter.

(i) This subsection does not apply to persons operating a nonmotorized vehicle for which a driver license is not required.

(4) The department, in computing the points and period of time for suspensions under this section, shall use the offense date of all convictions.

(5) The department shall revoke the license of any person designated a habitual offender, as set forth in § 322.264, and such person is not eligible to be relicensed for a minimum of 5 years from the date of revocation, except as provided for in § 322.271. Any person whose license is revoked may, by petition to the department, show cause why his or her license should not be revoked.

(6) The department shall revoke the driving privilege of any person who is convicted of a felony for the possession of a controlled substance if, at the time of such possession, the person was driving or in actual physical control of a motor vehicle. A person whose driving privilege has been revoked pursuant to this subsection is not eligible to receive a limited business or employment purpose license during the term of such revocation.

(7) Review of an order of suspension or revocation shall be by writ of certiorari as provided in § 322.31.

322.274. Automatic revocation of driver's license.

(1) The driver's license of any person convicted hereunder of theft of any motor vehicle or parts or components of a motor vehicle shall be revoked. If such revocation shall not be ordered by the court, the Department of Highway Safety and Motor Vehicles shall forthwith revoke the same. The department shall not consider the convicted person's application for reinstatement of such revoked license until the expiration of the full term of the sentence imposed, whether served during actual imprisonment, probation, parole, or suspension.

(2) It shall be grounds for the revocation of any person's parole or probation if he or she operates a motor vehicle while his or her license is revoked pursuant to this chapter. However, it shall be within the discretion of the trial judge who imposes sentence upon the person convicted hereunder to direct the reinstatement of the person's driver's license on a limited basis after a reasonable time.

322.28. Period of suspension or revocation.

(1) Unless otherwise provided by this section, the department shall not suspend a license for a period of more than 1 year and, upon revoking a license, in any case except in a prosecution for the offense of driving a motor vehicle while under the influence of alcoholic beverages, chemical substances as set forth in § 877.111, or controlled substances, shall not in any event grant a new license until the expiration of 1 year after such revocation.

(2) In a prosecution for a violation of § 316.193 or former § 316.1931, the following provisions apply:

(a) Upon conviction of the driver, the court, along with imposing sentence, shall revoke the driver license or driving privilege of the person so convicted, effective on the date of conviction, and shall prescribe the period of such revocation in accordance with the following provisions:

1. Upon a first conviction for a violation of the provisions of § 316.193, except a violation resulting in death, the driver license or driving privilege shall be revoked for at least 180 days but not more than 1 year.

2. Upon a second conviction for an offense that occurs within a period of 5 years after the date of a prior conviction for a violation of the provisions of § 316.193 or former § 316.1931 or a combination of such sections, the driver license or driving privilege shall be revoked for at least 5 years.

3. Upon a third conviction for an offense that occurs within a period of 10 years after the date of a prior conviction for the violation of the provisions of § 316.193 or former § 316.1931 or a combination of such sections, the driver license or driving privilege shall be revoked for at least 10 years.

For the purposes of this paragraph, a previous conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, or any other alcohol-related or drug-related traffic offense similar to the offense of driving under the influence as proscribed by § 316.193 will be considered a previous conviction for violation of § 316.193, and a conviction for violation of former § 316.028, former § 316.1931, or former § 860.01 is considered a conviction for violation of § 316.193.

(b) If the period of revocation was not specified by the court at the time of imposing sentence or within 30 days thereafter, and is not otherwise specified by law, the department shall forthwith revoke the driver license or driving privilege for the maximum period applicable under paragraph (a) for a first conviction and for the minimum period applicable under paragraph (a) for any subsequent convictions. The driver may, within 30 days after such revocation by the department, petition the court for further hearing on the period of revocation, and the court may reopen the case and determine the period of revocation within the limits specified in paragraph (a).

(c) The forfeiture of bail bond, not vacated within 20 days, in any prosecution for the offense of driving while under the influence of alcoholic beverages, chemical substances, or controlled substances to the extent of depriving the defendant of his or her normal faculties shall be deemed equivalent to a conviction for the purposes of this paragraph, and the department shall forthwith revoke the defendant's driver license or driving privi-

lege for the maximum period applicable under paragraph (a) for a first conviction and for the minimum period applicable under paragraph (a) for a second or subsequent conviction; however, if the defendant is later convicted of the charge, the period of revocation imposed by the department for such conviction shall not exceed the difference between the applicable maximum for a first conviction or minimum for a second or subsequent conviction and the revocation period under this subsection that has actually elapsed; upon conviction of such charge, the court may impose revocation for a period of time as specified in paragraph (a). This paragraph does not apply if an appropriate motion contesting the forfeiture is filed within the 20-day period.

(d) The court shall permanently revoke the driver license or driving privilege of a person who has been convicted four times for violation of § 316.193 or former § 316.1931 or a combination of such sections. The court shall permanently revoke the driver license or driving privilege of any person who has been convicted of DUI manslaughter in violation of § 316.193. If the court has not permanently revoked such driver license or driving privilege within 30 days after imposing sentence, the department shall permanently revoke the driver license or driving privilege pursuant to this paragraph. No driver license or driving privilege may be issued or granted to any such person. This paragraph applies only if at least one of the convictions for violation of § 316.193 or former § 316.1931 was for a violation that occurred after July 1, 1982. For the purposes of this paragraph, a conviction for violation of former § 316.028, former § 316.1931, or former § 860.01 is also considered a conviction for violation of § 316.193. Also, a conviction of driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, or any other similar alcohol-related or drug-related traffic offense outside this state is considered a conviction for the purposes of this paragraph.

(e) Convictions that occur on the same date resulting from separate offense dates shall be treated as separate convictions, and the offense that occurred earlier will be deemed a prior conviction for the purposes of this section.

(3) The court shall permanently revoke the driver license or driving privilege of a person who has been convicted of murder resulting from the operation of a motor vehicle. No driver license or driving privilege may be issued or granted to any such person.

(4) (a) Upon a conviction for a violation of § 316.193(3)(c)2., involving serious bodily injury, a conviction of manslaughter resulting from the operation of a motor vehicle, or a conviction of vehicular homicide, the court shall revoke the driver license of the person convicted for a minimum period of 3 years. If a conviction under § 316.193(3)(c)2., involving serious bodily injury, is also a subsequent conviction as described under paragraph (2)(a), the court shall revoke the driver license or driving privilege of the person convicted for the period applicable as provided in paragraph (2)(a) or paragraph (2)(d).

(b) If the period of revocation was not specified by the court at the time of imposing sentence or within 30 days thereafter, the department shall revoke the driver license for the minimum period applicable under paragraph (a) or, for a subsequent conviction, for the minimum period applicable under paragraph (2)(a) or paragraph (2)(d).

(5) A court may not stay the administrative suspension of a driving privilege under § 322.2615 or § 322.2616 during judicial review of the departmental order that resulted in such suspension, and a suspension or revocation of a driving privilege may not be stayed upon an appeal of the conviction or order that resulted in the suspension or revocation.

(6) In a prosecution for a violation of § 316.172(1), and upon a showing of the department's records that the licensee has received a second conviction within 5 years following the date of a prior conviction of § 316.172(1), the department shall, upon direction of the court, suspend the driver license of the person convicted for a period of at least 90 days but not more than 6 months.

(7) Following a second or subsequent violation of § 796.07(2)(f) which involves a motor vehicle and which results in any judicial disposition other than acquittal or dismissal, in addition to any other sentence imposed, the court shall revoke the person's driver license or driving privilege, effective upon the date of the disposition, for a period of at least 1 year. A person sentenced under this subsection may request a hearing under § 322.271.

322.32. Unlawful use of license.

It is a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, for any person:

(1) To display, cause or permit to be displayed, or have in his or her possession any canceled, revoked, suspended, or disqualified driver's license knowing that such license

has been canceled, revoked, suspended, or disqualified.

(a) The element of knowledge is satisfied if:

1. The person has been cited as provided in § 322.34(1), and any cancellation, revocation, or suspension in effect at that time remains in effect; or

2. The person admits to knowledge of the cancellation, suspension, or revocation; or

3. The person received notice as provided in paragraph (c).

(b) In any proceeding for a violation of this section, a court may consider evidence, other than that specified in paragraph (a), that a person knowingly possessed a canceled, suspended, or revoked driver's license.

(c) Any judgment or order rendered by a court or adjudicatory body or any uniform traffic citation that cancels, suspends, or revokes a person's driver's license must contain a provision notifying the person that his or her driver's license or driving privilege has been canceled, suspended, or revoked.

(2) To lend his or her driver's license to any other person or knowingly permit the use thereof by another.

(3) To display, or represent as his or her own, any driver's license not issued to him or her.

(4) To fail or refuse to surrender to the department or to any law enforcement officer, upon lawful demand, any driver's license in his or her possession that has been suspended, revoked, disqualified, or canceled.

(5) To permit any unlawful use of a driver's license issued to him or her.

(6) To apply for, obtain, or cause to be issued to him or her two or more photographic driver's licenses which are in different names. The issuance of such licenses shall be prima facie evidence that the licensee has violated the provisions of this section unless the issuance was in compliance with the requirements of this chapter.

(7) To do any act forbidden, or fail to perform any act required, by this chapter.

322.34. Driving while license suspended, revoked, canceled, or disqualified.

(1) Except as provided in subsection (2), any person whose driver's license or driving privilege has been canceled, suspended, or revoked, except a "habitual traffic offender" as defined in § 322.264, who drives a vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked is guilty of a moving violation, punishable as provided in chapter 318.

(2) Any person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, except persons defined in § 322.264, who, knowing of such cancellation, suspension, or revocation, drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked, upon:

(a) A first conviction is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(b) A second conviction is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(c) A third or subsequent conviction is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

The element of knowledge is satisfied if the person has been previously cited as provided in subsection (1); or the person admits to knowledge of the cancellation, suspension, or revocation; or the person received notice as provided in subsection (4). There shall be a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order as provided in subsection (4) appears in the department's records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation.

(3) In any proceeding for a violation of this section, a court may consider evidence, other than that specified in subsection (2), that the person knowingly violated this section.

(4) Any judgment or order rendered by a court or adjudicatory body or any uniform traffic citation that cancels, suspends, or revokes a person's driver's license must contain a provision notifying the person that his or her driver's license has been canceled, suspended, or revoked.

(5) Any person whose driver's license has been revoked pursuant to § 322.264 (habitual offender) and who drives any motor vehicle upon the highways of this state while such license is revoked is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(6) Any person who operates a motor vehicle:

(a) Without having a driver's license as required under § 322.03; or

(b) While his or her driver's license or driving privilege is canceled, suspended, or revoked pursuant to § 316.655, § 322.26(8), § 322.27(2), or § 322.28(2) or (4),

and who by careless or negligent operation of the motor vehicle causes the death of or serious bodily injury to another human being is guilty of a felony of the third degree, punishable as provided in § 775.082 or § 775.083.

(7) Any person whose driver's license or driving privilege has been canceled, suspended, revoked, or disqualified and who drives a commercial motor vehicle on the highways of this state while such license or privilege is canceled, suspended, revoked, or disqualified, upon:

(a) A first conviction is guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(b) A second or subsequent conviction is guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(8) (a) Upon the arrest of a person for the offense of driving while the person's driver's license or driving privilege is suspended or revoked, the arresting officer shall determine:

1. Whether the person's driver's license is suspended or revoked.

2. Whether the person's driver's license has remained suspended or revoked since a conviction for the offense of driving with a suspended or revoked license.

3. Whether the suspension or revocation was made under § 316.646 or § 627.733, relating to failure to maintain required security, or under § 322.264, relating to habitual traffic offenders.

4. Whether the driver is the registered owner or coowner of the vehicle.

(b) If the arresting officer finds in the affirmative as to all of the criteria in paragraph (a), the officer shall immediately impound or immobilize the vehicle.

(c) Within 7 business days after the date the arresting agency impounds or immobilizes the vehicle, either the arresting agency or the towing service, whichever is in possession of the vehicle, shall send notice by certified mail to any coregistered owners of the vehicle other than the person arrested and to each person of record claiming a lien against the vehicle. All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the vehicle or, if the vehicle is leased, by the person leasing the vehicle.

(d) Either the arresting agency or the towing service, whichever is in possession of the vehicle, shall determine whether any vehicle impounded or immobilized under this section has been leased or rented or if there are any persons of record with a lien upon the vehicle. Either the arresting agency or the towing service, whichever is in possession of the vehicle, shall notify by express courier service with receipt or certified mail within 7 business days after the date of the immobilization or impoundment of the vehicle, the registered owner and all persons having a recorded lien against the vehicle that the vehicle has been impounded or immobilized. A lessor, rental car company, or lienholder may then obtain the vehicle, upon payment of any lawful towing or storage charges. If the vehicle is a rental vehicle subject to a written contract, the charges may be separately charged to the renter, in addition to the rental rate, along with other separate fees, charges, and recoupments disclosed on the rental agreement. If the storage facility fails to provide timely notice to a lessor, rental car company, or lienholder as required by this paragraph, the storage facility shall be responsible for payment of any towing or storage charges necessary to release the vehicle to a lessor, rental car company, or lienholder that accrue after the notice period, which charges may then be assessed against the driver of the vehicle if the vehicle was lawfully impounded or immobilized.

(e) Except as provided in paragraph (d), the vehicle shall remain impounded or immobilized for any period imposed by the court until:

1. The owner presents proof of insurance to the arresting agency; or

2. The owner presents proof of sale of the vehicle to the arresting agency and the buyer presents proof of insurance to the arresting agency.

If proof is not presented within 35 days after the impoundment or immobilization, a lien shall be placed upon such vehicle pursuant to § 713.78.

(f) The owner of a vehicle that is impounded or immobilized under this subsection may, within 10 days after the date the owner has knowledge of the location of the vehicle, file a complaint in the county in which the owner resides to determine whether the vehicle was wrongfully taken or withheld. Upon the filing of a complaint, the owner or lienholder may have the vehicle released by posting with the court a bond or other adequate security equal to the amount of the costs and fees for impoundment or immobilization, including towing or storage, to ensure the payment of such costs and fees if the owner or lienholder does not prevail. When the vehicle owner or lienholder does not prevail on a complaint that

the vehicle was wrongfully taken or withheld, he or she must pay the accrued charges for the immobilization or impoundment, including any towing and storage charges assessed against the vehicle. When the bond is posted and the fee is paid as set forth in § 28.24, the clerk of the court shall issue a certificate releasing the vehicle. At the time of release, after reasonable inspection, the owner must give a receipt to the towing or storage company indicating any loss or damage to the vehicle or to the contents of the vehicle.

(9) (a) A motor vehicle that is driven by a person under the influence of alcohol or drugs in violation of § 316.193 is subject to seizure and forfeiture under §§ 932.701-932.706 and is subject to liens for recovering, towing, or storing vehicles under § 713.78 if, at the time of the offense, the person's driver's license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence.

(b) The law enforcement officer shall notify the Department of Highway Safety and Motor Vehicles of any impoundment or seizure for violation of paragraph (a) in accordance with procedures established by the department.

(c) Notwithstanding § 932.703(1)(c) or § 932.7055, when the seizing agency obtains a final judgment granting forfeiture of the motor vehicle under this section, 30 percent of the net proceeds from the sale of the motor vehicle shall be retained by the seizing law enforcement agency and 70 percent shall be deposited in the General Revenue Fund for use by regional workforce boards in providing transportation services for participants of the welfare transition program. In a forfeiture proceeding under this section, the court may consider the extent that the family of the owner has other public or private means of transportation.

(10) (a) Notwithstanding any other provision of this section, if a person does not have a prior forcible felony conviction as defined in § 776.08, the penalties provided in paragraph (b) apply if a person's driver's license or driving privilege is canceled, suspended, or revoked for:

1. Failing to pay child support as provided in § 322.245 or § 61.13016;

2. Failing to pay any other financial obligation as provided in § 322.245 other than those specified in § 322.245(1);

3. Failing to comply with a civil penalty required in § 318.15;

4. Failing to maintain vehicular financial responsibility as required by chapter 324;

5. Failing to comply with attendance or other requirements for minors as set forth in § 322.091; or

6. Having been designated a habitual traffic offender under § 322.264(1)(d) as a result of suspensions of his or her driver's license or driver privilege for any underlying violation listed in subparagraphs 1.-5.

(b) 1. Upon a first conviction for knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed in subparagraphs (a)1.-6., a person commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

2. Upon a second or subsequent conviction for the same offense of knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed in subparagraphs (a)1.-6., a person commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(11) (a) A person who does not hold a commercial driver's license and who is cited for an offense of knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed in paragraph (10)(a) may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau. In such case, adjudication shall be withheld. However, no election shall be made under this subsection if such person has made an election under this subsection during the preceding 12 months. A person may not make more than three elections under this subsection.

(b) If adjudication is withheld under paragraph (a), such action is not a conviction.

322.35. Permitting unauthorized minor to drive.

No person shall cause or knowingly permit his or her child or ward under the age of 18 years to drive a motor vehicle upon any highway when such minor is not authorized by the provisions of this chapter.

322.36. Permitting unauthorized operator to drive.

A person may not authorize or knowingly permit a motor vehicle owned by him or her or under his or her dominion or control to be operated upon any highway or public street except by a person who is duly authorized to

operate a motor vehicle under this chapter. Any person who violates this section commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. If a person violates this section by knowingly loaning a vehicle to a person whose driver's license is suspended and if that vehicle is involved in an accident resulting in bodily injury or death, the driver's license of the person violating this section shall be suspended for 1 year.

322.37. Employing unlicensed driver.

No person shall employ as a driver of a motor vehicle any person not then licensed to operate such vehicle as provided in this chapter. Violation of this section is a noncriminal traffic infraction subject to the penalty provided in § 318.18(2).

322.38. Renting motor vehicle to another.

(1) No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed, or if a nonresident he or she shall be licensed under the laws of the state or country of his or her residence, except a nonresident whose home state or country does not require that an operator be licensed.

(2) No person shall rent a motor vehicle to another until he or she has inspected the driver's license of the person to whom the vehicle is to be rented, and compared and verified the signature thereon with the signature of such person written in his or her presence.

(3) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person, and the date and place when and where the said license was issued. Such record shall be open to inspection by any police officer, or officer or employee of the department.

322.39. Penalties.

(1) It is a misdemeanor for any person to violate any of the provisions of this chapter, unless such violation is declared to be otherwise by this chapter or other law of this state.

(2) Unless another penalty is provided in this chapter or by the laws of this state, a person convicted of a misdemeanor for the violation of a provision of this chapter is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

322.62. Driving under the influence; commercial motor vehicle operators.

(1) A person who has any alcohol in his or her body may not drive or be in actual physical control of a commercial motor vehicle in this state. Any person who violates this section is guilty of a moving violation, punishable as provided in § 318.18.

(2) (a) In addition to the penalty provided in subsection (1), a person who violates this section shall be placed out-of-service immediately for a period of 24 hours.

(b) In addition to the penalty provided in subsection (1), a person who violates this section and who has a blood-alcohol level of 0.04 or more grams of alcohol per 100 milliliters of blood, or a breath-alcohol level of 0.04 or more grams of alcohol per 210 liters of breath is subject to the penalty provided in § 322.61.

(3) This section does not supersede § 316.193. Nothing in this section prohibits the prosecution of a person who drives a commercial motor vehicle for driving under the influence of alcohol or controlled substances whether or not such person is also prosecuted for a violation of this section.

322.64. Holder of commercial driver license; persons operating a commercial motor vehicle; driving with unlawful blood-alcohol level; refusal to submit to breath, urine, or blood test.

(1) (a) A law enforcement officer or correctional officer shall, on behalf of the department, disqualify from operating any commercial motor vehicle a person who while operating or in actual physical control of a commercial motor vehicle is arrested for a violation of § 316.193, relating to unlawful blood-alcohol level or breath-alcohol level, or a person who has refused to submit to a breath, urine, or blood test authorized by § 322.63 or § 316.1932 arising out of the operation or actual physical control of a commercial motor vehicle. A law enforcement officer or correctional officer shall, on behalf of the department, disqualify the holder of a commercial driver license from operating any commercial motor vehicle if the licenseholder, while operating or in actual physical control of a motor vehicle, is arrested for a violation of § 316.193, relating to unlawful blood-alcohol level or breath-alcohol level, or refused to submit to a breath, urine, or blood test authorized by § 322.63 or § 316.1932. Upon disqualification of the person, the officer shall take the person's driver license and issue the person a 10-day temporary permit for the operation of noncommercial vehicles only if the person is otherwise eligible for

the driving privilege and shall issue the person a notice of disqualification. If the person has been given a blood, breath, or urine test, the results of which are not available to the officer at the time of the arrest, the agency employing the officer shall transmit such results to the department within 5 days after receipt of the results. If the department then determines that the person had a blood-alcohol level or breath-alcohol level of 0.08 or higher, the department shall disqualify the person from operating a commercial motor vehicle pursuant to subsection (3).

(b) For purposes of determining the period of disqualification described in 49 C.F.R. § 383.51, a disqualification under paragraph (a) shall be considered a conviction.

(c) The disqualification under paragraph (a) shall be pursuant to, and the notice of disqualification shall inform the driver of, the following:

1. a. The driver refused to submit to a lawful breath, blood, or urine test and he or she is disqualified from operating a commercial motor vehicle for the time period specified in 49 C.F.R. § 383.51; or

b. The driver had an unlawful blood-alcohol level of 0.08 or higher while driving or in actual physical control of a commercial motor vehicle, or any motor vehicle if the driver holds a commercial driver license, and his or her driving privilege is disqualified for the time period specified in 49 C.F.R. § 383.51.

2. The disqualification period for operating commercial vehicles shall commence on the date of issuance of the notice of disqualification.

3. The driver may request a formal or informal review of the disqualification by the department within 10 days after the date of issuance of the notice of disqualification.

4. The temporary permit issued at the time of disqualification expires at midnight of the 10th day following the date of disqualification.

5. The driver may submit to the department any materials relevant to the disqualification.

(2) (a) Except as provided in paragraph (1)(a), the law enforcement officer shall forward to the department, within 5 days after the date of the issuance of the notice of disqualification, a copy of the notice of disqualification, the driver license of the person disqualified, and an affidavit stating the officer's grounds for belief that the person disqualified was operating or in actual physical control of a commercial motor vehicle, or holds a commercial driver license, and had an unlawful blood-alcohol or breath-alcohol level; the results of any breath or blood or urine test or an affidavit stating that a breath, blood, or urine test was requested by a law enforcement officer or correctional officer and that the person arrested refused to submit; a copy of the notice of disqualification issued to the person; and the officer's description of the person's field sobriety test, if any. The failure of the officer to submit materials within the 5-day period specified in this subsection or subsection (1) does not affect the department's ability to consider any evidence submitted at or prior to the hearing.

(b) The officer may also submit a copy of a video recording of the field sobriety test or the attempt to administer such test and a copy of the crash report. Notwithstanding § 316.066, the crash report shall be considered by the hearing officer.

(3) If the department determines that the person arrested should be disqualified from operating a commercial motor vehicle pursuant to this section and if the notice of disqualification has not already been served upon the person by a law enforcement officer or correctional officer as provided in subsection (1), the department shall issue a notice of disqualification and, unless the notice is mailed pursuant to § 322.251, a temporary permit which expires 10 days after the date of issuance if the driver is otherwise eligible.

(4) If the person disqualified requests an informal review pursuant to subparagraph (1)(c)3., the department shall conduct the informal review by a hearing officer designated by the department. Such informal review hearing shall consist solely of an examination by the department of the materials submitted by a law enforcement officer or correctional officer and by the person disqualified, and the presence of an officer or witness is not required.

(5) After completion of the informal review, notice of the department's decision sustaining, amending, or invalidating the disqualification must be provided to the person. Such notice must be mailed to the person at the last known address shown on the department's records, and to the address provided in the law enforcement officer's report if such address differs from the address of record, within 21 days after the expiration of the temporary permit issued pursuant to subsection (1) or subsection (3).

(6) (a) If the person disqualified requests a formal review, the department must schedule a hearing to be held within 30 days after such request is received by the department

and must notify the person of the date, time, and place of the hearing.

(b) Such formal review hearing shall be held before a hearing officer designated by the department, and the hearing officer shall be authorized to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas for the officers and witnesses identified in documents provided under paragraph (2)(a), regulate the course and conduct of the hearing, and make a ruling on the disqualification. The hearing officer may conduct hearings using communications technology. The department and the person disqualified may subpoena witnesses, and the party requesting the presence of a witness shall be responsible for the payment of any witness fees. If the person who requests a formal review hearing fails to appear and the hearing officer finds such failure to be without just cause, the right to a formal hearing is waived.

(c) The failure of a subpoenaed witness to appear at the formal review hearing shall not be grounds to invalidate the disqualification. If a witness fails to appear, a party may seek enforcement of a subpoena under paragraph (b) by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena resides or by filing a motion for enforcement in any criminal court case resulting from the driving or actual physical control of a motor vehicle or commercial motor vehicle that gave rise to the disqualification under this section. A failure to comply with an order of the court shall result in a finding of contempt of court. However, a person shall not be in contempt while a subpoena is being challenged.

(d) The department must, within 7 working days after a formal review hearing, send notice to the person of the hearing officer's decision as to whether sufficient cause exists to sustain, amend, or invalidate the disqualification.

(7) In a formal review hearing under subsection (6) or an informal review hearing under subsection (4), the hearing officer shall determine by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the disqualification. The scope of the review shall be limited to the following issues:

(a) If the person was disqualified from operating a commercial motor vehicle for driving with an unlawful blood-alcohol level:

1. Whether the law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a commercial motor vehicle, or any motor vehicle if the driver holds a commercial driver license, in this state while he or she had any alcohol, chemical substances, or controlled substances in his or her body.

2. Whether the person had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher.

(b) If the person was disqualified from operating a commercial motor vehicle for refusal to submit to a breath, blood, or urine test:

1. Whether the law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a commercial motor vehicle, or any motor vehicle if the driver holds a commercial driver license, in this state while he or she had any alcohol, chemical substances, or controlled substances in his or her body.

2. Whether the person refused to submit to the test after being requested to do so by a law enforcement officer or correctional officer.

3. Whether the person was told that if he or she refused to submit to such test he or she would be disqualified from operating a commercial motor vehicle for a period of 1 year or, if previously disqualified under this section, permanently.

(8) Based on the determination of the hearing officer pursuant to subsection (7) for both informal hearings under subsection (4) and formal hearings under subsection (6), the department shall sustain the disqualification for the time period described in 49 C.F.R. § 383.51. The disqualification period commences on the date of the issuance of the notice of disqualification.

(9) A request for a formal review hearing or an informal review hearing shall not stay the disqualification. If the department fails to schedule the formal review hearing within 30 days after receipt of the request therefor, the department shall invalidate the disqualification. If the scheduled hearing is continued at the department's initiative or the driver enforces the subpoena as provided in subsection (6), the department shall issue a temporary driving permit limited to noncommercial vehicles which is valid until the hearing is conducted if the person is otherwise eligible for the driving privilege. Such permit shall not be issued to a person who sought and obtained a continuance of the hearing. The permit issued under this subsection shall authorize driving for business purposes only.

(10) A person who is disqualified from operating a commercial motor vehicle under subsection (1) or subsection (3) is eligible for issuance of a license for business or employment purposes only under § 322.271 if the person is otherwise eligible for the driving privilege. However, such business or employment purposes license shall not authorize the driver to operate a commercial motor vehicle.

(11) The formal review hearing may be conducted upon a review of the reports of a law enforcement officer or a correctional officer, including documents relating to the administration of a breath test or blood test or the refusal to take either test. However, as provided in subsection (6), the driver may subpoena the officer or any person who administered or analyzed a breath or blood test. If the arresting officer or the breath technician fails to appear pursuant to a subpoena as provided in subsection (6), the department shall invalidate the disqualification.

(12) The formal review hearing and the informal review hearing are exempt from the provisions of chapter 120. The department may adopt rules for the conduct of reviews under this section.

(13) A person may appeal any decision of the department sustaining the disqualification from operating a commercial motor vehicle by a petition for writ of certiorari to the circuit court in the county wherein such person resides or wherein a formal or informal review was conducted pursuant to § 322.31. However, an appeal shall not stay the disqualification. This subsection shall not be construed to provide for a de novo review.

(14) The decision of the department under this section shall not be considered in any trial for a violation of § 316.193, § 322.61, or § 322.62, nor shall any written statement submitted by a person in his or her request for departmental review under this section be admissible into evidence against him or her in any such trial. The disposition of any related criminal proceedings shall not affect a disqualification imposed pursuant to this section.

(15) This section does not preclude the suspension of the driving privilege pursuant to § 322.2615. The driving privilege of a person who has been disqualified from operating a commercial motor vehicle also may be suspended for a violation of § 316.193.

CHAPTER 324
FINANCIAL RESPONSIBILITY

324.201. Return of license or registration to department.

(1) Any person whose license or registration shall have been suspended as herein provided; whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated; or who shall neglect to furnish other proof upon the request of the department shall immediately return his or her license and registrations to the department. If any person shall fail to return to the department the license or registrations as provided herein, the department shall issue a complaint to a court of competent jurisdiction which shall issue a warrant charging such person with a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083. Such person shall surrender to the court his or her driver's license, registration, and plates for delivery to the department. For the service and execution of such warrant the sheriff shall receive the arrest and other fees authorized by law.

(2) It shall be unlawful for any person whose license has been suspended to operate any motor vehicle or for any person whose registrations have been suspended to obtain another motor vehicle for the purpose of circumventing this chapter.

(3) If a law enforcement officer determines that a person operating a motor vehicle is also the owner or registrant, or the coowner or coregistrant, of the motor vehicle and is operating the motor vehicle with a driver's license or vehicle registration that has been under suspension pursuant to a violation of this chapter for a period of at least 30 days, the police officer shall immediately seize the license plate of the motor vehicle.

(4) All information obtained by the department regarding compliance with the provisions of this chapter shall be made available to all law enforcement agencies for the purpose of enforcing this chapter. Law enforcement agencies may utilize that information to seize the license plate of any motor vehicle which has a suspended registration as a result of noncompliance by the operator or owner of the motor vehicle under the provisions of this chapter.

Contents

CHAPTER 1
GENERAL PROVISIONS

1-5. General penalty; compliance; civil liability; criminal liability; penalties.

(a) Unless otherwise specifically provided herein, any person violating any of the provisions of this Code shall be punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in the county jail for a period not to exceed sixty (60) days, or by both such fine and imprisonment, in the discretion of the court having jurisdiction over the cause. Any person who violates or fails to comply with this Code shall also be subject to fines in accordance with Chapter 8CC of the Code of Miami-Dade County. Each day of violation or noncompliance shall constitute a separate offense.

[Remainder intentionally omitted.]

CHAPTER 2
ADMINISTRATION

ARTICLE XIIIA
NUISANCE ABATEMENT

2-98.4. Legislative findings and intent.

This article [Ordinance No. 92-42] is enacted pursuant to the provisions of the Miami-Dade County Home Rule Charter and Florida Statute, Section 893.138, as it may be renumbered or amended from time to time, and shall be known and may be cited as the "Miami-Dade County Public Nuisance Abatement Ordinance."

The Board of County Commissioners of Miami-Dade County, hereby finds and declares that any places or premises which are used as the site of the unlawful sale or delivery of controlled substances, prostitution, youth and street gang activity, gambling, illegal sale or consumption of alcoholic beverages, or lewd or lascivious behavior, may be a public nuisance that adversely affects the public health, safety, morals, and welfare. This Board also finds that abating the public nuisance which results from said criminal activity is necessary to improve the quality of life of the residents of Miami-Dade County and that said abatement will safeguard the public health, safety, and welfare.

This article is hereby declared to be remedial and essential to the public interest and it is intended that this article be liberally construed to effect the purposes as stated above. The provisions of this article and the standards set forth herein shall be applicable only to the unincorporated areas of Miami-Dade County, Florida.

The provisions of this article shall be cumulative and supplemental to and not in deregation of any provision of the Florida Statutes, the Code of Miami-Dade County, or any other applicable law.

2-98.5. Definitions.

For the purpose of this article the following definitions shall apply:

Public nuisance: Any place or premise which has been used on more than two (2) occasions within a twelve-month period:

(1) As the site of the unlawful sale or delivery of controlled substances, or

(2) By a youth and street gang for the purpose of conducting a pattern of youth and street gang activity, or

(3) For prostitution, or solicitation of prostitution, or

(4) For illegal gambling, or

(5) For the illegal sale or consumption of alcoholic beverages, or

(6) For lewd or lascivious behavior, or

(7) Any premise or place declared to be a nuisance by Florida Statute, Section 823.05 or Section 823.10 as they may be renumbered or amended from time to time.

2-98.6. Operating procedure.

Any employee, officer or resident of Miami-Dade County may file a complaint and request for prosecution with the Miami-Dade County Public Nuisance Abatement Board regarding the existence of a public nuisance located within Miami-Dade County. Said complaint shall be filed with the Director of the Miami-Dade Police Department, or his designee. Upon the filing of more than two (2) complaints on any particular place or premises, the Director or his designee shall mail written notice of such complaints by certified mail with return receipt to the owner of the place or premises complained of at the owner's address as shown in the Miami-Dade County property tax collector's file. Said notice shall provide for the owner of the place or premises to contact the Director or his designee within fourteen (14) days of receipt of the notice. This time period shall be allowed for the purpose of allowing the owner to take such good faith measures as are appropriate to abate the nuisance. The Director or his designee may extend the fourteen (14) days to allow the owner to institute or continue actions to abate the nuisance provided the actions are reasonable. In the event the

owner fails to respond to Notice of Complaint or fails to take reasonable action to abate the nuisance, the Director or his designee shall schedule a hearing on the complaint before the Miami-Dade County Public Nuisance Abatement Board, and written notice of said hearing shall be by certified mail with return receipt to the owner of the premises and the complaintant at least ten (10) days prior to the scheduled hearing.

The aforesaid notice of hearing shall include:

(a) A statement of the time, place and nature of the hearing;

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and ordinances involved;

(d) A short and plain statement summarizing the incidents complained of.

2-98.7. Public Nuisance Abatement Board.

The Miami-Dade County Public Nuisance Abatement Board is hereby created and established. The Board shall consist of nine (9) members with one member appointed by each County Commissioner.

(a) *Qualification of members.* The composition and representative membership of the Board shall be as follows:

(1) All members shall reside in the unincorporated areas of Miami-Dade County.

(2) One (1) member shall be a law enforcement officer as defined in Florida Statutes, Section 943.10 who is retired or inactive and who is not employed by Miami-Dade County.

(3) One (1) member shall be an attorney practicing law in Miami-Dade County and a members in good standing of the Florida Bar.

(4) Eleven (11) members of the general public, who possess outstanding reputations for civic pride, integrity, responsibility and business or professional ability, with interest or experience in abating public nuisances.

(b) *Terms of office.* The initial appointments to the Board shall be as follows: Seven (7) members shall be appointed for the term of one year, six (6) members shall be appointed for the term of two (2) years. Thereafter all appointments shall be made for the term of two (2) years. No members shall serve more than three (3) consecutive terms or seven (7) years. Appointments to fill any vacancy on the Board shall be for the remainder of the unexpired term of office. A member may be removed with or without cause by the affirmative vote of not less than a majority of the entire County Commission. Should any member of the Board fail to attend three (3) consecutive meetings without due cause, the chairperson shall certify the same to the County Commission. Upon such certification, the member shall be deemed to have been removed and the County Commission shall fill the vacancy by appointment.

(c) *Organization of the Board.* The members of the Board shall elect a chairperson and such other officers as may be deemed necessary or desirable, who shall serve at the will of the Board. Members shall serve without compensation, but shall be entitled to be reimbursed for necessary expenses incurred in the performance of their official duties, upon approval by the County Commission.

(d) *Meetings of the Board.* Meetings of the Board shall be held monthly, or more frequently if necessary, to hear and dispose of the pending complaints. Notice of the time and place of meetings shall be given to all complaintants and owners of premises scheduled to be heard. Notice shall be given in writing at least ten (10) days prior to the hearing. Any aggrieved person may request a continuance of the hearing. The Board may grant a continuance of any hearing for good cause. The chairperson may call an emergency meeting of the Board, and meetings may also be called by written notice signed by three (3) members of the Board. The meetings of the Board shall be recorded and be transcribed at the expense of the party requesting the transcript. All meetings shall be in compliance with Florida's "Government in Sunshine Law" and Chapter 286.011, Florida Statute. No less than seven (7) members shall constitute a quorum. No less than six (6) members voting affirmatively shall be required to declare any place or premises a public nuisance under this provision. The County Manager shall provide adequate and competent clerical and administrative personnel, and such technical or scientific personnel as may be reasonably required by the Board for the proper performance of its duties. The County Manager shall provide a regular meeting place for the Board. All records shall be public records as defined by Chapter 119.011, Florida Statutes.

(e) *Conduct of hearings.*

(1) The Director of the Miami-Dade Police Department or his designee shall present cases before the Board. All parties shall have an opportunity to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, and to be represented by counsel. When appropriate, the general public may be

given an opportunity to present oral or written communications. If the Board proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut it. The Board may consider any evidence, including evidence of the general reputation of the place or premises. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Orders of the Board shall be based on competent and substantial evidence and must be based on a preponderance of the evidence.

(2) After considering all evidence, the Board may declare the place or premises to be a public nuisance as defined in this chapter and may enter an order prohibiting:

(i) The maintaining of the nuisance;

(ii) The operating or maintaining of the place or premises; or

(iii) The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.

(3) An order entered under subsection (2) shall expire after one year or at such earlier time as stated in the order. The Board may retain jurisdiction to modify its orders prior to the expiration of said orders.

(4) The Board may bring a complaint under Section 60.05 of the Florida Statutes, seeking a permanent injunction against any public nuisance.

2-98.8. Costs.

In the event that the Board declares a place or premises to be a nuisance and issues an order pursuant to Section 2-98.7(e)(2) above, the Board shall assess against the owner of the place or premises the costs which the County has incurred in the preparation, investigation, and presentation of the case. These costs shall be due and payable ten (10) days after the written order of the Board has been filed. A certified copy of an order imposing costs may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or, if the violator does not own the land, upon any other real or personal property owned by the violator; and it may be enforced in the same manner as a court judgment by the sheriffs of this state including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After one year from the filing of any such lien which remains unpaid, Miami-Dade County may foreclose or otherwise execute on the lien. Interest shall accrue on the unpaid costs at the legal rate of interest set forth in Section 55.03, Florida Statute as that may be amended from time to time.

2-98.9. Appeals.

An aggrieved party may appeal a final order of the Miami-Dade County Public Nuisance Abatement Board to the Circuit Court of the Eleventh Judicial Circuit, Appeals Division. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the Board. An appeal shall be filed within thirty (30) days of the date of the written order appealed from.

2-98.10. Rights preserved.

This article does not restrict the right of any person to proceed under Section 60.05 of the Florida Statutes, against any Public Nuisance.

CHAPTER 7
BOATS, DOCKS AND WATERWAYS

ARTICLE I
IN GENERAL

7-3. Swimming or fishing from road bridges.

(a) The County Manager shall cause to be investigated and determined whether it is detrimental to traffic safety or dangerous to human life for any person to swim or fish from any road bridge located in Dade County.

(b) After making an affirmative finding in writing as to any road bridge as provided in subsection (a) of this section, the County Manager shall cause to be designated, in writing, such bridge as one (1) from which swimming or fishing is prohibited and shall post official signs thereon declaring that swimming or fishing is prohibited.

(c) When an official sign is erected giving notice thereof no person shall swim or fish from a bridge in violation of such sign.

(d) Adult offenders of this section shall be tried in the court of appropriate jurisdiction of Dade County, Florida, and juvenile offenders of this section shall be tried in the Dade County Juvenile and Domestic Relations Court.

(e) Violations of this section may be punished by:

(1) A fine not to exceed two hundred dollars ($200.00);

(2) Imprisonment in the county jail for a period not to exceed thirty (30) days;

(3) Both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

(4) Fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

(5) Completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.

CHAPTER 8A
BUSINESS REGULATIONS

ARTICLE I
IN GENERAL

8A-5. Prohibition of price gouging during declared state of emergency.

(1) It is prima facie evidence that a price is unconscionable if:

a. The amount charged represents a gross disparity between the price of the commodity or rental or lease of any dwelling unit or self-storage facility that is the subject of the offer or transaction and the average price at which that commodity or dwelling unit or self-storage facility was rented, leased, sold, or offered for rent or sale in the usual course of business during the thirty (30) days immediately prior to a declaration of a state or emergency, and the increase in the amount charged is not attributable to additional casts incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or national or international market trends; or

b. The amount charged grossly exceeds the average price at which the same or similar commodity was readily obtainable in the trade area during the thirty (30) days immediately prior to a declaration of a state of emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or national or international market trends.

(2) Upon a declaration applicable to any portion of Miami-Dade County of a state of emergency by the Governor, the Mayor, the Board of County Commissioners, the County Manager or Director of the Miami-Dade Police Department, it shall be unlawful for a person or his agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any essential commodity including, but not limited to food, water, ice, chemicals, petroleum products, lumber, supplies, services, provisions, or equipment, or any dwelling unit or self-storage facility, that is necessary for consumption or use as a direct result of the emergency. This prohibition shall remain in effect until the declaration expires or is terminated.

(3) A price increase approved by an appropriate government agency shall not be a violation of this section.

(4) This section shall not apply to sales by growers, producers, or processors of raw or processed food products, except for retail sales of such products to the ultimate consumer within the area of the declared state of emergency.

(5). Any person or entity who suffers a loss as result of a violation of any provision of this article may, in addition to any other available remedy, recover compensatory damages, attorney's fees and court costs from the person or entity committing the violation.

b. Any person or entity who proves the violation of any provision of this article occurred willfully or in bad faith shall recover from the person or entity committing the violation as compensatory damages three-fold the actual damages sustained or two hundred dollars ($200.00), whichever is greater, in addition to any other recovery available under law of this article.

(6) In addition to the remedies elsewhere provided in this article, the County Manager or his or her designee shall have the authority to institute a civil action in a court of competent jurisdiction: (i) to seek temporary or permanent, prohibitory or mandatory injunctive relief to enforce compliance with or prohibit the violation of this Section 8A-5; (ii) to impose and recover a civil penalty in an amount of not more than ten thousand dollars ($10,000.00) for each violation of this Section 8A-5; and (iii) to recover any sums and costs expended by the county in tracing, investigating, preventing, controlling, abating or remedying violation of this Section 8A-5. Each day during any portion of which such violation occurs constitutes a separate violation. In any such action in which the county prevails the court shall award the county reasonable attorney's fees.

(7) The County Manager or his or her designee shall have the power to investigate compliance with the requirements of this Section 8A-5 and incident thereto may subpoena witnesses, administer oaths and require the production of records.

(8) In addition to the remedies elsewhere provided in this article, any person found

guilty of violating any provision of this Section 8A-5 may be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment in the county jail for a period not to exceed sixty (60) days, or both.

ARTICLE IX
LOCAL BUSINESS TAX RECEIPT

8A-171. Local business taxes imposed.

No person shall engage in or manage any business, profession or occupation in Miami-Dade County for which a local business tax is required by this article without first obtaining the required license or licenses from the County Tax Collector.

With respect to each place where a business or profession is located, a separate local business tax receipt shall be required for each type of business, business classification or profession conducted therein. For purposes of this chapter, a business or profession will be deemed located where it exists at an identifiable physical location or where representation to the public has been made as to the situs of the business or profession. Fees or licenses paid to any regulatory Board, Commission or officer for permits, registration, examination or inspection shall be in addition to and not in lieu of any local business tax receipt required by this article.

For the purpose of this chapter, any representation by any person of being engaged in any business, occupation or profession for which a local business tax receipt is required under this chapter shall constitute evidence of the liability of such person to pay a local business tax, whether or not such person actually transacts any business or practices any profession. Displaying a sign or advertisement indicating the operation of business, occupation or profession at a given location, advertising a business, occupation or profession in the classified section of the telephone directory, or any other media or publication, shall also constitute evidence that such person is holding himself out to the public as being engaged in business, occupation or profession.

For purposes of this chapter the issuance of a local business tax receipt or receipts to a business or professional shall not be deemed to constitute evidence of the business' or the professional's entitlement to conduct its activities pursuant to other provisions of applicable law.

8A-172. Doing business without local business tax receipt.

It shall be unlawful and a violation of this section for any person to carry on or conduct any business or profession for which a receipt is required without first obtaining such receipt. Any person convicted of a violation of this section shall be punished by:

(1) A fine not to exceed double the amount required for such receipt;

(2) Imprisonment in the county jail for a period not to exceed sixty (60) days;

(3) Both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

(4) Fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

(5) Completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.

ARTICLE XIII
COMMERCIAL VEHICLE IDENTIFICATION

8A-276. Requirements.

(a) *Definitions.* When used herein:

(1) The words "commercial vehicle" shall mean any vehicle whether horse-drawn, motor-driven or towed, and used, constructed, or equipped for the transportation of goods, wares, merchandise, tools, or equipment in trade, commerce, or industry. The following vehicles shall be excluded from the effect of this article: Passenger automobiles including station wagons, vehicles constructed for recreational purposes or other noncommercial purposes, vehicles used by governmental agencies for official business, and other vehicles which are or may be required to be similarly identified by State or federal law.

(b) *Vehicles, markings of.* Every commercial vehicle operated on the streets of the County shall at all times display, permanently affixed and plainly marked on both sides in letters and numerals not less than three (3) inches in height, the name, address and telephone number of the owner thereof. The numbers of all occupational and business licenses issued to the owner thereof shall be similarly displayed along with and in addition to the other information required by this paragraph. If a vehicle is rented, the information required by this paragraph but applicable to the lessee or user, not the owner, must be affixed to the vehicle and may be affixed to signs made of paperboard and

attached by means of tape at the time such vehicle is delivered to the user or lessee.

(c) *Violations*. Any person convicted of:

(1) A violation of this section shall be punished by:

a. Not more than thirty (30) days imprisonment;

b. A fine of not more than two hundred fifty dollars ($250.00);

c. Both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

d. Fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

e. Completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.

(2) A second violation of this section shall be punished by:

a. Not more than thirty (30) days imprisonment;

b. A fine of not more than five hundred dollars ($500.00);

c. Both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

d. Fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

e. Completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.

(3) Any subsequent violations of this section shall be punished by:

a. Not more than thirty (30) days imprisonment;

b. A fine of not more than one thousand dollars ($1,000.00);

c. Both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

d. Fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

e. Completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.

(d) *Applicability*. This article shall be applicable in all the unincorporated and incorporated areas of Miami-Dade County, Florida.

(e) *Waiver*. Upon written application, the Miami-Dade Police Department may grant a waiver of the requirements of this section where it is demonstrated that compliance with this section may constitute a security risk to the commercial vehicle or its passengers.

(f) *Farm Vehicle Exemption.*

(1) A vehicle, owned or operated by a farmer, or lessee, or his or her designee, on a farm, grove, or nursery actively engaged in the production of agricultural or horticultural pursuits. Such vehicle is only operated incidentally on the roads, to go to or from the owner's or operator's headquarters or farm, grove or nursery and return.

(2) A vehicle, used principally for the transport of plows, harrows, fertilizer distributors, spray machines, or other farm, grove or nursery equipment ancillary to a bona-fide agricultural use. Such vehicle only uses the roads incidentally to go to or from the owner's or operator's headquarters or farm, grove or nursery and return.

(3) A vehicle with a gross vehicle weight rating ("GVWR") of 10,000 lbs. or less which is owned and operated by a farmer or lessee in the support of an active farm, grove or nursery operation.

ARTICLE XVI
MIAMI-DADE COUNTY
MOVING ORDINANCE

8A-325. Definitions.

(a) *Accessorial services* shall mean any service performed by a mover which results in a charge to the shipper and is incidental to the transportation service, including, but not limited to, preparation of a written inventory, packing, unpacking, or crating of articles, hoisting or lowering, waiting time, overtime loading and unloading, reweighing, disassembly or reassembly, elevator or stair carrying, boxing or servicing of appliances, and furnishing of packing or crating materials. Accessorial services include services not performed by the mover but by a third party at the request of the shipper or mover if the charges for such services are to be paid to the mover prior to or at the time of delivery.

(a.5) *Advertise* shall mean to advise, announce, give notice of, publish or call attention by use of oral, written or graphic statement made in a newspaper or other publication or on radio or television, any electronic medium, or contained in any notice, handbill, sign (including signage on vehicle), flyer, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any good.

(b) *Article* shall mean Article XVII of the Code of Miami-Dade County, Florida, and any rules, regulations and standards promulgated pursuant to this article.

(c) *Commission* shall mean the Board of County Commissioners of Miami-Dade County, Florida.

(d) *Compensation* shall mean money, fee, emolument, quid pro quo, barter, remuneration, pay, reward, indemnification or satisfaction.

(e) *Contract for service or bill of lading* shall mean a written document prepared by the mover and approved by the shipper in writing, prior to the performance of any service, that authorizes services from a named mover and lists the services and costs associated with the transportation of household goods and accessorial services.

(f) *Customer* shall mean a person who inquires about, makes a request for or enters into a contract for service.

(g) *Director* shall mean the Director of the Consumer Services Department or his/her designee. This definition shall apply to Section 8A-82.1 of the Code of Miami-Dade County, Florida, when utilizing the provisions of this article.

(g.5) *Equipment* shall mean those items utilized by the mover to secure, deliver, transport and/or protect the shipper's household goods. Such equipment includes, but is not limited to, dollies, hand trucks, pads, blankets, and straps.

(h) *Estimate* shall mean a written statement given by the mover to the shipper which sets forth the total cost of and the basis of the charges related to a shipper's move, such as, but not limited to, transportation or accessorial services.

(i) *Household goods* shall mean personal effects, or other personal property, found in a home or personal residence, or found in a storage facility owned or rented by the shipper, where the shipper is the owner or the agent of the owner of the items. This definition does not include freight or personal property moving to or from a factory or store or other place of business.

(j) *Mover* shall mean any person who engages in the transportation of household goods for compensation or any person who holds himself or herself out to the general public as engaging in the transportation of household goods for compensation.

(j.5) *Packing material* shall mean the container utilized by a mover to package, deliver, transport, and/or protect the shipper's household goods. If a mover charges for packing material, the mover shall only charge for such material on a per container basis. This container charge shall include the cost for each container and any wrap, tape or other materials utilized by mover to pack the container.

(k) *Person* shall mean any natural person, individual, public, or private corporation, trust, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer, or any other entity whatsoever, or any combination of the foregoing, jointly or severally.

(l) *Registration* or registration certificate shall mean the authorization by the Director required by this article before a person is authorized to engage in business in Miami-Dade County as a mover of household goods.

(m) *Shipper* shall mean any person who contracts with a mover for the transportation of household goods. This term shall include any other person whom the shipper designates in writing.

8A-326. Intent and application.

(a) The provisions of this article shall be construed liberally to promote the following policies:

(1) To establish the law governing moving practices within this county with regard to the transportation of household goods.

(2) To address moving practices in this county in a manner that is not inconsistent with federal law and the laws of this state relating to consumer protection and moving.

(b) The provisions of this article apply to the operations of any mover engaged in the intrastate transportation of household goods, except that this article shall not be construed to include shipments contracted by the United States, the state, or any local government or subdivision thereof. The provision of this article shall only apply to the transportation of household goods originating in Miami-Dade County and terminating in Miami-Dade County, Broward County or Palm Beach County, or originating in Broward County or Palm Beach County and terminating in Miami-Dade County.

(c) It is the intent of this article to seek to secure the satisfaction and confidence of customers and members of the public when utilizing a mover. This article shall be effective in the incorporated and unincorporated areas of Miami-Dade County and shall be liberally construed to effectuate the purposes set forth herein and to protect the public. This article shall be known and cited as the "Miami-Dade County Moving Ordinance."

(d) Nothing in this article shall be construed to remove the authority or jurisdiction of any state or local agency with respect to goods or services regulated or controlled under other provisions of law or ordinance.

(e) This article is not applicable to an act or practice required or specifically permitted by federal law or the law of this state.

(f) The provisions of this article shall be deemed supplemental to all county and municipal ordinances. In the event of a conflict between any of the provisions of this article and any provision of any county or municipal ordinance, the provision which establishes the most stringent standard shall prevail.

8A-330. Contract for service and disclosure statement required.

(a) In any agreement for service, the mover shall prepare a written contract for service. The contract for service shall be provided by the mover to the shipper for the shipper's written authorization and signature before commencing the performance of any transportation or accessorial services.

(b) A contract for service shall clearly and conspicuously disclose, at a minimum, the following:

(1) The name and telephone number of the mover and the address of the mover at which employees of the mover are on duty during business hours.

(2) The name of the shipper, the addresses at which the items are to be picked up and delivered, if available; and a telephone number where the shipper may be reached, if available.

(3) The agreed pickup and delivery date, or the period of time within which pickup, delivery, or the entire move will be accomplished, if provided.

(4) A description of the transportation and accessorial services expected to be provided during a move.

(5) In the event that no estimate has been provided pursuant to this article, the total cost of the transportation and accessorial services to be provided.

(6) The method of payment, subject to the provisions of Section 8A-334 of this Code.

(7) In the event that an estimate has been provided pursuant to this article, the maximum amount required to be paid by the shipper to the mover at the time of delivery, subject to the provisions of Section 8A-332 of this Code.

(8) The name and telephone number of any other person who may authorize pickup or delivery of any items to be transported, if the shipper designates such a person in writing.

(9) A statement regarding the mover's limitation of liability, subject to the provisions of Section 8A-336 of this Code.

(10) A brief description of the procedures for shipper inquiry and complaint handling and a telephone number which the shipper may use to communicate with the mover, accompanied by a statement disclosing who shall pay for such calls if other than the mover.

(11) If the cost for services provided is based on weight, a statement that the shipper has a right to observe any weighing before and after loading.

(c) The contract for service provided by a mover to a shipper shall include the following language in bold capitalized letters of at least 12-point type:

PLEASE READ CAREFULLY:

THIS CONTRACT FOR SERVICE IS REQUIRED BY COUNTY LAW AND MUST INCLUDE THE TERMS AND COSTS ASSOCIATED WITH YOUR MOVE. IN ORDER FOR THE CONTRACT FOR SERVICE TO BE ACCURATE, YOU MUST DISCLOSE ALL INFORMATION RELEVANT TO THE MOVE TO THE MOVER. COUNTY LAW REQUIRES THAT A MOVER RELINQUISH POSSESSION OF YOUR GOODS AND COMPLETE YOUR MOVE UPON PAYMENT OF NO MORE THAN THE SPECIFIED MAXIMUM AMOUNT DUE AT DELIVERY.

(d) Prior to beginning the move, the mover shall present to the shipper a copy of the Moving Consumer Bill of Rights and Disclosure Statement (Disclosure Statement) on its letterhead in the form approved and as amended by the Director. The Disclosure Statement shall be signed by the mover and shipper and shall indicate the time of each signature.

(e) The Disclosure Statement, once signed and dated by the mover and shipper, shall be incorporated in the mover's contract for services and shall bind all parties.

(f) Failure to present the Disclosure Statement shall constitute a violation of this Section and shall be subject to civil penalties described in this Chapter.

8A-331. Estimates of moving costs.

(a) A mover shall provide to the shipper a written estimate of the costs for moving the shipper's household goods, to include all transportation and accessorial services. No mover shall charge for preparing an estimate unless, prior to preparing the estimate, the mover:

(1) Clearly and conspicuously discloses in writing to the customer the amount of the charge for preparing the estimate or, if the amount cannot be determined, the complete

basis upon which the charge will be calculated, and

(2) Obtains the customer's written authorization on the written estimate to prepare an estimate.

(b) It is unlawful for a mover to require a shipper to waive the shipper's right to a written estimate. A shipper cannot waive the shipper's right to a written estimate.

(c) The written estimate provided to the shipper shall, at a minimum, include the following:

(1) The total cost for transportation and accessorial services to be provided.

(2) A description of the transportation and accessorial services to be provided.

(3) A listing of the basis for which any charges may be assessed for the transportation and accessorial services to be provided.

(4) The following language in bold capitalized letters of at least 12-point type:

UNDER COUNTY LAW YOU ARE ENTITLED TO A WRITTEN ESTIMATE OF THE TOTAL COST OF YOUR MOVE AND A COPY OF THE DISCLOSURE STATEMENT. PLEASE REVIEW THESE DOCUMENTS TO MAKE SURE THEY ARE COMPLETE.

(d) A copy of the estimate, signed by the mover, shall be delivered to the shipper prior to performing any transportation or accessorial service and a copy shall be maintained by the mover as part of the mover's records.

(e) Nothing in this article shall be construed to require a customer to enter into a contract for service with a mover based upon the issuance of an estimate.

(f) The estimate and disclosure may be provided on the same form as the contract for service.

(g) No mover shall provide an oral estimate to any customer.

(h) Reserved.

(i) Mover shall provide to the consumer, at the time of performing a moving estimate, a copy of Moving Consumer Bill of Rights and Disclosure Statement on its letterhead, in the form approved and as amended by the Director.

(j) Failure to present the Disclosure Statement shall constitute a violation of this Section and shall be subject to civil penalties described in this Chapter.

8A-345. Criminal penalties.

In addition to any other judicial or administrative remedies or penalties provided by law, rule, regulation or ordinance, if any person violates or fails or refuses to obey or comply with any of the provisions of this article or any lawful order of the Director or any cease and desist order of the Director or any notice to correct a violation of the Director or any assurance of compliance entered into pursuant to Section 8A-82.1 of the Code and this article, or any condition, limitation, or restriction of a registration certificate issued by the Director, such person, upon conviction of any such offense, shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment not to exceed sixty (60) days in the county jail, or both, in the discretion of the court. Each day or portion thereof of continuing violation shall be deemed a separate offense.

CHAPTER 8CC
CODE ENFORCEMENT

8CC-5.1. Miami-Dade County Diversion Program.

Notwithstanding the provisions of 8CC-5, a violator who has been served with a civil violation notice may enter the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners, provided the civil violation notice is issued for the violation of an ordinance listed in the table below, which may be amended from time to time.

The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section may carry different civil penalties. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined.

Code Section	*Description of Violation*
7-3	Swimming or fishing from prohibited road bridges
8A-172	Conducting business without a local business tax receipt
8A-276(b)	Failure to display commercial vehicle markings
21-22	Sale, offer for sale, purchase with intent to sell or public display for sale of synthetic cannabinoid herbal incense
21-22.1	Sale, offer for sale, purchase with intent to sell or public display for sale of synthetic stimulant bath salts or synthetic stimulants
21-28	Producing loud or excessive noise
21-31.2(b)(1), (2)	Alcohol possession or consumption near a store
21-31.4(B)	Obstructing traffic or aggressively begging
26-1	Parks violations

8CC-10. Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

* * *

Code Section	*Description of Violation*	*Civil Penalty*
* * *		
7-3	Swimming or fishing from prohibited road bridges:	
	First Offense	25.00
	Second and Subsequent Offense	100.00
* * *		
8A-172	Doing business without local business tax receipt	100.00
* * *		
8A-276(b)	Failure to display commercial vehicle markings	200.00
* * *		
21-22	Sale, offer for sale, purchase with intent to sell or public display for sale of synthetic cannabinoid herbal incense	500.00
21-22.1	Sale, offer for sale, purchase with intent to sell or public display for sale of synthetic stimulant bath salts or synthetic stimulants	500.00
* * *		
21-28	Excessive noise violations	100.00
* * *		
21-31.2(b)(1), (2)	Alcohol possession or consumption near a store	100.00
* * *		
21-31.4(B)	Obstructing traffic or aggressively begging	100.00
* * *		
26-1	Rule 3(a), Driving on other than approved park roadways	100.00
26-1	Rule 3(b), Stopping on, or obstructing park roadways	100.00
26-1	Rule 4, Truck or commercial vehicle on restricted roadway w/out authorization	100.00

26-1	Rule 5, Other types of vehicles on any but vehicular roads	100.00
	Subsequent offenses	200.00
26-1	Rule 6(a), Parking in undesignated space or location	100.00
26-1	Rule 6(b), Violation of overnight parking restriction	100.00
26-1	Rule 7(a), Towing of vehicles on park managed beaches	100.00
26-1	Rule 7(b), Providing taxi service w/out authorization	100.00
26-1	Rule 7(c), Vehicle repair or cleaning on park property	100.00
26-1	Rule 8(b), Defacement or destruction of park property	100.00
26-1	Rule 8(c), Removal of plants or plant material	100.00
26-1	Rule 8(d), Excavation in archeological sensitive areas of parks	100.00
26-1	Rule 8(e), Construction or encroachment w/out authorization	100.00
26-1	Rule 8(f), Lighting a fire or dumping in other than designated areas	100.00
26-1	Rule 8(g), Leaving a park w/out extinguishing a fire	100.00
26-1	Rule 8(h), Burning or defacing park equipment	100.00
26-1	Rule 9(a), Molesting, harming or removal of wild animals from park property w/out authorization	100.00
26-1	Rule 9(b), Feeding of any zoo animals	100.00
26-1	Rule 9(c), Dumping or leaving wild or domestic animals in parks	100.00
26-1	Rule 10(b), Introduction of exotic animal or leaving any animal in a park	100.00
26-1	Rule 10(c), Feeding of animals in or adjacent to a park	100.00
	Subsequent offenses	200.00
26-1	Rule 11, Entering a park with a domesticated animal, in other than designated area	100.00
26-1	Rule 12(a), Operating an aerial apparatus on park property w/out authorization	100.00
26-1	Rule 12(b), Flying lower than 1000 feet above populated park	100.00
26-1	Rule 13(a), Trespassing on park property after operating hours	100.00
26-1	Rule 13(b), Unauthorized entry onto a park that is in an unfinished state or under construction	100.00
26-1	Rule 16(a), Swimming in other than designated park area	100.00
26-1	Rule 16(b), Swimming with a floatation device in parks	100.00
26-1	Rule 16(c), Erecting of structures on or in beach areas	100.00
26-1	Rule 17, Fishing in a park in other than designated areas	100.00
* * *		
26-1	Rule 20(a), Picnicking or cooking in a park in other than designated areas	100.00

26-1	Rule 21, Horseback riding in a park in other than designated areas	100.00
26-1	Rule 22(a), Bringing a watercraft in a park in other than designated areas	100.00
26-1	Rule 22(b), Unauthorized mooring within 200 ft of park or marina	100.00
26-1	Rule 22(c), Docking or boating in park water other than under permit	100.00
26-1	Rule 22(d), Creation of excessive noise by boats in park waters	100.00
26-1	Rule 23, Commercial marina activity within park waters w/out permit	100.00
26-1	Rule 24(a), Failure to follow Picnic Shelter Permit restrictions	100.00
26-1	Rule 24(b), Solicitation, collection of funds, ticket sales within a park	100.00
26-1	Rule 25, Camping w/out permit or in other than designated area	100.00
26-1	Rule 26, Pollution of park waters	100.00
26-1	Rule 27(a), Depositing of trash or garbage on park grounds	100.00
26-1	Rule 27(b), Possession of glass containers on park beaches	100.00
26-1	Rule 27(c), Use of recycle bin for other than intended purpose on park property	100.00
26-1	Rule 29, Illegal merchandising, vending, or peddling	100.00
26-1	Rule 30, Advertising on park property w/out authorization	100.00
26-1	Rule 31, Public demonstration, gatherings and performances without specific authorization	100.00
26-1	Rule 33(d), Consumption of alcohol at youth athletic events	100.00
26-1	Rule 34(a), Entering facilities designated for opposite sex (child exclusion)	100.00
26-1	Rule 34(b), Loitering in or about park restrooms, dressing room, bath house or nature area	100.00
26-1	Rule 35, Gambling on park property	100.00
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CHAPTER 21
OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE II
MINORS

21-6. Purchase or sale of certain articles by.

(a) When *unlawful*. It shall be unlawful for any person to buy any used or secondhand article from a person under seventeen (17) years of age unless accompanied by a parent or legal guardian, and it shall likewise be unlawful for any person under seventeen (17) years of age to offer for sale any such articles.

(b) *Exception*. Persons under seventeen (17) years of age lawfully employed as a sales person in any established place of business shall be exempt herefrom.

21-8. Lodginghouse to report presence of.

Each owner, agent, manager or keeper of a hotel, boardinghouse, tenement house or

apartment house shall immediately report to the Miami-Dade Police Department the presence there (except for purely temporary purposes in the daytime) of all minors under the age of eighteen (18) years, unless such minors are accompanied by the parent, guardian or other person having the care and custody of such minors. The report shall include the name, age, last-known place of abode of the minors and the names and residences of the parents, guardian or other custodian of such minors, so far as such information can be ascertained from the minors or otherwise.

21-9. Tattooing.

It shall be unlawful for any person to tattoo any minor in the County unless the parent, guardian, or other person having charge and custody of the minor shall first have given his or her written consent to the tattooing.

21-10. False statement or credentials for gaining admission to prohibited places.

It shall be unlawful for any minor to make statements, or to furnish, present, or exhibit any fictitious or false registration card, identification card, or note or other document, or to furnish, present or exhibit such document or documents issued to a person other than the one (1) presenting the same, for the purpose of gaining admission to prohibited places or for the purpose of procuring the sale, gift or delivery of prohibited articles, including, but not limited to, beer, liquor, wine, cigarettes, and tobacco.

21-11. Minors engaging others for unlawful purpose.

It shall be unlawful for any minor to engage or utilize the services of any other person, and it shall be unlawful for any person, whether for remuneration or not, to procure for such minor any article which the minor himself is forbidden by law to purchase.

ARTICLE III
WEAPONS

DIVISION 3
ELECTRONIC CONTROL DEVICES

21-20.20. Definitions.

For purposes of this division, the following terms shall be defined as follows:

(a) The word "Electronic Control Device" as used in this division shall be construed to mean any portable device which is designed or intended by the manufacturer to be used, offensively or defensively, which fires one or more barbs attached to a length of wire and which, upon hitting a person, can send out an electric pulse or current capable of temporarily immobilizing or incapacitating a person by disrupting that person's nervous system.

(b) "Any part of the transaction" means any part of the sales transaction, including but not limited to, the offer of sale, negotiations, the agreement to sell, the transfer of consideration, or the transfer of the electronic control device.

(c) "Property to which the public has the right of access" means any real or personal property to which the public has a right of access, including property owned by either public or private individuals, firms and entities and expressly includes, but is not limited to, flea markets, gun shows and firearm exhibitions.

(d) "Sale" means the transfer of money or other valuable consideration.

21-20.21. Five-day Waiting Period and Criminal History Records Check on Electronic Control Device Sales.

(a) *Application and enforcement of section.* Law enforcement officers shall have the right to enforce the provisions of this section against any person found violating these provisions within their jurisdiction.

(b) *Sale and delivery of electronic control devices; mandatory five-day waiting period.* There shall be a mandatory five-day waiting period, which shall be five full days, excluding weekends and legal holidays, between the hour of the sale and the hour of the delivery of any electronic control device when any part of the transaction is conducted within Miami-Dade County on property to which the public has the right of access.

(c) *Sale and delivery of electronic control devices; mandatory criminal records check.* No person, whether licensed or unlicensed, shall sell, offer for sale, transfer or deliver any electronic control device to another person when any part of the transaction is conducted on property to which the public has the right of access within Miami-Dade County unless the buyer or the transferee has undergone the criminal history and background check procedures specified under section 790.065, Florida Statutes (2005) and has been provided with a unique approval number.

In the case of a seller who is not a licensed importer, licensed manufacturer or licensed dealer, compliance with section 790.065 or its state or federal successor shall be achieved by the seller requesting that a licensed importer, licensed manufacturer or li-

censed dealer complete all the requirements of section 790.065 or its state or federal successor. Licensed importers, manufacturers and dealers may charge a reasonable fee of an unlicensed seller to cover costs associated with completing the requirements of section 790.065.

(d) *Records available for inspection.* Records of electronic control device sales must be available for inspection by any law enforcement officer as defined in section 934.02(6), Florida Statutes (2005).

(e) *Exemptions.* Holders of a concealed weapons permit as prescribed by state law and holders of an active certification from the Criminal Justice Standards and Training officer, or a correctional probation officer as set forth in state law shall not be subject to the provisions of this section.

Sales to a licensed importer, licensed manufacturer or licensed dealer shall not be subject to the provisions of this section.

21-20.22. Unlawful to sell electronic control devices to persons who have not had mandatory training on the proper use of electronic control devices.

(a) It shall be unlawful for any person to acquire an electronic control device in Miami-Dade County unless such person has received safety instruction and is otherwise qualified, pursuant to this section, or unless he is specifically exempted from the operation of this section.

(b) In order to qualify under this section the purchaser must complete the training course offered by the manufacturer of the electronic control device or any other instructor certified by the manufacturer. Persons who have successfully completed the training course offered by the manufacturer in the course of purchasing an electronic control device shall not be required to repeat the training in any given year in order to purchase another electronic control device.

(c) This section shall not apply to:

(1) Law enforcement officers or agents of any state of the United States, or any political subdivision, municipal corporation, department or agency of either, members of the organized militia of any state for the armed forces of the United States, or law enforcement officers of any political subdivision, municipal corporation, department or agency of either, while engaged in the discharge of their official duties.

(2) Wholesale dealers in their business intercourse with retail dealers or retail dealers in their business intercourse with other retail dealers or to wholesale or retail dealers in the regular or ordinary transportation of electronic control devices by mail, express or other mode of shipment to points outside the country.

(3) Nonresidents of the United States having proper authorization from his or her consulate, acting consulate, commercial attache, or such other authorized representative.

21-20.23. Sale or delivery of electronic control devices to certain classes of persons is prohibited.

It shall be unlawful to sell or deliver any electronic control device to any person who the seller has reasonable grounds to believe is under the age of eighteen (18); is under the influence of intoxicating liquor, narcotic drugs, barbiturates, hallucinogens, other controlled substance; is addicted to the use of any narcotic drug, barbiturate, hallucinogens, or other controlled substance; is a habitual alcoholic; is of unsound mind; has been convicted of a felony; or is a fugitive from justice.

21-20.24. Possession of electronic control device.

It shall be unlawful to possess an electronic control device in Miami-Dade County unless the person possessing the electronic control device has undergone the criminal history and background check procedures specified under section 790.065, Florida Statutes, and the mandatory training requirements specified in section 21-20.22 of this division. Upon request, a person possessing an electronic control device in Miami-Dade County must be able to provide proof of having undergone the criminal history and background check procedures specified under section 790.065, Florida Statutes, and the mandatory training requirements specified in section 21-20.22 of this division.

It shall be unlawful for a person who has been convicted of a felony to possess an electronic control device in Miami-Dade County.

21-20.25. Electronic control device must be kept secure.

(a) If a person stores or leaves a firearm at any location where the person knows or reasonably should know that a minor might gain access to the electronic control device, the person shall secure the electronic control device in a securely locked box or container except when it is carried on his or her body or is located within such close proximity that the person can retrieve the electronic control device and prevent access to it by a minor.

(b) A violation of this section is a breach of a duty of safety owed by the person who owns or possesses the electronic control device to all minors who might gain access to it and to the general public.

21-20.26. Penalties.

Any person violating any section of this division shall be punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment. Nothing contained herein shall be construed to preempt the imposition of higher penalties imposed by state or federal law.

ARTICLE IV
MISCELLANEOUS

21-21. Alcoholic beverage establishments, solicitation of drinks in.

(a) *Soliciting drinks*. It shall be unlawful for any host, hostess, waiter, waitress, male or female entertainer or employee in a place dispensing alcoholic beverages for consumption on the premises to solicit any beverage, whether an alcoholic beverage or otherwise, for which the customer or patron in such establishment pays.

(b) *Mingling incident to soliciting drinks*. It shall be unlawful for any male or female employee or entertainer in places dispensing alcoholic beverages for consumption on the premises to mingle or fraternize with the customers or patrons of such establishments incident to soliciting the purchase of beverages, alcoholic or otherwise, for any such employee and for which the patron or customer in such establishment pays.

(c) *Employing persons to solicit drinks*. It shall be unlawful for any owner, operator, manager or other employee of a place dispensing alcoholic beverages for the consumption on the premises to employ or permit on the premises any person to solicit drinks for himself or herself or any other person.

(d) *Loitering to solicit drinks*. It shall be unlawful for any man or woman to frequent or loiter in any tavern, cabaret or night club for the purpose of soliciting drinks.

21-22. Sale, offer for sale, purchase with intent to sell and public display for sale of synthetic cannabinoid herbal incense prohibited.

(a) *Purpose and intent*. The Miami-Dade County Board of County Commissioners finds and declares that the products and synthetic substances described hereunder are commonly used as alternatives to marijuana. The Board further finds that these synthetic substances are particularly appealing to youth, and that these synthetic substances are potentially dangerous to users in the short term and that the long term effects are not yet known. The Board finds that the products which contain these synthetic substances often use a disclaimer that the product is "not for human consumption" to avoid regulations requiring the manufacturer to list the product's active ingredients. The Board finds drug designers and chemists can quickly create new synthetic drugs once federal or state law makes a particular synthetic drug illegal. As such, the Board finds there is a need to declare illegal the sale, offer for sale, purchase with intent to sell and public display for sale of synthetic substances that mimic illegal controlled substances that have not yet themselves been categorized as illegal controlled substances under federal or state law. The Board further finds that it is proper and necessary for the Board to exercise its authority to safeguard and protect the public health, safety and welfare by taking this action.

(b) *Application*. This section shall be applicable in the incorporated and unincorporated areas of Miami-Dade County, with the enforcement of the provision of this section in the unincorporated area being the responsibility of Miami-Dade County and in the incorporated area being the responsibility of the respective municipalities.

(c) *Preemption*. This section shall not preempt any municipal ordinance governing this subject area that is more stringent than this ordinance or that declares illegal a substance that is not declared illegal by this ordinance.

(d) *Definitions*. For purposes of this section, the following terms apply:

(1) *Structurally similar* as used in this section shall mean chemical substitutions off a common chemical backbone associated with synthetic cannabinoids, synthetic cannabinoid-mimicking compounds, 2-[(1R, 3S)-3-hydroxycyclohexyl]-5- (2-methyloctan-2-yl) phenol, also known as CP 47,497 and its dimethyloctyl (C8) homologue, (6aR, 10aR) -9-(hydroxymethyl) -6, 6-dimethyl-3- (2-methyloctan-2-yl) -6a, 7, 10, 10a-tetrahydrobenzo [c] chromen-1-ol, also known as HU-210, 1-Pentyl-3- (1-naphthoyl) indole, also known as JWH-018, 1-Butyl-3- (1-naphthoyl) indole, also known as JWH-073, 1-[2-(4-morpholinyl)ethyl]-3-(1- naphthoyl)indole, also known as JWH-200, JWH-007 (1-pentyl-2-methyl-

3-(1-naphthoyl)indole), JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1- naphthalenyl-methanone), JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-yl)methanone), JWH-020 (1- heptyl-3-(1-naphthoyl)indole), JWH-072 (Naphthalen-1 -yl-(1-propyl-1H-indol-3-yl) methanone), JWH-081 (4-methoxynaphthalen-1-yl-(l-pentylindol-3-yl)methanone), JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole), JWH-133 ((6aR, 10aR)-3-(1,1-Dimethylbutyl)-6a.,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)), JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-indole), JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole), JWH-203 (2-(2- chlorophenyl)-1-(1-pentylindol-3-yl)ethanone), JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone), JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-yl) ethanone), JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-yl)ethanone), JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl) indole), JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole), HU-211 ((6aS, 10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3 -(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c] chromen-1-ol), HU-308 ([(1R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2-yl) phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl] methanol), HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione), CB-13 (Naphthalen-1-yl-(4-pentyloxynaphthalen-1-yl)methanone), CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-undecanamide), CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-undecanamide), CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol), AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-iodophenyl)methanone), AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(naphthalen-1-yl)methanone), RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-yl)methanone), RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenylethanone), WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4- benzoxazin-6-yl]-1-naphthalenylmethanone), WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenyl-methanone), or related salts, isomers, and salts of isomers, listed in the controlled substance schedules in Chapter 893, Florida Statutes, as amended, or otherwise prohibited by federal or state law.

(2) *Synthetic cannabinoid herbal incense* as used in this section shall mean aromatic or nonaromatic plant material containing a synthetic drug, or to which a synthetic drug has been sprayed, applied or otherwise added, that is distributed in a loose, leafy, powder or granular form or in a compressed block or blocks that can be crushed to result in a powder or granular form, and can be placed into a pipe, cigarette paper or drug paraphernalia for purposes of ingestion by smoking, inhaling or other method, regardless of whether the substance is marketed as not for the purpose of human consumption, and regardless of how the substance is labeled, including, but not limited to, insect repellant, plant food, herbs, incense, nutrient, dietary supplement or spice.

(3) *Synthetic drug* as used in this section shall mean any chemical or mixture of chemicals, however packaged, that is structurally similar to synthetic cannabinoids, synthetic cannabinoid-mimicking compounds or any other substance listed in paragraph (1) above, or related salts, isomers, or salts of isomers, as listed in the controlled substance schedules in Chapter 893, Florida Statutes, or otherwise prohibited by federal or state law, as such may be amended from time to time. "Synthetic drug" also shall include any chemical or mixture of chemicals, however packaged, that mimics the effects of tetrahydrocannabinol (also known as THC), the main active ingredient found in marijuana or any other substance listed in paragraph (1) above, or related salts, isomers, or salts of isomers, as Packaging that indicates or implies that a product mimics the effects of marijuana, such as "fake weed" or "fake pot" or any other substance listed in paragraph (1) above, shall create a presumption that the product mimics the effects of tetrahydrocannabinol. "Synthetic drug" shall not include any substance currently listed in the controlled substance schedules in Chapter 893, Florida Statutes, or otherwise prohibited by federal or state law, as such may be amended from time to time.

(e) *Sale, offer for sale and purchase with intent to sell synthetic cannabinoid herbal incense prohibited.* It shall be unlawful for any store owner, store manager, store purchasing agent or other person to sell, offer for sale or purchase with intent to sell any synthetic cannabinoid herbal incense as defined herein.

(f) *Public display for sale of synthetic cannabinoid herbal incense prohibited.* It shall be unlawful for any store owner, store man-

ager, store purchasing agent or other person to publicly display for sale any synthetic cannabinoid herbal incense as defined herein.

(g) *Affirmative defense*. It shall be an affirmative defense to prosecution of a violation of this section if the sale, offer for sale or public display for sale of synthetic cannabinoid herbal incense is pursuant to the direction or prescription of a licensed physician or dentist authorized in the State of Florida to direct or prescribe such act.

(h) *Seizure and destruction of synthetic cannabinoid herbal incense*. Synthetic cannabinoid herbal incense prohibited herein may be seized by law enforcement officers and may be destroyed in the same manner used to destroy narcotics and contraband substances, after its use for evidentiary purposes in any judicial proceeding is no longer required.

(i) *Injunctive relief*. Miami-Dade County shall have the authority to seek an injunction against any person or business violating the provisions of this section. In any action seeking an injunction, Miami-Dade County shall be entitled to collect its enforcement expenses, including forensic costs, law enforcement costs and reasonable attorney fees and costs incurred at trial and on appeal.

(j) *Subsequent federal or state action*. If Congress or a federal agency amends federal law to include a particular substance or otherwise enacts or amends a federal law providing for criminal penalties for the prohibitions of substances set forth in this ordinance, then upon the effective date of such enactment or amendment, the provisions of this ordinance addressed by federal law shall no longer be deemed effective. Any violations of this ordinance committed prior to the Congress or a federal agency enacting a federal law may be prosecuted.

If the Florida Legislature amends the controlled substance schedules in Section 893.01, Florida Statutes, to include a particular substance or otherwise enacts, or amends a state statute providing for criminal penalties for the prohibitions of substances set forth in this ordinance, then upon the effective date of such enactment or amendment, the provisions of this ordinance addressed by the state statute shall no longer be deemed effective.

If the Florida Attorney General pursuant to the rulemaking authority provided in Chapter 893[, Florida Statutes,] adds a particular substance to the controlled substance schedules in Section 893.01, Florida Statutes, then upon the effective date of such enactment or amendment, the provisions of this ordinance addressed by the state statute shall no longer be deemed effective. Any violations of this ordinance committed prior to the Florida Legislature enacting such a statute or the Florida Attorney General promulgating rules may be prosecuted.

(k) *Penalty*. Any store owner, store manager, store purchasing agent or other person violating any provision of this section shall be punishable by:

(1) A fine not to exceed five hundred dollars ($500.00);

(2) Imprisonment in the county jail for a period not to exceed sixty (60) days;

(3) Both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

(4) Fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

(5) Completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.

21-22.1. Sale, offer for sale, purchase with intent to sell and public display for sale prohibited of synthetic stimulant bath salts, synthetic cathinones, synthetic amphetamines and other synthetic stimulants that mimic illegal drugs.

(a) *Purpose and intent*. The Miami-Dade County Board of County Commissioners finds and declares that the products and synthetic substances described hereunder are commonly used as alternatives to amphetamines, cocaine, ecstasy and other illegal drugs. The Board further finds that these synthetic substances are particularly appealing to youth, and that these synthetic substances are potentially dangerous to users in the short term and the long term effects are not yet known. The Board finds that the products which contain these synthetic substances often use a disclaimer that the product is "not for human consumption" to avoid regulations that require the manufacturer to list the product's active ingredients. The Board finds that drug designers and chemists can quickly create new synthetic drugs once federal or state law makes a particular synthetic drug illegal. As such, the Board finds there is a need to declare illegal the sale, offer for sale, purchase with intent to sell and public display for sale of synthetic substances that mimic illegal controlled substances, even though such synthetic substances have not yet themselves been categorized as illegal controlled substances under federal or state law. The Board further finds

that it is proper and necessary for the Board to exercise its authority to safeguard and protect the public health, safety and welfare by taking this action.

(b) *Application*. This section shall be applicable in the incorporated and unincorporated areas of Miami-Dade County, with the enforcement of the provision of this section in the unincorporated area being the responsibility of Miami-Dade County and in the incorporated area being the responsibility of the respective municipalities.

(c) *Preemption*. This section shall not preempt any municipal ordinance governing this subject area that is more stringent than this ordinance or that declares illegal a substance that is not declared illegal by this ordinance.

(d) *Definitions*. For purposes of this section, the following terms apply;

(1) *Structurally similar* as used in this section shall mean chemical substitutions off a common chemical backbone associated with cathinone, methcathinone, amphetamine, methamphetamine, cocaine, 3,4-methylenedioxymethamphetamine (MDMA), 3,4-methylenedioxymethcathinone, 3,4- methylenedioxypyrovalerone (MDPV), methylmethcathinone, methoxymethcathinone, methylethcathinone, fluoromethcathinone, BZP (benzylpiperazine), fluorophenylpiperazine, methylphenylpiperazine, chlorophenylpiperazine, methoxyphenylpiperazine, DBZP (1,4- dibenzylpiperazine), TFMPP (3-Trifluoromethylphenylpiperazine), MBDB (Methylbenzodioxolylbutanamine), 5-Hydroxy-alpha-methyltryptamine, 5-Hydroxy-N-methyltryptamine, 5-Methoxy-N-methyl-N-isopropyltryptamine, 5-Methoxy-alpha-methyltryptamine, methyltryptamine, 5-Methoxy- N,N-dimethyltryptamine, 5-Methyl-N,N-dimethyltryptamine, 5-Methoxy-N,N-Diisopropyltryptamine, DiPT (N,N-Diisopropyltryptamine), DPT N,N-Dipropyltryptamine) 4-Hydroxy-N,N-diisopropyltryptamine, N,N-Diallyl-5-Methoxytryptamine, DOI (4-Iodo-2,5-dimethoxyamphetamine), DOC (4-Chloro-2,5- dimethoxyamphetamine), 2C-E (4-Ethyl-2,5- dimethoxyphenethylamine), 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine), 2C-C (4-Chloro-2, 5-dimethoxyphenethylamine), 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine), 2C- T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine), 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine), 2C-I (4-Iodo-2,5-dimethoxyphenethylamine), Butylone (beta-keto-N-methylbenzodioxolylpropylamine), Ethcathinone, Ethylone (3,4-methylenedioxy-N-ethylcathinone), Naphyrone (naphthylpyrovalerone), N-N-Dimethyl-3,4-methylenedioxycathinone, N-N-Diethyl-3,4-methylenedioxycathinone, 3,4-methylenedioxy-propiophenone, 2-Bromo-3,4-Methylenedioxypropiophenone, 3,4-methylenedioxy-propiophenone-2-oxime, N-Acetyl-3,4-methylenedioxycathinone, N-Acetyl-N-Methyl-3,4-Methylenedioxycathinone, N-Acetyl-N-Ethyl-3,4-Methylenedioxycathinone, Bromomethcathinone, Buphedrone (alpha-methylamino-butyrophenone), Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine), Dimethylcathinone, Dimethylmethcathinone, Pentylone (beta-Keto-Methylbenzodioxolylpentanamine), (MDPPP) 3,4-Methylenedioxy-alpha pyrrolidinopropiophenone, (MDPBP) 3,4-Methylenedioxy-alpha pyrrolidinobutiophenone, Methoxy-alpha-pyrrolidinopropiophenone (MOPPP), Methyl-alpha-pyrrolidinohexiophenone (MPHP), Benocyclidine (BCP), benzothiophenylcyclohexylpiperidine (BTCP), Fluoromethylaminobutyrophenone (F-MABP), Methoxypyrrolidinobutyrophenone (MeO- PBP), Ethyl-pyrrolidinobutyrophenone (Et-PBP), 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO- MCAT), Methylethylaminobutyrophenone (Me-EABP), Methylamino-butyrophenone (MABP), Pyrrolidinopropiophenone (PPP), Pyrrolidinobutiophenone (PBP), Pyrrolidinovalerophenone (PVP), Methyl-alpha-pyrrolidinopropiophenone (MPPP), or related salts, isomers, and salts of isomers, listed in the controlled substance schedules in Chapter 893, Florida Statutes, as amended, or otherwise prohibited by federal or state law.

(2) *Synthetic stimulant bath salts* as used in this section shall mean any substance, whether in powder, crystal, liquid, tablet or capsule form, containing a synthetic stimulant as defined herein or to which a synthetic stimulant has been added or applied, that can be ingested by smoking, inhaling or other method, regardless of whether the substance is marketed as not for the purpose of human consumption, and regardless of how the substance is labeled, including, but not limited to, bath salts, insect repellant, plant food, herbs, incense, iPod cleaner, nutrient, dietary supplement or spice.

(3) *Synthetic stimulant* as used in this section shall mean any chemical or mixture of chemicals, however packaged, that has a stimulant effect on the central nervous system and is structurally similar to cathinone, methcathinone, amphetamine, methamphetamine, cocaine, MDMA or any other substance listed in paragraph (1) above, or

related salts, isomers, and salts of isomers, as listed in the controlled substance schedules in Chapter 893, Florida Statutes, or otherwise prohibited by federal or state law. "Synthetic stimulant" shall also include any chemical or mixture of chemicals, however packaged, that mimics the pharmacological effects of cathinone, methcathinone, amphetamine, methamphetamine, cocaine, MDMA or any other substance listed in paragraph (1) above, or related salts, isomers, and salts of isomers. Packaging that indicates, suggests or implies that a product mimics the pharmacological effects of cathinone, methcathinone, amphetamine, methamphetamine, cocaine, ecstasy or any other substance listed in paragraph (1) above, shall create a presumption that the product mimics the effects of the substance. "Synthetic stimulant" shall not include any substance currently listed in the controlled substance schedules in Chapter 893, Florida Statutes, or otherwise prohibited by federal or state law, as such may be amended from time to time.

(e) *Sale, offer for sale and purchase with intent to sell synthetic stimulant bath salts and synthetic stimulants prohibited.* It shall be unlawful for any store owner, store manager, store purchasing agent or other person to sell, offer for sale or purchase with intent to sell any synthetic stimulant bath salts as defined herein or any synthetic stimulants as defined herein.

(f) *Public display for sale of synthetic stimulant bath salts and synthetic stimulants prohibited.* It shall be unlawful for any store owner, store manager, store purchasing agent or other person to publicly display for sale any synthetic stimulant bath salts as defined herein or any synthetic stimulants as defined herein.

(g) *Affirmative defense.* It shall be an affirmative defense to prosecution of a violation of this section if the sale, offer for sale, purchase with intent to sell or public display for sale of synthetic stimulant bath salts as defined herein or synthetic stimulants as defined herein is pursuant to the direction or prescription of a licensed physician or dentist authorized in the State of Florida to direct or prescribe such act.

(h) *Seizure and destruction of synthetic stimulant bath salts and synthetic stimulants.* Synthetic stimulant bath salts and synthetic stimulants prohibited herein may be seized by law enforcement officers and may be destroyed in the same manner used to destroy narcotics and contraband substances, after its use for evidentiary purposes in any judicial proceeding is no longer required.

(i) *Injunctive relief.* Miami-Dade County shall have the authority to seek an injunction against any person or business violating the provisions of this section. In any action seeking an injunction, Miami-Dade County shall be entitled to collect its enforcement expenses, including forensic costs, law enforcement costs and reasonable attorney fees and costs incurred at the trial level and on appeal.

(j) *Subsequent federal or state action.* If Congress or a federal agency amends federal law to include a particular substance or otherwise enacts or amends a federal law providing for criminal penalties for the prohibitions of substances set forth in this ordinance, then upon the effective date of such enactment or amendment, the provisions of this ordinance addressed by federal law shall no longer be deemed effective. Any violations of this ordinance committed prior to Congress or a federal agency enacting a federal law may be prosecuted.

If the Florida Legislature amends the controlled substance schedules in Section 893.01, Florida Statutes, to include a particular substance or otherwise enacts, or amends a state statute providing for criminal penalties for the prohibitions of substances set forth in this ordinance, then upon the effective date of such enactment or amendment, the provisions of this ordinance addressed by the state statute shall no longer be deemed effective.

If the Florida Attorney General pursuant to the rulemaking authority provided in Chapter 893[, Florida Statutes,] adds a particular substance to the controlled substance schedules in Section 893.01, Florida Statutes, then upon the effective date of such enactment or amendment, the provisions of this ordinance addressed by the state statute shall no longer be deemed effective.

Any violations of this ordinance committed prior to the Florida Legislature enacting such a statute or the Florida Attorney General promulgating rules may be prosecuted.

(k) *Penalty.* Any store owner, store manager, store purchasing agent or other person violating any provision of this section shall be punishable by:

(1) A fine not to exceed five hundred dollars ($500.00);

(2) Imprisonment in the county jail for a period not to exceed sixty (60) days;

(3) Both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

(4) Fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

(5) Completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.

21-24. False alarms and reports.

(a) *False alarms.* It shall be unlawful for any person intentionally to make, turn in, or give a false alarm of fire, or a false alarm of the need for police or ambulance assistance; and it shall be unlawful for any person to aid or abet in the commission of any such act.

(b) *False reports.* It shall be unlawful to make to, or file with, the Miami-Dade Police Department or the Police Department of any municipality any false, misleading or unfounded statement or report concerning the commission or alleged commission of any crime, or offense, occurring within the County or any municipality within the County.

21-25. Fire and police alarm systems; obstructing or interfering with.

It shall be unlawful for any person to place, or cause to be placed, any article or thing on or upon any sidewalk in such a manner as to interfere with or obstruct the free access or approach to any signal box of the fire and police systems, or without authority from the Miami-Dade Police Director, to run any wire on any of the telegraph poles or fixtures of such systems, or, without authority from the Miami-Dade Police Director, to break, remove or injure or cause to be broken, removed or injured, any of the parts or appurtenances of such systems; or, without authority, to make, or fit, or cause to be made or fitted, any key to the lock of any signal box of such systems; or without authority, to have or retain in his possession any key belonging to or fitted to the lock of any such signal box.

21-27. Fires; obedience to firefighters and police officers.

(a) Every person who shall be present at a fire shall be subject to the orders of the Miami-Dade Fire Department, the Fire Chief or other officers, including Miami-Dade Police, in extinguishing the fire and removing and protecting property, providing the official character of the officer be known or made known to the person.

(b) It shall be unlawful for any person to neglect or refuse to obey a lawful order authorized by this section.

21-27.1. Merchandise—Selling, serving, vending in public rights-of-way near schools.

(a) *Prohibited.* It shall be unlawful for any person to sell, offer for sale, serve, vend, or otherwise dispose of any goods, wares or merchandise, including ice cream, peanuts, popcorn, soda water products, drinks, candy, and food products, in the public rights-of-way, including streets, sidewalks or other public property, within five hundred (500) feet of any property used, owned or operated for public or private school purposes, or for any person to station himself, or operate any stand, establishment or vehicle, for such purpose within the prohibited areas unless within five hundred (500) feet of the school in a secure vending area established and controlled by the school principal. The term "secure vending area" means an area designated by the school principal which is cordoned off by movable barriers, is of sufficient size to accommodate a parked vehicle and student customers in numbers reasonably anticipated by the principal, is supervised by the principal or his or her designee, and for which specific designation thereof is made in writing and filed in the school and at the police station which provides service to the area.

(b) *Enforcement and penalties for violations.* It shall be the duty of all County and municipal peace officers to enforce the provisions of this section. Any person convicted of a violation of the provisions of this section shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment not to exceed sixty (60) days, or both, in the discretion of the court of appropriate jurisdiction.

21-27.2. Same—Selling, serving, vending in public rights-of-way near public parks.

(a) *Prohibited.* It shall be unlawful for any person to sell, offer for sale, serve, vend, or otherwise dispose of any goods, wares or merchandise, including ice cream, peanuts, popcorn, soda water products, drinks, candy and food products, in the public rights-of-way, including streets, sidewalks and parkways, within five hundred (500) feet of any public park including beaches and marinas, in the unincorporated area of Miami-Dade County, Florida, or for any person to station himself, or operate any stand, establishment or vehicle, for such purpose within the prohibited areas.

(b) *Enforcement and penalties for violations.* It shall be the duty of all County offi-

cers to enforce the provisions of this section. Any person convicted of a violation of the provisions of this section shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment not to exceed sixty (60) days, or both in the discretion of the County Court.

21-28. Noises; unnecessary and excessive prohibited.

It shall be unlawful for any person to make, continue, or cause to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise. Any person violating any of the provisions of this section shall be punished by (i) a fine not to exceed five hundred dollars ($500.00); (ii) imprisonment in the county jail for a period not to exceed sixty (60) days; (iii) both such fine and imprisonment in the discretion of the court having jurisdiction over the cause; (iv) fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or (v) completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners. The following acts, among others, are declared to be unreasonably loud, excessive, unnecessary or unusual noises in violation of this section, but this enumeration shall not be deemed to be exclusive, namely:

(a) *Horns, signaling devices, etc.* The sounding of any horn or signaling device on any automobile, motorcycle, bus or other vehicle on any street or public place of the County, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; and the sounding of any such device for any unnecessary and unreasonable period of time.

(b) *Radios, televisions, phonographs, etc.* The using, operating, or permitting to be played, used or operated any radio receiving set, television set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such manner as to be plainly audible at a distance of one hundred (100) feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

(c) *Animals, birds, etc.* The owning, harboring, possessing or keeping of any dog, animal or bird which causes frequent, habitual or long continued noise which is plainly audible at a distance of one hundred (100) feet from the building, structure or yard in which the dog, animal or bird is located.

(d) *Whistles.* The blowing of any locomotive whistle or whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of the proper municipal or County authorities.

(e) *Exhausts.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, or motor vehicle except through a muffler or other device which will effectively prevent unreasonably loud or explosive noises therefrom.

(f) *Defect in vehicle or load.* The use of any automobile, motorcycle, jet ski, water bike, recreational vehicle, dirt bike or motor vehicle so out of repair, so loaded or in such manner as to create unreasonably loud or unnecessary grating, grinding, rattling or other noise within a residential area.

(g) *Schools, courts, hospitals.* The creation of any excessive or unreasonably loud noise on any street adjacent to any school, institution of learning, house of worship or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institutions, or which disturbs or unduly annoys the patients in the hospital, provided conspicuous signs are displayed in such streets indicating that it is a school, hospital or court street.

(h) *Hawkers, peddlers.* The shouting and crying of peddlers, hawkers, and vendors which disturbs the peace and quiet of the neighborhood.

(i) *Noises to attract attention.* The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of any unreasonably loud or unnecessary noise to any performance, show, sale, display or advertisement of merchandise.

(j) *Loudspeakers, etc.* The use or operation on or upon the public streets, alleys and thoroughfares anywhere in this County for any purpose of any device known as a sound truck, loud speaker or sound amplifier or radio or any other instrument of any kind or character which emits therefrom loud and raucous noises and is attached to and upon any vehicle operated or standing upon such

streets or public places aforementioned. It is provided, however, that this subsection is not intended to be construed in a manner that would interfere with the legitimate use of the foregoing loudspeaker type devices in political campaigns.

(k) *Power tools and landscaping equipment*. The operation of noise-producing lawn mowers, lawn edgers, weed trimmers, blowers, chippers, chain saws, power tools and other noise-producing tools which are used to maintain or at a residence out-of-doors between 8:00 p.m. and 7:00 a.m.

(l) *Shouting*. Any unreasonably loud, boisterous or raucous shouting in any residential area.

21-28.1. Open-air concerts, musical broadcasts, etc.

(a) *Permit required; presumption*. It shall be unlawful and a violation of this section for any person, firm, partnership or corporation to play, broadcast or transmit music in such a manner as would reasonably be calculated to attract a crowd or cause numbers of persons to congregate in or on any open space, lot, yard, sidewalk or street, or to permit the same to occur on or from any property owned, leased or occupied by said person, firm, partnership, or corporation, without first having obtained a permit to do so from the Miami-Dade Police Department; except no permit shall be required of any person in order to engage in such activity within the residential property wherein such person resides. The use of any amplifier or loudspeaker to play, broadcast or transmit music shall constitute prima facie evidence that the music is being played, broadcasted or transmitted in such a manner as would reasonably be calculated to attract a crowd or cause numbers of persons to congregate.

(b) *Permit contents, time restrictions*. Permits issued under this section shall specify the date and time during which the activity authorized by the permit may be conducted. No permit shall issue which encompasses more than one (1) calendar date, or a span of hours in excess of six (6) hours; nor shall the requested activity commence or continue beyond the hour of 11:00 p.m. in any case.

(c) *Permit application information*. The application for a permit under this section shall contain the following information:

(1) The name, date of birth, address and telephone number of the person who will be in charge of the activity for which a permit is requested.

(2) The name of the person, firm, partnership or corporation seeking the permit.

(3) The exact date and times for which the permit is sought.

(4) The exact location of the event for which a permit is requested.

(d) *Filing application for permit*. Applications for a permit required under this section must be submitted to the Miami-Dade Police Department at least five (5) days prior to the date of the event for which the permit is requested.

(e) *Procedures for administering permits.* The Director of the Miami-Dade Police Department is hereby authorized and directed to promulgate reasonable rules and procedures for the application, issuance and revocation of such permits.

(f) *Criteria for permit issuance; posting of bond*. Issuance of the permit required under this section shall be based on a determination by the Miami-Dade Police Department that the event for which a permit is requested does not constitute a threat to public safety; constitute a danger or impediment to the normal flow of traffic; or constitute a potential disturbance of the peace and quiet of persons outside the premises where the event is located. Subsequent permits under this section may be denied to, or a bond required of, any person known to have been convicted for violations of a previous permit under this section. The bond shall be in an amount sufficient to secure the costs of cleanup and repair or replacement of damage or destruction of property and shall be subject to forfeiture for purposes of paying any judgment against the permit holder which may be entered by a court of competent jurisdiction on account of such property damage or destruction or cleanup cost.

(g) *Review of permit denial or revocation.* Any person dissatisfied or aggrieved with the decision of the Director of the Miami-Dade Police Department with reference to denial of his application for such permit or the revocation of such permit may, within ten (10) days after such denial or revocation, appeal to and appear before the Manager or his designee; and, upon the affirmance or approval of the action taken by the Director of the Miami-Dade Police Department, such action shall be final and subject to judicial review by writ of certiorari in accordance with the Florida Rules of Appellate Procedure. In the event the Manager or his designee, upon the original review, determines that the applicant is entitled to such permit, then in that event the Director of the Miami-Dade Police Department shall immediately issue such permit.

(h) *Surrender of permit upon demand.* It shall be unlawful and a violation of this section for the person designated in the permit application as being in charge of the event for which a permit is sought to fail or refuse to surrender the permit, on demand, to any State, County, or municipal police officer.

(i) *Person designated as being in charge to be present*. The person designated in the permit application required in this section as being the person in charge of the event for which the permit is sought must remain at the location of said event during the entire time stated in the permit for which the event is authorized. It shall be unlawful and a violation of this section for said designated person in charge to fail to remain in attendance at the location of the event authorized by the permit for the entire time specified in the permit.

(j) *Penalties for violations*. Any violation of any provision of this section shall be punishable by imprisonment in the County Jail for a term not to exceed thirty (30) days or a fine of up to five hundred dollars ($500.00), or both.

21-29. Secondhand dealers.

(a) *Definitions*.

(1) *Secondhand dealers*: For the purpose of this section, the term "secondhand dealers" shall mean any person, firm, corporation or partnership engaged in the business of buying, selling, bartering, exchanging in any manner at retail or wholesale or otherwise dealing for profit in secondhand goods as defined in subsection (2) hereof, whether or not at a fixed place of business. Such term shall include pawnbrokers and all dealers who buy, trade or sell or who make loans of money upon the deposit or pledge of any secondhand goods. Provided, however, that nothing in this section shall apply to:

a. Registered religious or charitable organizations selling reconditioned or used articles;

b. Licensed garage sales;

c. Any person whose primary business is dealing in gold or silver coins if such business is licensed pursuant to law or ordinance.

(2) *Secondhand goods*: For the purposes of this section, "secondhand goods" shall mean personal property previously owned or used which is not purchased or sold as new and shall include but shall not be limited to items containing gold, silver, platinum or other precious metal; jewelry, diamonds, gems, and other precious stones; audio and video electronic equipment, including but not limited to television sets, radios, amplifiers, receivers, turntables, tape recorders, videotape recorders, speakers and citizens' band radios; photographic equipment, including but not limited to cameras, lenses, electronic flashes, tripods and developing equipment; machinery; tools, electric motors, calculators, tires, hub caps, musical instruments, typewriters and firearms.

(b) *Records of transactions to be kept*. Every secondhand dealer shall keep a record approved as to type and form by the Miami-Dade Police Director. The record shall be clearly and legibly written in ink in the English language at the time of each acquisition and shall contain an accurate and true description of each article purchased, bartered, exchanged or received, including a notation as to any identifying markings or characteristics such as serial numbers; the amount of money or other consideration loaned thereon or paid or given therefor; the date and time of the acquisition of such article by the secondhand dealer; the true name of the person dealt with, as nearly as known, as well as such person's signature and thumbprint, place of residence, sex, age, height, weight, build, color of hair, color of eyes, complexion and reasonable proof of identification by an exhibition of a driver's license or other picture identification or other reliable means of identification. The record shall contain the type of identification exhibited, the issuing agency, and the number thereon. For purposes of this section, credit cards, Social Security cards, handwritten identification cards and nonphoto I.D. shall not constitute acceptable I.D. No entry made in such record shall be erased, obliterated or defaced. Every secondhand dealer shall deliver to the Office of the Miami-Dade Police Director a complete and correct copy of said record within forty-eight (48) hours of the date of acquisition of items covered under this section.

A special tag shall be affixed to all items not bearing a serial number. The tag shall exhibit information sufficient to enable ready reference to be made to the portion of the above record which pertains to the item bearing the tag. The County Manager shall issue an administrative order specifying a uniform format and design for the tag. The tag shall not be required to be affixed to articles of clothing. Organizations exempt from federal taxation pursuant to 26 U.S.C. Sec. 501(c)(3) and religious organizations shall be exempt from the requirement of affixing the tag.

The records created and maintained as required by subsections (b) and (c) of this section shall be made available for inspec-

tion and copying by any person desiring to do so, in the same manner and in accordance with the same procedures provided for the inspection and duplication of public records by the provisions of Florida Statutes, Section 119.07(1)(a), (b), as set forth at the time this paragraph becomes law.

(c) *Holding period.*

(1) Items containing gold, silver, platinum or other precious metal and jewelry, diamonds, gems and other precious stones shall be held by the secondhand dealer for a period of fifteen (15) days prior to sale, exchange or other disposition thereof. All other property covered by this section acquired in the course of a secondhand dealer's business shall be held for a period of thirty (30) days prior to disposition thereof; provided, however, that the provisions of this subsection shall not be applicable when the person known by the secondhand dealer to be the true owner of any article desires to redeem, repurchase or recover such article at any time within the required hold period. The secondhand dealer shall keep a record of the proof of ownership presented by the true owners.

(2) If a police officer has probable cause to believe that an item acquired by a secondhand dealer in the course of his business is the subject of a criminal investigation, such police officer may apply to a court of competent jurisdiction for an order which would prohibit the release of such property for a period of sixty (60) days. Upon release of such property, the secondhand dealer shall keep a record of the disposition thereof.

(d) *Inspection of premises and records.* Any law enforcement officer shall, upon authorization of the Miami-Dade Police Director or his designee, have the right to inspect during normal business hours the records required to be kept by this section.

(e) Certain acts and practices prohibited. Each of the following acts of either a secondhand dealer or any of his or her employees is hereby declared to be unlawful and shall subject the person convicted thereof by a court of competent jurisdiction to the penalties prescribed by Section 1-5, Code of Miami-Dade County:

(1) Knowingly purchasing or otherwise acquiring any article covered by this section from:

a. Any person under the influence of drugs or alcohol, or

b. Any minor unless said minor has the written consent of his or her parent or guardian, or

c. Any person using a name other than his own.

(2) Refusing, denying or interfering with the lawful inspection of the records required to be kept by this section by a police officer.

(3) Disposing of any property covered by this section contrary to the provisions of this section.

(4) Failing or neglecting to comply with any applicable provision of this section.

(5) Possessing property owned by Miami-Dade County, or any municipality within Miami-Dade County without documentation of the receipt of such property as required by this ordinance is prohibited and shall subject the person convicted thereof to a fine not to exceed one thousand dollars ($1,000.00) or imprisonment in the county jail for a term not to exceed one (1) year imprisonment.

(f) *Hours of operation.* No pawnshop shall engage in business within the incorporated or unincorporated areas of Miami-Dade County except between the hours of 7:00 a.m. and 7:00 p.m.

(g) *Applicability and enforcement.* This chapter [section] shall apply to both the incorporated and unincorporated areas, and in the unincorporated areas shall be enforced by the County and in the incorporated areas shall be enforced by the municipalities unless the County is notified by any municipality, in the form of a resolution of the governing council or commission that it is desirous of having the County enforce this chapter [section] in which event enforcement within the incorporated areas shall be by the County.

21-29.1. Private business, advertising on public property prohibited; exceptions; penalty; enforcement.

(a) It shall be unlawful for any person, firm, corporation or other legal entity to engage in any private business, commercial activity, or to undertake to provide any service for compensation, or to advertise or display merchandise, or to transact any business for profit, or to solicit business, on any property or facilities owned or operated by Miami-Dade County without first obtaining a permit, concession, lease, or other authorization in writing approved or authorized by the Board of County Commissioners. A County occupational license shall not authorize any person, firm, corporation or other legal entity to engage in any of the prohibited activities on County property or facilities.

(b) It shall be unlawful for any person, firm, corporation or other legal entity to post, display or distribute any signs, advertisements, circulars, handbills, printed or

written matter relating to any business or commercial activities on any property or facilities owned or operated by or for Miami-Dade County, without first obtaining a written permit issued or authorized by the Board of County Commissioners; provided that the provisions of this section shall not be applicable to licensees, concessionaires, lessees or agencies of the County.

(c) The provisions of this section shall be applicable to all lands, buildings, improvements, facilities, equipment, projects, and all property, either real or personal, owned, operated, or under the custody or control of Miami-Dade County, or its agents, representatives, officials, departments or instrumentalities, except public streets, roads, highways and sidewalks.

(d) Any person, firm, corporation or other legal entity violating any provisions of this section shall, upon conviction thereof, be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment in the County Jail for a period not to exceed sixty (60) days, or by both such fine and imprisonment, in the discretion of the County Court.

(e) It shall be the duty of the Miami-Dade Police and the police officers of each municipality to enforce the provisions of this section against any person, firm, corporation or other legal entity found violating the same within their jurisdiction.

21-30. Offenses against public and private property.

(a) No person in the County shall:

(1) Willfully, maliciously, wantonly or otherwise injure, deface, destroy or remove real property or improvements thereto, or movable or personal property, belonging to the County, any municipality in the County, any state or Federal agency in the County, or to any person in the County. For the purpose of this ordinance, "person" shall include any individual or entity as defined by Section 1.01(3) of the Florida Statutes.

(2) Destroy, damage, or vandalize, any County property, including but not limited to the swale area in the public right-of-way.

(3) Injure or knowingly suffer to be injured any meter, valve, valve or meter identification, piping or appurtenance thereto, connected with or belonging to a gas distribution system in the County, including portions thereof on private property and within buildings. No person shall tamper or meddle with or alter the condition of any meter, valve or meter identification, or other part of such system in the County, or appliance connected thereto, in such manner as to cause loss or damage to the owner of such facilities or the users thereof, or to create a hazard to life and property.

(4) Tamper with, injure, deface, destroy or remove any sign, notice, marker, fire alarm box, fireplug, topographical survey monument, or any other personal property erected or placed by the County.

(5) Place or erect upon any public way or passageway to any building, an obstruction of any type, provided that this section shall not prevent duly authorized or required placing of temporary barriers or signs for the purpose of safeguarding the public.

(6) Move, disturb, or take any earth, stone or other material from any public street, alley, park or other public ground.

(7) Remove or attempt to remove a library book or other library property from a public library without first obtaining authorization to do so from the librarian or other authorized person.

(b) Any person violating this ordinance shall: be punished by a fine not to exceed five hundred dollars ($500) for the first offense and each subsequent offense and by imprisonment in the County jail for a term not to exceed sixty (60) days. In addition to such punishment, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the defendant's offense in the amount or manner determined by the Court. In the case of a minor, the parents or legal guardian shall be jointly and severably liable, with the minor for payment of all fines and restitution. Failure of the violator to pay the fine or restitution shall be punished by an additional term of imprisonment in the County jail not to exceed twenty (20) days.

(c) This ordinance shall be applicable in incorporated and unincorporated areas of Miami-Dade County.

21-30.01. Graffiti.

(a) *Definitions*. For the purpose of this section, the following terms apply.

(1) "*Broad tipped indelible marker*" means any felt tip marker, or similar implement, which contains a fluid which is not water soluble and which has a flat or angled writing surface one-half (½) inch or greater.

(2) "*Bona fide evidence of majority*" means a document issued by a federal, state, county, or municipal government or agency thereof, including but not limited to, a motor vehicle operator's license, or registration certificate issued under the Federal Selective Service Act, a passport, or an identification card issued to a member of the armed forces which

identifies an individual and provides proof of the age of such individual.

(3) "*Business day*" means any day of the week except Saturday, Sunday, or legal holidays.

(4) "*Commercial property*" means real and personal property that is used for business, commercial, or for-profit purposes including but not limited to vehicles, dumpsters, advertisements and signs. It shall be prima facie evidence that a property is commercial if it (1) is located in a business, commercial, office, apartment, hotel or warehouse zoning district; (2) contains commercial or business advertising visible from the right-of-way; or (3) has posted on its premise a business occupational license. "Commercial property" shall include advertising and billboards. "Commercial property" shall include residential property of four (4) or more units that is rented or advertised for rent. "Commercial property" shall not include (1) single family homes or residential property of three (3) or less units; (2) property owned by governments; (3) property used for non-profit purposes by educational institutions, charities, or religious institutions; (4) property used for agricultural purposes except for those portions of the property containing a business open to the general public.

(5) "*Corrective action*" mean an act required to remove or effectively obscure graffiti that is visible from the right-of-way.

(6) "*Director*" mean the Director of the Public Works Department or his or her designee.

(7) "*Non-commercial property*" means all property that is not included in the definition of commercial property in this section.

(8) "*Owner*" means any and all persons with legal and/or equitable title to real property in Miami-Dade County as their names and addresses are shown upon the records of the Property Appraiser Department.

(9) "*Supervising adult*" means an individual twenty-one (21) years of age or older who has been given responsibility by the minor's parents, legal guardian, or other lawful authority to supervise the minor.

(10) "*Used or intended to be used*" includes usage in the course of a violation or usage to transport a violator to or from the scene of a violation.

(b) *Application of section.*

(1) This section shall be applicable in incorporated and unincorporated areas of Miami-Dade County, with the enforcement of the provision of this section in the unincorporated area being the responsibility of Miami-Dade County and in the incorporated area being the responsibility of the municipalities.

(c) *Affect on municipal ordinances.* It is the intent of the Board to provide a minimum standard for those graffiti offenses provided in subsections (f), (h), and (i) in incorporated areas of Miami-Dade County. Any municipality in Miami-Dade County may adopt more stringent graffiti regulations and/or higher penalties for graffiti offenses than those provided herein.

(d) *Graffiti prohibited.*

(1) No person shall write, paint, or draw any inscription, figure, or mark of any type on any public or private building or structure or other real or personal property, owned, operated, or maintained by a governmental entity or any agency or instrumentality thereof or by any person, firm, or corporation, unless the express prior written permission of the owner, owner's agent, manager or operator of the property has been obtained and filed with the Public Works Department, Graffiti Coordinator. No filing is required if the owner, owner's agent, manager or operator of the property has obtained a valid painting permit in accordance with other pertinent law.

(2) Any person violating this subsection shall be punished by a fine of two hundred and fifty dollars ($250.00) for the first offense; five hundred dollars ($500.00) for the second offense and one thousand dollars ($1,000.00) for each subsequent offense or by imprisonment in the County jail for a term not to exceed sixty (60) days or by both fine and imprisonment at the discretion of the court.

(I) In the case of a minor, the parents or legal guardian shall be jointly and severably liable with the minor for payment of all fines.

(II) Failure of the parents or legal guardian to make payment, will result in the filing of a lien on the parents or legal guardian's property to include the fine and administrative costs.

(III) Upon an application and finding of indigency, the court may decline to order fines against the minor or parents.

(3) In addition to any punishment listed in subsection (d)(2), the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the defendant's offense in the amount or manner determined by the court.

(I) In the case of a minor, the parents or legal guardian shall be ordered jointly and severably liable with the minor to make such restitution.

(4) In addition to any punishment listed in subsection (d)(2) or restitution ordered under subsection (d)(3), the court shall order any violator to perform monitored community service in the removal of graffiti of not less than forty (40) hours and not more than one hundred (100) hours.

(5) Forfeiture of personal property. All personal property, including, but not limited to automobiles and bicycles, used or intended to be used in violating this subsection, shall be forfeitable to Miami-Dade County. In forfeiting such personal property, the County shall follow the procedures outlined in Section 31-116 et seq. of the Miami-Dade County Code concerning forfeitures of passenger motor vehicles for violation of the transportation code, except that one (1) violation of this subsection shall be the basis for forfeiture; the County Manager or his designee shall act as the party for the County in lieu of CSD as recipient of all request for hearings and for all other purposes under the procedure; the property subject to forfeiture shall be personal property as described above. In any forfeiture under this section, the court shall not order a forfeiture unless it finds that the forfeiture is commensurate with the severity of the violation to the extent required by Florida and Federal Constitution.

(I) Municipalities may establish their own system for the forfeiture of personal property.

(e) *Graffiti removal by the County.*

(1) Whenever the County becomes aware of the existence of graffiti on any property, including any structure or improvement, that abuts the public right-of-way within any unincorporated area of the County, County personnel are authorized to immediately remove or obscure such graffiti.

(2) For purposes of this subsection (e) only, "property that abuts the public right-of-way" means property that can be accessed by County personnel without substantially encroaching onto private property, such as subdivision walls and other structures and improvements lying at or near the public right-of-way.

(3) General notice. Property owners are hereby put on notice of the County's intention to immediately obscure graffiti placed on walls, buildings and other surfaces that abut the public right-of-way. Team Metro shall also publish notice once during each week for four (4) consecutive weeks in the Miami Herald and shall substantially comply with Chapter 50, Florida Statutes. Any property owner who objects to graffiti being obscured on property abutting the public right-of-way shall file a statement of objection with the County Manager or his designee within thirty (30) days of the date of the final published notice. Such objection shall be effective for one (1) year. A new objection must be filed each year thereafter to preserve the objection. If an objection is filed, subsection (e) shall not apply to the property owner's property. The County reserves the right, however, to ensure that graffiti is obscured on such property by citation and fine under subsection (g).

(4) Specific notice to affected property owner. The appearance of graffiti on a wall, building or other surface abutting the public right-of-way shall serve as notice to the property owner that the graffiti is subject to being obscured or removed by the County. Any property owner who has not filed a statement under subsection (3) and who desires to obscure or remove the graffiti himself shall (i) immediately remove the graffiti; or (ii) notify the County Manager or his designee immediately of his intention to remove the graffiti within forty-eight (48) hours. Graffiti not removed within forty-eight (48) hours is subject to removal by the County.

(5) Nothing contained in this subsection (e) shall be construed to supersede or otherwise affect the provisions contained in subsection (g).

(f) *Graffiti removal by the property owner.*

(1) Whenever the County becomes aware of the existence of graffiti visible from the public right-of-way on any property, real or personal, including structures or improvements within the County, a Code Enforcement Officer is authorized, upon such discovery, to give, or cause to be given, notice to take corrective action to the property owner or the property owner's agent or manager.

(2) For commercial property, the property owner or the property owner's agent or manager shall take corrective action within two (2) business days from receipt or posting of the notice listed in subsection (f)(1). For non-commercial property, the property owner or the property owner's agent or manager shall take corrective action within fourteen (14) calendar days from receipt or posting of the notice listed in subsection (f)(1).

(3) If the property owner or the property owner's agent or manager fails to take corrective action, he or she shall be cited pursuant to Chapter 8CC of this Code or by any municipal citation system.

(I) For commercial property, the property owner or the property owner's agent or man-

ager has two (2) business days from receipt or posting of the citation to file for an appeal hearing before an 8CC hearing officer, or municipal hearing officer, or take corrective action. For non-commercial property, the property owner or the property owner's agent or manager has seven (7) calendar days from receipt or posting of the citation to file for an appeal hearing before an 8CC Hearing Officer, or municipal hearing officer, or take corrective action.

(II) If the owner or the property owner's agent or manager does not appeal the citation, they shall pay the fine in accordance with Section 8CC-10 of the Code, or in accordance with the applicable municipal citation system. Thereafter, each day the owner, or property owner's agent or manager fails to take corrective action counts as a continuing violation.

(4) The above listed hearing shall be conducted not sooner than five (5) calendar days, but not later than twenty (20) calendar days after receipt of the appeal.

(5) Notwithstanding any provision of this Chapter or Chapter 8CC of the Miami-Dade County Code to the contrary, the appeal of a violation of this section shall not extend or otherwise change the time period for corrective action of the violation. Continuing penalties as provided for herein and in Section 8CC-4(c) shall accrue upon the expiration of the time period provided in subsection (3) above.

(6) The Director, or City Manager of a municipality, shall cause corrective action to take place at the owner's expense after two (2) business days for commercial property, or fourteen (14) calendar days for non-commercial property from the date of citation or date of the rendering of the Hearing Officer's order, which finds the violator guilty.

(I) The County or municipality shall have the right to enter upon private property to the extent necessary to take corrective action. Entry into any dwelling or structure is expressly prohibited.

(II) After taking corrective action, the Director, or City Manager of a municipality, shall file a lien in the amount of all expenses incurred in correcting the condition, including all fines, continuing penalties and actual administrative costs.

(III) Such liens shall be enforceable in the same manner as a tax lien and may be satisfied at any time by payment thereof, including accrued interest. Upon such payment, the Clerk of the Circuit Court shall, by appropriate means, evidence the satisfaction and cancellation of such lien upon the record thereof. Notice of such lien may be filed in the Office of the Clerk of the Circuit Court and recorded among the public records of Miami-Dade County, Florida.

(7) It shall be an affirmative defense preventing any fines from issuing under this section if the property owner proves at a hearing that, at the subject location, he or she had been victimized by graffiti three (3) or more times within the calendar year of the violation and had removed or effectively obscured the graffiti within two (2) business days of its appearance for commercial property, or within fourteen (14) days of its appearance for non-commercial property, or within the times provided in this ordinance if a notice or violation was issued. This mitigation provision applies only to fines and shall not prevent the Director, pursuant to section (d)(6), from taking corrective action and liening the property for costs, if the property owner fails to take corrective action.

(g) *Possession of spray paint and markers.*

(1) Possession of spray paint and markers with intent to make graffiti is prohibited. No person shall carry an aerosol spray paint can or broad-tipped indelible marker with the intent to violate the provisions of subsection (d)(1).

(2) Possession of spray paint and markers by minors on public property prohibited. No person under the age of eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any public property, highway, street, alley or way except in the company of a supervising adult.

(3) Possession of spray paint and markers by minors on private property prohibited without consent of owner. No person under the age of eighteen (18) shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any private property unless the owner, agent, or manager, or person in possession of the property knows of the minor's possession of the aerosol container or marker and has consented to the minor's possession while on his or her property.

(4) Any person violating this subsection (g)(1), (2) or (3) shall be punished by a fine of two hundred and fifty dollars ($250.00) for a first offense, and five hundred dollars ($500.00) for a second offense and one thousand dollars ($1,000.00) for each subsequent offense, or by imprisonment in the County Jail for a term not to exceed sixty (60) days,

or by both fine and imprisonment in the discretion of the court.

(I) In the case of a minor, the parents or legal guardian shall be responsible for payment of all fines.

(II) Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents or legal guardian's property to include the fine and administrative costs.

(5) In addition to any punishment, the court shall order any person found in violation of subsection (g)(1), (2) or (3) to make restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense in a reasonable amount or manner to be determined by the court.

(I) Where the defendant is a minor, the parent or legal guardian shall be jointly and severably liable with the minor to make such restitution.

(6) In addition to any punishment listed in subsection (g)(5) or restitution ordered under subsection (g)(6), the court shall order any person found in violation of subsection (g)(1), (2), or (3) to perform monitored community service in the removal of graffiti of not less than forty (40) hours and not more than one hundred (100) hours.

(h) *Storage and sale of spray paint and markers.*

(1) *Sale to minors prohibited.* No person or firm shall sell or cause to be sold to any person under the age of eighteen (18) years, and no person under the age of eighteen (18) years shall buy any aerosol container of spray paint or broad-tipped indelible markers. Evidence that a person, his or her employee, or agent demanded and was shown bona fide evidence of majority and acted upon such evidence in a transaction or sale shall be a defense to any prosecution thereof.

(2) *Display or spray paint and markers.* Every person who owns, conducts, operates or manages a retail commercial establishment selling aerosol containers of spray paint or broad-tipped indelible markers shall:

(I) Place a sign in clear public view at or near the display of such products stating:

"GRAFFITI IS A CRIME. ANY PERSON DEFACING REAL OR PERSONAL PROPERTY NOT HIS OR HER OWN WITH PAINT OR ANY OTHER LIQUID OR DEVICE IS GUILTY OF A CRIME PUNISHABLE BY IMPRISONMENT OF UP TO 60 DAYS AND/OR A FINE UP TO $1,000.00."

(II) Place a sign in the direct view of such persons responsible for accepting customer payment for aerosol containers of spray paint or broad-tipped indelible markers.

"IT IS A VIOLATION OF THE LAW TO SELL AEROSOL CONTAINERS OF SPRAY PAINT OR BROAD-TIPPED INDELIBLE MARKERS TO PERSONS UNDER 18 YEARS OF AGE PUNISHABLE BY A CIVIL FINE OF $100.00."

(III) Store or cause such aerosol containers or marker pens to be stored either (a) in the direct line of sight from the cash-register work station or any other work station that is normally continuously occupied while the store is open, or (b) in a place not accessible to the public in the regular course of business without employee assistance, pending legal sale or disposition of such marker pens or paint containers.

(3) Violation of subsection (h)(1) or (2) shall result in a civil penalty of one hundred dollars ($100.00) for a first offense and two hundred dollars ($200.00) for subsequent offenses. When three (3) violations of subsection (h)(1) or (2) occur within any calendar year at a commercial establishment, that establishment shall be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tipped indelible markers for a period up to two (2) years. Violation of such injunction shall be punished by a fine of one hundred dollars ($100.00) per day of violation in addition to any other penalties levied by the Court. Failure to make payment of fines will be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paints and broad-tip indelible markers until payment of the fine, attorney's fees and costs.

(i) *Anti-graffiti trust fund.*

(1) There is hereby created the Miami-Dade County Anti-Graffiti Trust Fund. Civil and criminal penalties assessed against violators of this section shall be placed in the fund. The Board of County Commissioners shall direct the expenditures of monies in the fund. Such expenditures shall be limited to the payment of the cost of removal of graffiti, the payment, at the discretion of the County Manager, or rewards for information leading to the arrest, taking into custody, adjudication, referral to pre-trial programs or conviction for violation of this section or other state laws relating to graffiti, the costs of administering this ordinance, and such other public purposes as may be approved by the Miami-Dade County Commission by resolution.

(2) Each jurisdiction that enforces the provisions of this section shall have the right to

create its own anti-graffiti trust fund to fund anti-graffiti measures.

21-30.1. Public dance halls.

(a) *Definitions of terms.*

The term "public dance" or "public ball," as used under this section, shall be taken to include any dance or ball conducted in connection with instruction in dancing for hire, and any dance or ball to which admission may be had by the payment of a fee or by the purchase, possession, or presentation of a ticket or token, or in connection with which a charge is made for caring for clothing or other property; and any dance or ball to which the public generally may gain admission with or without the payment of a fee.

The term "dance hall" or "ballroom," as used in this section, shall be taken to include any room, place, or space, in which a public dance or public ball, as herein defined, shall be held, and any room, hall, or academy, in which classes in dancing are held and instruction in dancing is given for hire.

The term "owner", as used in this section, shall be taken to include the owner, operator, manager or other person having supervision of a dance hall or ballroom as defined herein. Any license required by State or municipal laws for the operation of a dance hall or ballroom shall be prima facie evidence that the licensee named therein is the owner of said dance hall or ballroom as defined herein.

(b) *Regulation of employees and other persons.* It shall be unlawful:

(1) For any hostess, waitress, female entertainer, or female employee in a dance hall or ballroom to be served any beverage, whether an alcoholic beverage or otherwise, for which a customer or patron in such establishment pays;

(2) For any person in or about any dance hall or ballroom to solicit dancing partners on a commission basis, directly or indirectly;

(3) For any person in or about any dance hall or ballroom to solicit the purchase of refreshment on a commission basis, directly or indirectly;

(4) For a female employee in a dance hall or ballroom to sell her time to a male customer other than for the purpose of giving dance instructions to such customer;

(5) For female employees or entertainers in dance halls or ballrooms to mingle or fraternize with the customers or patrons of such establishments except when actually providing dance instruction to such customers or patrons.

(c) *Responsibility of owners.* It shall be unlawful for the owner of any dance hall or ballroom to permit or allow therein any solicitation, sale, or fraternization as prohibited in this section.

(d) *Penalty.* Any person violating any of the provisions of this section shall be punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in the County Jail for a period not to exceed sixty (60) days, or by both such fine and imprisonment.

21-31. Reserved.

21-31.2. Consumption or possession of alcohol in open containers near store selling alcoholic beverages, religious property, and other locations. Signs required in such stores.

(a) *Definitions.* The following definitions shall apply for purposes of this section.

(1) *Alcoholic beverage* shall mean any beverage containing more than one (1) percent of alcohol by weight.

(2) *Food store selling alcoholic beverages* shall mean any food or convenience store which has a license for package sales of alcoholic beverages from the Florida Division of Beverages and Tobacco in the classification 1-APS, 2-APS, or PS.

(3) *Open container* means any bottle, can, cup, glass, or other receptacle containing any alcoholic beverage which is open, which has been opened, which has its seal broken, or which has had its contents partially removed.

(4) *Operator* shall mean any person physically present at a store defined in Section 21-31.2(a)(2) or (6) who is managing said store or is otherwise in charge of its operation.

(5) *Owner* shall mean any person holding an occupational license for a store defined in Section 21-31.2(a)(2) or (6).

(6) *Package store* shall mean any store primarily engaged in the business of selling alcoholic beverages which has a license for package sales from the Florida Division of Beverages and Tobacco in the classifications of 1-APS, 2-APS or PS.

(7) *Person* shall mean any individual, firm, partnership, joint venture, syndicate or other group or combination acting as a unit association, corporation, or other legal entity and shall include the plural as well as the singular.

(b) *Public nuisance; unlawful acts.*

(1) It is a public nuisance and shall be unlawful and in violation of this section for any person to consume any alcoholic beverage while within one hundred (100) feet of any package store or food store selling alcoholic beverages, property regularly used for

religious purposes, community center, senior citizens' center, day care center, funeral home, or school.

(2) It is a public nuisance and shall be unlawful and in violation of this section for any person to possess an open container of alcoholic beverages while stopping, standing, or remaining within one hundred (100) feet of any package store or food store selling alcoholic beverages, property regularly used for religious purposes, community center, senior citizens' center, day care center, funeral home, or school.

(3) The owner or operator of any package store or food store selling alcoholic beverages shall prominently post, on the outside of each entrance and on the inside of the main customer exit of each food store selling alcoholic beverage or package store, a sign with contrasting letters at least two (2) inches tall, stating the following:

IT IS UNLAWFUL FOR ANY PERSON TO CONSUME, OR POSSESS, IN AN OPEN CONTAINER, ANY ALCOHOLIC BEVERAGE IN THIS STORE OR WITHIN 100 FEET OF ANY PART OF THIS STORE. VIOLATORS ARE SUBJECT TO ARREST AND PROSECUTION.

(4) The owner or operator of any package store or food store selling alcoholic beverages shall prominently post, on the outside of the display case and coolers containing alcoholic beverages, a sign which is at least eleven (11) inches by seventeen (17) inches in size, which is plainly visible and legible, stating the following:

IT IS UNLAWFUL TO POSSESS AN OPEN CONTAINER OF ALCOHOL WHILE DRIVING OR RIDING IN A MOTOR VEHICLE. DRIVING UNDER THE INFLUENCE OF ALCOHOL IS UNLAWFUL. VIOLATORS ARE SUBJECT TO IMMEDIATE ARREST AND IMPOUNDMENT OF THEIR VEHICLE. REMEMBER: JUST ONE BOTTLE OF BEER OR OTHER ALCOHOLIC DRINK COULD LAND YOU IN JAIL.

(5) The signs required by this ordinance shall be posted in English, Spanish and Haitian Creole.

(c) *Area of applicability and exceptions.* For the purpose of this section, the area within one hundred (100) feet of any property described in sections (b)(1) and (2) shall be the area within a one hundred-foot radius of any part of such property, but shall not include any property lawfully used for a private residence or any area where possession or consumption of alcoholic beverages is specifically prohibited or permitted by State law or by any license or permit issued pursuant thereto. Nor shall this provision apply to any alcoholic beverage served by a religious organization, community center, senior citizens' center, day care center, funeral home, or school and consumed on its premises as part of a religious service, community meal, or event sponsored by that organization.

(d) *Penalties.* A violation of subsection (b)(3) and (b)(4) shall be penalized as follows:

(1) A first violation will be punishable by a fine of fifty dollars ($50.00);

(2) A second violation will be punishable by a fine of one hundred dollars ($100.00);

(3) The third and each additional violation will be punishable by a fine of not less than one hundred fifty dollars ($150.00) or greater than three hundred dollars ($300.00), or by imprisonment of not less than ten (10) days or greater than thirty (30) days in jail, or both.

Any person violating any of the provisions of subsection (b)(1) or (b)(2) shall be punished by:

(1) A fine not to exceed five hundred dollars ($500.00);

(2) Imprisonment in the county jail for a period not to exceed sixty (60) days;

(3) Both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

(4) Fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

(5) Completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.

21-31.4. Aggressive or obstructive panhandling prohibited.

(A) *Definitions.* The following definitions apply in this section:

(1) *Aggressively beg* means to beg with the intent to intimidate another person into giving money or goods.

(2) *Intimidate* means to engage in conduct which would make a reasonable person fearful or feel compelled. Among the circumstances which may be considered in determining whether the actor intends to intimidate another person into giving money or goods are that the actor: (a) touches the person solicited; (b) follows the person solicited, and persists in begging after the person solicited has given a negative response; (c) directs profane or abusive language toward the person solicited; or (d) uses violent or threatening gestures toward the person solicited.

(3) *Beg* means to ask or solicit for money or goods as a charity, whether by word, bodily gestures, signs, or other means.

(4) *Obstruct pedestrian or vehicular traffic* means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take unreasonable evasive action to avoid physical contact.

(5) *Public place* means an area generally visible to public view and includes alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks and streets open to the general public, including those that serve food or drink or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

(6) *Unreasonable evasive action* means causing a vehicle to depart from the lane of traffic in which it is traveling to change lanes, to straddle lanes, or to enter onto a swale to obtain passage; it also means causing a pedestrian to leave the sidewalk on which she or he is traveling or to make contact with a wall or fence bordering the sidewalk.

(B) *Prohibited acts*. A person is guilty of pedestrian interference if, in a public place, he or she intentionally:

(1) Obstructs pedestrian or vehicular traffic; or

(2) Aggressively begs.

(C) *Permitted activities*. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by a permit duly issued by a lawful authority shall not constitute obstruction of pedestrian or vehicular traffic.

(D) *Penalties*. Any person convicted of:

(1) A violation of this section shall be punished by:

a. Not more than thirty (30) days imprisonment;

b. A fine of not more than one hundred dollars ($100.00);

c. Both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

d. Fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

e. Completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.

(2) A second or subsequent violation of this section shall be punished by:

a. Not more than sixty (60) days imprisonment;

b. A fine not more than two hundred dollars ($200.00);

c. Both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

d. Fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

e. Completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.

(E) *Alternative programs*. Nothing herein shall limit the discretion of the police, court personnel, and judges from referring individuals suspected, charged, or convicted of a violation of this provision to treatment programs or facilities as an alternative to prosecution or incarceration, provided that the individual freely consents. For homeless individuals, such alternative programs shall include, but not be limited to, the Miami-Dade County Homeless Assistance Project.

21-34. Watercourse, canal, drain, ditch, etc.; obstructing, damaging prohibited, penalty.

(a) No person may willfully, or otherwise, obstruct, damage, destroy or interfere in any way with the functioning of any canal, drain, ditch or watercourse, or any drainage, flood control or water conservation works constructed by or for Miami-Dade County.

(b) Any person who shall willfully obstruct, damage, destroy or interfere in any way with the functioning of any canal, drain, ditch, or watercourse, or any drainage, flood control or water conservation works constructed by or for Miami-Dade County shall be liable to the County for double the cost of removing such obstruction, repairing such damage or replacing such destroyed works.

(c) Any person who shall willfully obstruct, damage, destroy or interfere in any way with the functioning of any canal, drain, ditch, or watercourse, or any drainage, flood control or water conservation works constructed by or for the County, shall, upon conviction thereof, be punished by imprisonment in the County Jail not exceeding a period of one (1) year, or by a fine not exceeding one thousand dollars ($1,000.00), or by both such imprisonment and fine.

21-35. Glue and cement; sales to minors; exception; intoxication; applicable areas; penalty for section violation; trials.

(a) *Sales to persons under eighteen prohibited*. Except as otherwise provided herein, no person shall sell, deliver or give to any indi-

vidual under the age of eighteen (18) years, any glue, cement, or automotive transmission or brake fluids containing one (1) or more of the following volatile solvents:

(1) Toluol or toluene
(2) Hexane
(3) Trichloroethylene
(4) Acetone
(5) Toluene
(6) Ethyl acetate
(7) Methyl ethyl ketone
(8) Trichloroethane
(9) Isopropanol
(10) Methyl isobutyl ketone
(11) Methyl cellosolve acetate
(12) Cychlohexanone

(b) *Exception—Glue or cement.* The provisions of subsection (a) shall not apply where no more than one (1) tube of the glue or cement is sold, delivered or given simultaneously with or as part of a kit used for the construction of model airplanes, model boats, model automobiles, model trains or other similar models.

(c) *Same—Transmission or brake fluids.* The provisions of subsection (a) shall not apply to the sale or delivery of transmission or brake fluids when those substances are placed directly into the automobiles of minors sixteen (16) or seventeen (17) years of age who possess a valid drivers license.

(d) *Intoxication in public place.* It shall be unlawful for any person to be found in a public place under the influence of or in a state of intoxication as the result of inhaling any glue, cement or automotive transmission or brake fluids containing one (1) or more of the solvents named in subsection (a).

(e) *Applicable areas.* This section is applicable in both the incorporated and unincorporated areas of Miami-Dade County.

(f) *Penalty for violation of section.* Any person violating any of the provisions of this section shall be punished by fine not to exceed five hundred dollars ($500.00) or by imprisonment in the County Jail for a period not to exceed sixty (60) days or both at the discretion of the court.

21-36. Sidewalk solicitation of business; enforcement; penalty for section violation.

(a) It shall be unlawful for any person, firm or corporation on any public street or sidewalk within the unincorporated area of Miami-Dade County, Florida or in any area or doorway or entranceway immediately abutting thereon, to solicit the sale to street or sidewalk traffic of any real or personal property to be delivered at a subsequent time, or to solicit to street or sidewalk traffic the participation by any person in any excursion, trip, or other activity having as a purpose the sale of real or personal property to such person.

(b) It shall be the duty of all County officers to enforce the provisions of this section.

(c) Any person convicted of a violation of this section shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment not to exceed sixty (60) days, or both, in the discretion of the County Court.

21-36.1. Street corner automobile window washers restricted.

(a) It shall be unlawful for any person to approach an automobile waiting at a traffic light or intersection and either request permission to clean, service or repair the windshield or any other part of the automobile or to clean, service or repair the windshield or any other part of the automobile.

(b) Any person convicted of a violation of this section shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment not to exceed sixty (60) days, or both such fine and imprisonment.

21-38. Hypodermic syringe or needle; sale prohibited without prescription; discarding prohibited without destruction or mutilation and packaging and sealing.

(a) It shall be unlawful for any person to sell or distribute on a retail basis any hypodermic syringe or needle, designed principally for subcutaneous injection, except when authorized by prescription, as such terms is defined in Section 465.031(2), Florida Statutes, by such persons as are authorized under Florida law to issue prescriptions for drugs to be administered subcutaneously by hypodermic syringe.

(b) It shall be unlawful for any person to discard any hypodermic syringe or needle, designed principally for subcutaneous injection, without first rendering such hypodermic syringe or needle useless by destruction or mutilation of the syringe barrel and needle.

(c) It shall be unlawful for any person to place any item set forth in subsection (b) of this section, including the destroyed or mutilated remains thereof, into a garbage or trash container unless said item shall have been first packaged and sealed.

(d) Every person who is convicted of a violation of subsection (a), (b) or (c) shall be punished by fine not to exceed five hundred dollars ($500.00) or imprisonment in the County

Jail for not more than sixty (60) days, or by both such fine and imprisonment.

21-40. Smoking, spitting within certain public vehicles prohibited.

Passengers are prohibited from smoking or spitting within any fixed guideway mass transit vehicles, buses, limousines, or jitneys operated for public use in the County, including Miami-Dade County municipalities; and the operators of such vehicles shall provide a sign within each of their vehicles so advising. Penalties for anyone violating the provisions hereof shall be the same as those provided in Section 1-5 of the Code of Miami-Dade County, Florida.

21-44. Manholes; safety requirements; penalty.

(a) No person, firm or corporation shall cause any person to enter a manhole being used for repairs, maintenance, installation or inspection of underground utilities unless the following requirements are fulfilled:

(1) A second person shall remain abovegrade at all times to provide surveillance of the manhole and the person(s) belowgrade until the manhole cover is in place and no person(s) remains belowgrade at or near the location of the manhole.

(2) The person required herein to remain abovegrade shall be trained and shall be capable of providing first aid and emergency rescue procedures and shall be furnished with communication equipment to summon additional aid in the event of an emergency.

(3) The person providing aboveground surveillance shall keep animals and unauthorized persons away from the open manhole.

(4) The person required herein to remain abovegrade may be assigned other duties provided such other duties do not interfere with the requirements of this section.

(b) Every violation of any provision of this section shall be punished by a fine not to exceed five hundred dollars ($500.00) or imprisonment in the County Jail for a period not to exceed sixty (60) days or both such fine and imprisonment, in the discretion of the court. Each day of continued violation shall be considered as a separate offense.

ARTICLE V
USED MOTOR VEHICLE PARTS DEALERS, WRECKERS AND REBUILDERS

21-51. License to engage in business—Required; definition.

No person shall, except as an incident to the sale or servicing of motor vehicles or unless licensed to do so by the Miami-Dade Police Director (hereinafter called the "Director") under the article, carry on or conduct within Miami-Dade County the business of:

(a) Selling used parts of or used accessories for motor vehicles;

(b) Wrecking or dismantling motor vehicles for resale of the parts thereof; or

(c) Rebuilding wrecked or dismantled motor vehicles; or

(d) Destroying motor vehicles by any means (including, but not limited to, such operations as crushing, shredding, flattening, bailing, compacting or melting).

The words used in this article shall be deemed and construed to include, embrace and apply to secondhand or used motor vehicles, parts, etc.

21-56. Records to be maintained.

Every licensee shall maintain in its possession for the period of three (3) years, in such form as shall be prescribed by the Director, an accurate and complete record of:

(a) Each motor vehicle, and every part, accessory, body, chassis or engine purchased or acquired unattached from a motor vehicle which can be identified by serial number, including, but not limited to, such accessories as radios, heaters, air conditioners, wheels, mirrors and hubcaps. Such record shall set forth the description, identifying or serial number, date of acquisition, name and address of person from whom acquired.

(b) Every motor vehicle dismantled, wrecked or destroyed by the licensee, and the description, date of its dismantling, wrecking or destruction and the documentation required by Section 21-57 of this article.

(c) Every licensee, upon purchase or acquisition of any motor vehicle or part(s) thereof, shall require the seller to produce written identification, such as his driver's license, and shall make and maintain a record of the identification of the seller and the particular items acquired. All such records shall be open and available to inspection during reasonable business hours by any representative of the Director or any peace officer of the State, any County or municipality.

21-57. Title certificate or documentation required prior to dismantling, wrecking, or destroying motor vehicles.

It shall be unlawful for any person, firm, corporation or other legal entity to dismantle, wreck or destroy any motor vehicle without having in its possession a valid, properly endorsed and notarized title certificate to such motor vehicle. Any person undertaking to dismantle, wreck or destroy any motor vehicle shall, upon demand of any peace officer or law enforcement officer, produce for inspection an appropriate lawful title certificate, or other documentation to such motor vehicle required by this section. The foregoing notwithstanding:

(a) It shall not be unlawful for any person, firm, corporation or other legal entity to dismantle, wreck, or destroy any motor vehicle five (5) model years old or less for which an insurance company, prior to January 1, 1990, has paid money as compensation for a total loss provided that such person has in its possession prior to such dismantling, wrecking or destruction a copy of the notarized bill of sale for such motor vehicle from the registered owner to the insurance company together with a copy of the completed report of total loss settlement therefor filed by the insurance company with the Florida Department of Highway Safety and Motor Vehicles that has been certified by such Department.

(b) It shall not be unlawful for any person, firm, corporation or other legal entity to dismantle, wreck or destroy any motor vehicle which, on or after January 1, 1990, becomes salvage provided such person has in its possession prior to such dismantling, wrecking or destruction a valid, properly endorsed salvage certificate of title issued by the Florida Department of Highway Safety and Motor Vehicles for such vehicle.

(c) It shall not be unlawful for any person, firm, corporation or other legal entity to dismantle, wreck or destroy any motor vehicle for which an insurance company, on or after January 1, 1990, has paid money as compensation for a total loss provided that such person has in its possession prior to such dismantling, wrecking, or destruction a valid, properly endorsed salvage certificate of title issued by the Florida Department of Highway Safety and Motor Vehicles for such vehicle.

(d) It shall not be unlawful for any person, firm, corporation or other legal entity to dismantle, wreck or destroy any motor vehicle which a governmental body had determined to be abandoned property, as that term is defined in Chapter 705, Florida Statutes, or in Section 33-15.1 of the County Code, as these may be amended from time to time, without having therefor a valid, properly endorsed and notarized title certificate. The person, firm, corporation or other entity which dismantles, wrecks or destroys a motor vehicle pursuant to instructions from the government body which previously exercised control over the vehicle as abandoned property, shall have in its possession official documentation from the governmental body ordering the dismantling; wrecking or destruction. The official documentation from the governmental body under this subsection shall contain, at a minimum, the location where the motor vehicle was seized, a description of the motor vehicle by make, model, and year, the VIN number, where available, the name of the government enforcement officer who directed removal of the vehicle, and identification of the contract between the government and the legal entity charged with either the removal or the dismantling, wreckage or destruction of the motor vehicle. The person, firm, corporation or other legal entity who dismantles, wrecks or destroys a motor vehicle pursuant to governmental authority over abandoned property, shall after such dismantling, wreckage or destruction, return to the appropriate governmental body a copy of the documentation described herein, with the date and location that such dismantling, wreckage or destruction took place.

(e) It shall be unlawful for any person licensed to do business pursuant to this article to possess any vehicle or vehicle part or accessory owned by Miami-Dade County or any municipality within Miami-Dade County without proper documentation therefor as required by this article. Any person convicted of a violation of this provision shall be subject to a fine not to exceed one thousand dollars ($1,000.00) or imprisonment in the county jail for a term not to exceed one (1) year, or by both fine and imprisonment.

For purposes of subsections (a), (b) and (c) of this section the terms "salvage" and "total loss" shall be defined as provided in Section 319.30 Florida Statutes (1988), as the same may be amended from time to time.

21-58. Failure to submit reports or permit inspection.

It shall be unlawful for any licensee to fail, refuse or neglect to submit any report in the form and manner required by this article or to fail, refuse or neglect to keep records in the form and manner required by this article, or

to fail, refuse or neglect to permit inspection of records required hereunder, or of the vehicle or parts to which the records pertain, by any officer or other duly authorized person.

21-59. Penalty.

Any person convicted of a violation of any of the provisions of this article shall be punished as provided in Section 1-5 of this Code.

ARTICLE IX
WELLS (OPEN IRRIGATION HOLES) IN AGRICULTURAL FIELDS OPEN TO PUBLIC

21-111. Definitions.

In construing the provisions hereof, each and every word, term, phrase or part of the definitions provided in Chapter 72-299 (see Section 373.303, Florida Statutes) Laws of Florida, as amended, and the following definitions shall apply:

(a) *Well (irrigation hole)* means an excavation that is drilled or otherwise constructed when the intended use of such excavation is for irrigation purposes. The irrigation hole is generally drilled nine (9) inches in diameter and twenty (20) to twenty-five (25) feet in depth.

(b) *Abandoned well (irrigation hole)* means a well (irrigation hole) whose use has been permanently discontinued.

21-112. Abandoned wells.

Any well not expected to be in continued use must be filled permanently with like materials that originally came out of the hole.

21-113. Functional wells.

Any well in a field open to the public must be covered with a cap sufficient to withstand three hundred (300) pounds in weight. Each cap shall be painted bright red. Any such well shall also be marked by a small, triangular, colored flag.

21-114. Permit required to open self-harvest agricultural field; requirements and conditions prerequisite to issuance of permit.

It shall be unlawful to open a self-harvest agricultural field to the public unless and until the owner or lessee of such field obtains a permit for such an enterprise. The County Manager or his designated agent is hereby empowered and directed to issue such permits upon proof of compliance with the following requirements and conditions:

(a) That the applicant for such a permit is the owner or lessee of agricultural fields for which a permit is sought;

(b) That a survey or map of said field is presented showing the boundaries of the field and the location of all known "wells (irrigation holes)" located within the boundaries of said field;

(c) That an affidavit is presented and filed wherein the owner or lessee states under oath that all known wells (irrigation holes) have been marked and covered in compliance with the provisions of this article;

(d) That written permission is granted by said owner or lessee for the entrance to and for inspection of the permitted field by the County Manager or his designees to determine whether there is compliance with the requirements of this section; and

(e) That payment of a one dollar ($1.00) fee to cover the cost of processing the permit is tendered. This permit shall be valid for six (6) months.

21-115. Children under ten years of age prohibited from entering fields.

It shall be unlawful for any parent or other person acting in loco parentis, or the owner or lessee of a self-harvest field open to the public to permit a child under ten (10) years of age to enter upon such field, unless said owner or lessee has a designed area specifically approved for children under ten (10) years of age, and unless said parent or other person acting in loco parentis accompanies said child. Said designated area shall be inspected annually by the County Manager or his designated agent and must at all times be roped off in a manner that would prevent a child from leaving said designated area. Upon payment of an annual twenty-five-dollar-fee, the County Manager or his designated agent shall conduct the inspection and if the designated area is properly and securely roped off, issue the permit. Notwithstanding any of the foregoing, the County shall not be liable for any injury caused by the owner or lessee failing to maintain the designated area properly.

21-116. Posting of fields.

It shall be unlawful to open a self-harvest agricultural field to the public unless and until the field is posted with at least four (4) red-lettered signs stating in a clear and conspicuous manner the following warning:

"Self-harvesting is very dangerous—Watch for hidden holes. Children under 10 years of age not permitted by law".

Areas covered by the permit that are closed to the public must be marked by at least four (4) red-lettered signs stating:

"This area closed to public—Keep out"

and marked with the well known danger symbol of a skull and cross-bones.

21-117. Violations and penalty.

Each known or plainly visible well (irrigation hole) left uncovered in violation of this article shall constitute a separate violation. Failure to post any warning sign required hereby shall constitute a separate violation for each sign not properly posted. All violations of this article shall be punished as provided by Section 1-5 of the Code of Miami-Dade County.

21-118. Thefts of plants and fruits and trespass.

(a) It is unlawful for any person, with the intent to injure or defraud, to take, carry away, or damage any plants, fruits, plant products, or nursery stock contained within any nursery or private or public property without the consent of the owner of the property or his agent.

(b) It is unlawful for any person to enter upon the premises of any nursery or upon private or public property with the intent to injure, damage, take or carry away any plant, fruit, plant product or nursery stock, without the written or oral consent of the owner of the property or his agent.

(c) It is unlawful for any person to enter the premises of any plant or fruit nursery, whenever the nursery is not open for business, without the written or oral consent of the owner of the nursery or his agent.

(d) All violations of this section shall be punished as provided by Section 1-5 of the Code of Miami-Dade County.

ARTICLE XIII
JUVENILE CURFEW PROGRAM

21-201. Short title and applicability.

(a) This article may be cited as the "Miami-Dade County Juvenile Curfew Ordinance."

(b) The provisions of this article are hereby declared to have county-wide effect.

21-203. Definitions.

For the purpose of this article, the following definitions shall apply:

(a) *Emergency* shall mean an unforseen combination of circumstances or the resulting state or any situation requiring immediate action to care for or prevent serious bodily injury or loss of life. This term includes, but is not limited to, a fire, natural disaster, or an automobile accident.

(b) *Juvenile* shall mean a person under seventeen (17) years of age whose disabilities have not been removed by marriage or a court of competent jurisdiction or otherwise.

(c) *Legal guardian* shall mean a person or agency appointed by a court to act in the role of a parent.

(d) *Operator* shall mean any individual, firm, association, partnership or corporation operating, managing, or conducting any business or other establishment. The term includes the members or partners of an association, or partnership and the officers of a corporation.

(e) *Parent* shall mean the natural parent, adoptive parent, or step-parent of a juvenile.

(f) *Public place* shall mean any property owned or controlled by the County, any municipality, the School Board, the State or other governmental entity to which the general public has access and a right to resort for business, recreation, entertainment, or other lawful purpose, including streets and highways.

(g) *Semi-public place* shall mean any privately-owned or privately-operated real property (including any structure thereon) to which the general public is invited or has the legal right of access and right to resort for business, recreation, entertainment, or other lawful purpose such as, but not limited to, any store, shop, restaurant, tavern, theater, parking lot, alley, road, shopping center, bowling alley, pool hall, any vacant lot, or any vacant or abandoned building.

(h) *Law enforcement officer* shall mean a certified law enforcement officer of any rank who is a duly sworn officer of the Miami-Dade Police Department, a municipal police department in Miami-Dade County, the Florida Highway Patrol or other state or federal law enforcement agency.

(i) *Curfew hours* shall mean the hours of 11:00 p.m. until 6:00 a.m. the following day from Sunday to Thursday, and the hours of 12:00 midnight until 6:00 a.m. the following day from Friday evening to Sunday morning.

21-204. Curfew of juveniles.

It shall be unlawful and a violation of this article for any person under the age of seventeen (17) years to linger, stay, congregate, move about, wander, or stroll in any public or semi-public place in Miami-Dade County, either on foot or in or upon any conveyance or vehicle being driven or parked thereon, during curfew hours.

21-205. Exceptions.

The provisions of this article shall not apply if the juvenile is:

(a) Accompanied by a parent or legal guardian or another adult person at least twenty-one (21) years of age given permission by the parent or legal guardian to have the care, custody or control of the juvenile.

(b) Engaged in a lawful employment activity or traveling to or returning home from a lawful employment activity without any detour.

(c) Engaged in interstate travel.

(d) On an errand at the written approval and direction of the juvenile's parent or legal guardian, without any detour.

(e) Involved in or attempting to remedy, alleviate or respond to an emergency.

(f) Attending an official school, religious, or recreational activity supervised by adults at least twenty-one (21) years of age and sponsored by the County of Miami-Dade, the Miami-Dade County School Board, municipality, a civic organization or other similar entity, which organizations take responsibility for the juvenile as an invitee, or going to or returning home from, any such activity without any detour.

(g) On the swale or sidewalk abutting the juvenile's residence or abutting the residence of a next door neighbor if the neighbor has not complained to the police department about the juvenile's presence.

(h) Exercising First Amendment rights protected by the United States Constitution (or those similar rights protected by Article 1, Sections 3, 4 and 5 of the Florida Constitution), such as free exercise of religion, freedom of speech, and the right of assembly.

(i) Attending or returning to current residence from a specific activity at a public or semi-public place which is open to the general public and supervised by adults at least twenty-one (21) years of age; provided further, that any such activity begins no later than 10:00 p.m.; provided further, that the juvenile possesses written permission from his or her parent or legal guardian authorizing the juvenile to attend or engage in that specific activity.

(j) Married in accordance with law or had disability of nonage removed by a court of competent jurisdiction.

(k) Homeless or uses a public or semi-public place as his or her usual place or abode.

(l) When the County Commission pursuant to an application by a sponsor of an event not provided for in this subsection, or any other person, authorizes juvenile(s) to be in a public or semi-public place during curfew hours.

21-206. Procedures.

Unless flight by the person or other circumstances makes it impracticable, a law enforcement officer, upon finding a person suspected to be in violation of this chapter, shall ask the apparent offender's age and reason for being in a public or semi-public place during curfew hours. The law enforcement officer shall immediately attempt to verify statements or other information provided by the juvenile through contact with the parent, legal guardian or others. The officer shall not issue a written warning to appear or take into custody any person pursuant to this article unless the officer reasonably believes that an offense has occurred and that, based on any response or circumstance, no defense in Section 21-205 is present.

21-207. Responsibility of parents.

It shall be unlawful for the parent, legal guardian or other adult person at least twenty-one (21) years of age having the care, custody or control of a juvenile to permit or by insufficient control to permit such juvenile to linger, stay, congregate, move about, wander, or stroll on or upon the public streets, highways, roads, alleys, parks, public buildings, places of amusement and entertainment, vacant lots or any public places in Miami-Dade County during curfew hours, unless the juvenile is accompanied by his or her parent, legal guardian or other adult person at least twenty-one (21) years of age having his or her care, custody or control. Any parent, legal guardian or other adult person at least twenty-one (21) years of age having the care, custody or control of a juvenile who shall have made a missing person notification or informs the police department that the juvenile left or remained away from his or her residence during curfew hours over the objection of the parent, legal guardian or other adult person at least twenty-one (21) years of age having the care, custody or control of the juvenile shall not be considered to have permitted any person to be in violation of this section. It shall also constitute a defense hereto that such parent, legal guardian or other adult person at least twenty-one (21) years of age having the care, custody or control of such juvenile, did not have knowledge of the presence of such juvenile in, or about or upon any place in the county away from the current residence or usual place of abode of said juvenile during curfew hours, if said parent, legal guardian or other person

having care, custody or control of such juvenile, in the exercise of reasonable care and diligence, should not have known of the unlawful acts of such juvenile.

21-208. Responsibility of operators.

It shall be unlawful for any operator, owner or any employee managing or conducting any business or other establishment to knowingly permit a juvenile to linger, stay, congregate, move about, wander or stroll upon the premises of the establishment during curfew hours. It is a defense to prosecution under Section 21-210 of this article that the owner, operator, or employee notified the police department that a juvenile was present on the premises of the establishment during curfew hours and refused to leave after being asked to leave the premises.

21-209. Notice.

Operators are encouraged but not required to conspicuously display in or about the premises of an establishment, a legibly printed notice in English, Spanish and Creole in substantially the following form: "IT IS UNLAWFUL FOR A PERSON UNDER THE AGE OF SEVENTEEN (17) TO REMAIN ON THESE PREMISES BETWEEN THE HOURS OF 11:00 P.M. TO 6:00 A.M. THE FOLLOWING DAY FROM SUNDAY TO THURSDAY AND THE HOURS OF 12:00 MIDNIGHT TO 6:00 A.M. THE FOLLOWING DAY FROM FRIDAY EVENING TO SUNDAY MORNING UNLESS SPECIFICALLY ALLOWED BY LAW."

21-210. Penalty or remedy for violations.

(a) Any parent, legal guardian or other adult person at least twenty-one (21) years of age having the legal care, custody or control of a juvenile, or operator, owner or any employee managing or conducting any establishment who shall violate the provisions of this article shall receive a written warning on a form to be established by the Miami-Dade Police Department. The third and any subsequent violation of Section 21-207 or Section 21-208 shall result in the issuance of a notice to appear and shall be punished by a fine not to exceed five hundred dollars ($500.00).

(b) Any juvenile violating the provision of Section 21-204 shall be taken into custody and transported immediately to the police station, substation, or other appropriate holding facility in accordance with Chapter 39, Florida Statutes, or to the juvenile's home. Miami-Dade County and the municipalities may enter into the contracts with the community based organizations, including churches, to operate such holding facilities. After recording pertinent information about the juvenile, the law enforcement agency or holding facility shall, in the event the juvenile is not taken immediately to his or her home, attempt to contact the parent or legal guardian of the juvenile and, if successful, shall request the parent or legal guardian to immediately come to the facility where the juvenile is being held, and upon presenting documents identifying the juvenile and the parent or legal guardian shall release the juvenile to the parent or legal guardian. If after two (2) hours of reaching the holding facility the law enforcement agency or holding facility is unsuccessful in contacting the parent or legal guardian, or if the parent or legal guardian fails or refuses to come to obtain custody of the juvenile, the law enforcement agency or holding facility shall transport the juvenile to his or her current residence. The procedures established for the first violation shall be repeated for the second and any subsequent violation except that commencing with the third and any subsequent violation, a juvenile civil citation may be issued in accordance with the provisions of Section 985.301, Florida Statutes.

(c) When a juvenile is taken into custody as provided in this section the law enforcement agency taking the juvenile into custody shall attempt to telephone a role model from a list supplied by the Miami-Dade County School Board Role Model Program to inform that role model of the name, address and telephone number of the juvenile. A copy of the citation or notice to appear shall be mailed to the role model.

21-211. Enforcement.

Law enforcement officers shall have the right to enforce the provisions of this article against any person found violating the same within their jurisdiction.

ARTICLE XVI
BURGLAR ALARMS

21-276. Burglar alarms.

(1) *Purpose of regulations*. The purpose of this section is to place responsibility on the alarm user to prevent, by use of appropriate mechanical, electrical, or other means, false burglar alarms.

(2) *Scope of regulations*. This section will apply to unincorporated Miami-Dade County.

(3) *Definitions.*

(a) *Alarm company* means any person engaged in selling, leasing, maintaining, servicing, repairing, altering, replacing, moving, installing or monitoring any alarm system or causing any alarm system to be sold, leased, maintained, serviced, repaired, altered, replaced, moved or installed in, or on, any building, structure or facility. An alarm company and/or alarm monitoring company shall be properly licensed in accordance with Chapter 489, Florida Statutes. An alarm company shall have an appropriate occupational license pursuant to state statute, Chapter 489, Part II.

(b) *Alarm user* means any person or other entity that owns, possesses, controls, occupies, or manages any premises as defined below.

(c) *Burglar alarm system* means any assembly of equipment, mechanical or electrical, arranged to signal the occurrence of an illegal entry or other activity requiring urgent attention and to which the Police Department may reasonably be expected to respond, but does not include fire alarms or alarms installed in motor vehicles. If a fire alarm system is connected to a burglar alarm system, this section shall not apply to false alarms that the alarm user proves were generated by the fire alarm portion of the system.

(d) *False burglar alarm* means a signal from a burglar alarm system that elicits a response by the Police when no emergency or actual or threatened criminal activity requiring immediately response exists. This definition includes signals activated by negligence, accident, mechanical failure, and electrical failure; signals activated intentionally in nonemergency situations; and signals for which the actual cause of activation is unknown. It is a rebuttable presumption that a burglar alarm is false if personnel responding from the Police Department do not discover any evidence of unauthorized entry, criminal activity, or other emergency after following normal Police procedures in investigating the incident. An alarm is not false if the alarm user proves that (1) an individual activated the alarm based upon a reasonable belief that an emergency or actual or threatened criminal activity requiring immediate response existed; or (2) the alarm system was activated by lightning or an electrical surge that caused physical damage to the system, as evidenced by the testimony of a licensed alarm system contractor who conducted an on-site inspection and personally observed the damage to the system; or (3) if the user experienced a power outage of four or more hours, causing the alarm to activate upon restoration of power, as evidenced by written documentation provided by Florida Power and Light Company or other applicable provider.

(e) *Premises* means the building or structure or portion of a building or structure upon which is installed or maintained a burglar alarm system.

(4) *Registration of alarm system and fee.*

(a) *Registration of burglar alarm systems.* All burglar alarm systems which operate at locations within the unincorporated area of Miami-Dade County shall be registered with the Miami-Dade Police Department by the user. The user shall complete and submit to the MDPD an initial registration or an annual registration renewal with the appropriate fee. Initial registration shall be necessary to register any system which is not currently registered with the Department or upon a change in the user of an alarm.

(b) *Annual registration fee.* Effective with registrations for registration periods beginning on or after January 1, 2002, there shall be an annual registration fee of twenty-five dollars ($25.00) for all alarm registrations. Separate alarm systems require separate registrations. The registration period will be for one year. Upon renewal for registration periods beginning on or after January 1, 2003, the fee will be waived if the burglar alarm system has had no false burglar alarms requiring police dispatch during the prior registration period.

(c) *Change in registration information.* In the event of a change in any of the information required as part of the initial or annual registration, the user shall notify the Miami-Dade Police Department of the change. An updated registration shall be filed within ten (10) days of any change.

(d) *Application of funds.* Funds collected under this section shall be applied to the operational costs and enforcement of this ordinance, to reduce the number of false alarms received by Miami-Dade County, and to reduce the time spent by Miami-Dade Police handling false alarm calls.

(5) *Required equipment in a burglar alarm.* A burglar alarm user shall not use a burglar alarm system unless that burglar alarm system is equipped with:

(a) A backup power supply that will become effective in the event of power failure or outage; and

(b) A device that automatically silences the alarm within fifteen (15) minutes after activation.

(6) *Alarm Companies Responsibilities.*

(a) It shall be the responsibility of any licensed person selling and/or monitoring any alarm system to provide the user with the registration form and the Miami-Dade County Burglar Alarm Ordinance Information form. The registration form provided to the user shall include the said person's name, address, and State of Florida burglar alarm contractor's license number as required on the registration form. An alarm company may not charge a customer a fee, other than the required registration fee, to register any alarm system with Miami-Dade County. A copy of the current/valid contractor's license must be on file with the Miami-Dade County Police Department.

(b) Any person within the unincorporated area of Miami-Dade County which sells burglar alarm systems to a potential user must include a copy of the Miami-Dade Burglar Alarm Ordinance Information form and registration form and with each system sold.

(c) Any person testing and/or working on an alarm system shall promptly cancel any activation so that police will not be dispatched.

(7) *Alarm verification calls required.* All residential or commercial intrusion/burglar alarms, that have central monitoring, must have a central monitoring verification call made to the premises generating the alarm signal, prior to alarm monitor personnel contacting the Miami-Dade Police Department for dispatch. This does not apply to panic or holdup type alarms. Alarm monitoring companies will make available to the Miami-Dade Police Department upon request, records providing proof that the monitoring company made the verification calls.

(8) *Cancelling false burglar alarm calls.* Alarm monitoring companies shall notify the Metro-Dade Police Department to cancel dispatches to alarm calls the company initiated within ten (10) minutes of being notified that the alarm is false by the alarm user or his authorized representative. However, Police will not cite the company for failure to meet the ten-minute criterion if notification of a false alarm is received before an Officer arrives on the scene. Alarm monitoring companies will make available to the Miami-Dade Police Department records providing proof that the police department was contacted within the ten-minute criterion. An emergency line has been provided by the Miami-Dade Police Department to call in and/or cancel panic or holdup type alarms. Use of this line for non-emergency alarm calls is prohibited.

(9) *False burglar alarms prohibited.* No burglar alarm user shall cause, allow, or permit the burglar alarm system to give four (4) or more false alarms in any registration period.

(10) *Penalties.*

(a) Each violation of this section shall be punished as follows:

1. For a first violation of Sections 21-276(4) or (5), by a fine of fifty dollars ($50.00).

2. For a second and each additional violation of Sections 21-276(4) or (5), by a fine of one hundred dollars ($100.00).

3. For the fourth false burglar alarm in the user's registration period, by a fine of fifty dollars ($50.00).

4. For the fifth false burglar alarm in the user's registration period, by a fine of one hundred dollars ($100.00).

5. For the sixth and each additional false burglar alarm in the user's registration period, by a fine of two hundred dollars ($200.00).

6. For each violation of Section 21-276(6), (7) or (8), by a fine of one hundred dollars ($100.00).

All citations for violations set forth in this section shall be issued, and may be appealed, in accordance with, and shall be governed by the procedures set forth in Chapter 8CC of the Miami-Dade County Code.

(b) An alarm user shall not be fined more than two hundred dollars ($200.00) for false alarms that occur at the same premises in any twenty-four-hour period.

(c) No penalty specified hereunder shall be imposed or assessed against any entity that qualifies as tax exempt under the provisions of Section 501(c)(3) of the Internal Revenue Code provided that the premises is used exclusively by said entity for such tax exempt purposes.

(11) *Notification of false alarms.* It is the responsibility of each alarm user to monitor the occurrences of false alarms on its premises. The Metro-Dade Police Department shall notify the alarm user of each false alarm. Such notice shall be provided by posting a notice on the premises; or by mailing notice to the alarm user.

(12) *Limitations to Police response.*

(a) Police are not required to respond:

1. To burglar alarms at locations where six (6) or more false alarms occurred in the user's registration period. After sustaining the first Police response termination in a registration period for accruing six (6) false

alarms, the alarm user will sustain subsequent response terminations for every three (3) additional false alarms occurring in the same registration period;

2. To burglar alarms at locations where a burglar alarm fine was not paid within sixty (60) days of a civil violation notice; or

3. To locations where required alarm registration information was not filed within thirty (30) days of a civil violation notice for failure to file alarm information.

(b) Nothing herein shall:

1. Preclude the Police Department from responding to panic or am-bush alarm signals, calls describing emergencies or crimes in progress, or routine calls for service;

2. Limit the Police Department from issuing civil violation notices for alarms in violation of this ordinance; or

3. Be construed to create a duty to respond in any circumstances where such a duty does not exist pursuant to the statutory or common law of Florida.

(c) A notice that Police response will be discontinued, for any of the above reasons, will accompany a civil violation notice, be posted at the affected location, or be sent to the user by certified mail at least thirty (30) days prior to discontinuing service.

(d) Police response will continue while an appeal is pending under Chapter 8CC of the Code of Miami-Dade County, for a civil violation notice issued for violation of Section 21-276

(13) *Restoring Police response to terminated locations*. To regain Police response to burglar alarms at terminated locations, the alarm user must:

(a) When Police response has been discontinued pursuant to Section 21-276(10)(a)1., submit a written report from a licensed burglar alarm company certifying that the system has been inspected, repaired if required, and that it is functioning properly. In addition, the alarm user must pay all outstanding burglar alarm ordinance fines;

(b) When Police response has been discontinued pursuant to Section 21-276(12)a.2., submit burglar alarm registration information and pay all outstanding burglar alarm ordinance fines.

(14) *Enforcement*. In addition to all remedies otherwise available, this section shall be enforced by the code enforcement provisions of Chapter 8CC of the Code of Miami-Dade County.

ARTICLE XVII
THE LAUREN BOOK CHILD SAFETY ORDINANCE

21-277. Title.

Article XVII shall be known and may be cited as "The Lauren Book Child Safety Ordinance."

21-278. Findings and Intent.

(a) Repeat sexual offenders, sexual offenders who use physical violence and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses. Most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

(b) The intent of this article is to serve the County's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the County, particularly children, by prohibiting sexual offenders and sexual predators from establishing temporary or permanent residence in certain areas where children are known to regularly congregate, to prohibit renting or leasing certain property to sexual offenders or sexual predators if such property is located where children are known to regularly congregate and to restrict sexual offenders' and sexual predators' access to parks and child care facilities.

21-279. Applicability.

(a) This article shall be applicable to the incorporated and unincorporated areas of Miami-Dade County.

(b) This article shall be applicable in all municipalities in Miami-Dade County on the effective date of this ordinance. All municipal ordinances in Miami-Dade County establishing sexual offender or predator residency restrictions are hereby preempted and shall stand repealed.

21-280. Definitions.

The following terms and phrases when used in this article shall have the meanings ascribed to them in this section unless the context otherwise requires:

(1) "Child" or "children" means any person(s) less than sixteen (16) years of age.

(2) "Child care facility" means day nurseries, and family day care homes, licensed by

the Department of Children and Families, and as defined in Section 33-151.11 of the Code.

(3) "Child safety zone" means an area three hundred (300) feet extending from schools, child care facilities, parks, and school bus stops measured in a manner similar to the measurement of the residency restriction area provided in this ordinance.

(4) "Convicted" or "conviction" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction for a similar offense includes, but is not limited to: a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

(5) "Legal guardian" or "guardian" shall mean biological or adoptive parent of a child registered at a child care facility or a person who is responsible for the care and maintenance of said child pursuant to Florida Statutes or similar laws of another jurisdiction.

(6) "Park" means a County or municipal park excluding a park that includes a shooting range.

(7) "Permanent residence" means a place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.

(8) "Reside" or "residence" means to have a place of permanent residence or temporary residence.

(9) "School" means a public or private kindergarten, elementary, middle or secondary (high) school.

(10) "Sexual offender" shall have the meaning ascribed to such term in Section 943.0435, Florida Statutes.

(11) "Sexual offense" means a conviction under Section 794.011, 800.04, 827.071, 847.0135(5) or 847.0145, Florida Statutes, or a similar law of another jurisdiction in which the victim or apparent victim of the sexual offense was less than sixteen (16) years of age, excluding Section 794.011(10), Florida Statutes.

(12) "Sexual predator" shall have the meaning ascribed to such term in Section 775.21, Florida Statutes.

(13) "Temporary residence" means a place where the person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

21-281. Sexual Offender and Sexual Predator Residence Prohibition; Penalties.

(a) It is unlawful for any person who has been convicted of a violation of Section 794.011 (sexual battery), 800.04 (lewd and lascivious acts on/in presence of persons under age 16), 827.071 (sexual performance by a child), 847.0135(5) (sexual acts transmitted over computer) or 847.0145 (selling or buying of minors for portrayal in sexually explicit conduct), Florida Statutes, or a similar law of another jurisdiction, in which the victim or apparent victim of the offense was less than sixteen (16) years of age, to reside within 2,500 feet of any school.

(b) The 2,500-foot distance shall be measured in a straight line from the outer boundary of the real property that comprises a sexual offender's or sexual predator's residence to the nearest boundary line of the real property that comprises a school. The distance may not be measured by a pedestrian route or automobile route, but instead as the shortest straight line distance between the two points.

(c) *Penalties.* A person who violates section 21-281(a) herein shall be punished by a fine not to exceed $1,000.00 or imprisonment in the County jail for not more than 364 days or by both such fine and imprisonment.

21-282. Exceptions.

(1) A sexual offender or sexual predator residing within 2,500 feet of any school does not commit a violation of this section if any of the following apply:

(a) The sexual offender or sexual predator established a residence prior to the effective date of this ordinance. The sexual offender or sexual predator shall not be deemed to have established a residence or registered said residence for purposes of this section, if the residence is an illegal multifamily apartment unit within a neighborhood zoned for single-family residential use.

(b) The sexual offender or sexual predator was a minor when he or she committed the

sexual offense and was not convicted as an adult.

(c) The school was opened after the sexual offender or sexual predator established the residence.

(2) Section 21-282(1)(a) and (1)(c) herein shall not apply to a sexual offender or sexual predator who is convicted of a subsequent sexual offense as an adult after residing at a registered residence within 2,500 feet of a school.

21-283. Property Owners or Lessors Prohibited from Renting Real Property to Certain Sexual Offenders or Sexual Predators; Penalties.

(a) It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with knowledge that it will be used as a permanent or temporary residence by any person prohibited from establishing such permanent or temporary residence pursuant to this Article of the Code, if such place, structure, or part thereof, trailer or other conveyance, is located within 2,500 feet of a school. Knowingly renting to a sexual offender or predator shall include, but shall not be limited to, renting or leasing a residence after being notified that the prospective renter, lessee or adult resident is a sexual offender or predator as defined in this ordinance.

(b) Prior to letting, renting or leasing any place, structure, or part thereof, trailer or other conveyance for use as a permanent or temporary residence that is located within 2,500 feet of a school, and annually thereafter if a rental agreement is entered into, the owner or lessor shall obtain confirmation of a nationwide search from the Miami-Dade County Police Department or other law enforcement agency that the prospective renter, lessee or adult resident is not a registered sexual offender or sexual predator as a result of a conviction of a sexual offense as defined in section 21-280 herein. A person may call the Miami-Dade County Answer Center (311) to obtain assistance or referrals to determine whether a prospective renter, lessee or adult resident is a sexual offender or predator and to determine whether a residence is 2,500 feet, from a particular school.

(c) *Penalties.*

(1) A person who violates section 21-283(a) herein shall be punished by a fine not to exceed $500.00 or imprisonment in the County jail for not more than 60 days, or both such fine and imprisonment. A person who is convicted of a second or subsequent violation of section 21-283(a) herein shall be punished by a fine not to exceed $1,000.00 or imprisonment in the County jail for not more than 364 days, or by both such fine and imprisonment.

(2) A person who violates section 21-283(b) herein shall be punished by a civil penalty of five hundred dollars ($500.00) in the manner established by Chapter 8CC of this Code. Each day of violation or noncompliance shall constitute a separate offense.

21-284. Sexual Offender and Sexual Predator Access to Parks and Child Care Facilities Restricted; Penalties.

(a) It is unlawful for a sexual offender or sexual predator convicted of a sexual offense, as defined in section 21-280, to knowingly be present in a County or municipal park, when a child under the age of sixteen (16) years is present, unless the sexual offender or sexual predator is the parent or legal guardian of a child present in the park.

(b) Signage at the entrance of County and municipal parks shall include notification that a person convicted of a sexual offense, as defined in section 21-280 herein, shall not be present in a park when a child under the age of sixteen (16) years is present, unless the sexual offender or sexual predator is the parent or guardian of a child present in the park.

(c) It is unlawful for a sexual offender or sexual predator convicted of a sexual offense, as defined in section 21-280, to knowingly enter or remain in a child care facility ("facility") or on its premises unless the sexual offender or sexual predator:

(1) Is dropping off or picking up a child registered at the facility and is the parent or legal guardian of said child; and

(2) Remains under the supervision of a facility supervisor or his or her designee while on the facility premises.

(d) *Penalties.* A person who violates section 21-284(a) or (c) herein shall be punished by a fine not to exceed $500.00 or imprisonment in the County jail for not more than 60 days, or by both such fine and imprisonment. A person who is convicted of a second or subsequent violation of section 21-284(a) or (c) herein shall be punished by a fine not to exceed $1,000.00 or imprisonment in the County jail for not more than 364 days, or by both such fine and imprisonment.

21-285. Loitering or prowling in child safety zone; penalties.

(a) It is unlawful for any sexual offender or sexual predator:

(1) To loiter or prowl with the intent to commit a sexual offense as listed in Section 21-280 of this article;

(2) While knowingly within a child safety zone when children are present; and

(3) To engage in overt conduct that, under the circumstances, manifests an intent to commit a sexual offense as listed in Section 21-280 of this article.

(b) Conduct which may, under the circumstances, be deemed adequate to manifest an intent to commit a sexual offense as listed in Section 21-280 of this article includes, but is not limited to, conduct such as the following:

(1) Making sexual conversation or sexual remarks to a child;

(2) Making lewd or sexual gestures to a child, or exposing sexual organs to a child;

(3) Giving gifts of candy, money, music, or other items to a child to which he or she is not related or acquainted.

(c) Unless flight by the sexual offender or sexual predator or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the sexual offender or predator an opportunity to explain his or her presence and conduct. No sexual offender or predator shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it is proven at trial that the explanation given by the sexual offender or predator is true, and that the sexual offender or predator had no intent to commit a sexual offense.

(d) As used in this section a sexual offender or predator is related to a child if he or she is the father, mother, step-father, step-mother, grandparent, sibling, cousin, aunt, uncle or resides with the child. As used in this section a sexual offender or predator is acquainted with a child if he or she has been introduced to the child in the presence of an adult with legal authority to supervise the child.

(e) Penalties. A person who violates Section 21-285(a) herein shall be punished by a fine not to exceed $500.00 or imprisonment in the County jail for not more than 60 days or by both fine and such imprisonment.

(f) This provision is not intended to limit or affect the applicability of any general loitering and prowling statutes to sexual offenders or predators, including, but not limited to, F.S. § 856.021.

CHAPTER 25
AVIATION DEPARTMENT RULES AND REGULATIONS

25-1. General.

25-1.1 *Definitions.* Note: Words not specifically defined by subsection 25-1.1 herein, which relate to aeronautical practices, processes and equipment, shall be construed according to their general usage in the aviation industry.

(1) "Abandon" shall mean to forsake, desert, give up and surrender one's claim or right.

(2) "Aircraft" shall mean any contrivance now known or hereafter designed, invented or used for navigation or flight in the air or space, except a parachute or other contrivance used primarily as safety equipment.

(3) "Air Operations Area" or "AOA" shall mean any area of the Airport identified by the Department and used or intended to be used for landing, taking-off or surface maneuvering of aircraft, excluding those leasehold areas within or having direct access to the AOA which are subject to security requirements imposed on the lessee or tenant under appropriate federal regulations, or agreement incorporated in a signed lease, unless such security requirements are assumed by the Department through the issuance of an Operational Directive or by lease agreement.

(4) "Airport" shall mean any Airport now or hereafter owned or operated by Dade County, Florida.

(5) "Apron" or "ramp" shall mean that area of the Airport within the AOA designated by Operational Directive or other document of the Department for the loading, unloading, servicing or parking of aircraft.

(6) "Authorized" shall mean acting under or pursuant to a written contract, permit, authorization or other evidence of right issued by the Board, the County Manager or Department Director or their authorized designee(s).

(7) "Board" shall mean the Board of County Commissioners of Dade County, Florida.

(8) "Bus" shall mean a passenger motor vehicle which operates on or to and from the Airport on a fixed route or a predetermined schedule or in a designated service area on or off the Airport and which holds a valid license from the Florida Public Service Commission or which is operated under a permit issued by the Department.

(9) "Code" shall mean the Code of Metropolitan Dade County, Florida, as may be amended from time to time.

(10) "Commercial activity" shall mean (a) the exchange, trading, buying, hiring or selling of commodities, goods, services or property of any kind on the Airport, (b) engaging in any conduct on the Airport for revenue-producing purposes, whether or not revenues ultimately are exchanged, obtained, or trans-

ferred on the Airport, or (c) the offering or exchange of any service on the Airport as a part of, or condition to, other revenue-producing activities or services on or off the Airport.

(11) "Control tower" shall mean a Federal Aviation Administration Air Traffic Control Tower located at an Airport, or one which may be operated by or on behalf of the Department.

(12) "County" shall mean the County of Dade in the State of Florida.

(13) "County Manager" shall mean the County Manager of Dade County, Florida, appointed by the Board pursuant to the Home Rule Charter.

(14) "Courtesy vehicle" shall mean any vehicle used in commercial activity as herein defined, other than a taxicab, to transport persons, baggage or goods, or any combination thereof, of a business establishment owning or operating such vehicle, to or from the Airport, whether or not revenues in payment for such service ultimately are exchanged, obtained or transferred.

(15) "Cruising" shall mean the driving of a commercial vehicle on the upper or lower motor vehicle roadways in front of the Terminal Building of an Airport without passengers or cargo or without a pre-arrangement to pick up passengers or cargo for the purpose of advertising the availability of the commercial service.

(16) "Curbside" shall mean the curb and those other areas designated by the Department to be used for loading and unloading of passengers and baggage adjacent to the upper and lower motor vehicle roadways within the Terminal Building area at an Airport, as may be designated by the Department for such specific use by appropriate signs or Operational Directive.

(17) "Department" shall mean the Dade County Aviation Department, Dade County, Florida.

(18) Reserved.

(19) "Directive"—See "Operational Directive."

(20) "Director" shall mean that person appointed by the County Manager of Dade County, Florida, carrying the title of Aviation Director or his duly authorized representatives.

(21) "Domestic animal" shall mean any animal of a species usually domesticated in the United States and customarily found in the home.

(22) "Equipment" shall mean mobile units or vehicles, other than those commonly classified as motor vehicles, which are utilized in conjunction with the operation of aircraft or an Airport facility.

(23) "Explosives" shall mean any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon application of heat, flame or shock, or any device, the primary purpose of which is to function by explosion. The term "explosives" includes, but is not limited to, dynamite, nitroglycerine, trinitrotoluene, ammonium nitrate when combined with other ingredients to form an explosive mixture, or other high explosives, detonators, safety fuses, squibbs, detonating cords, igniter cords and igniters. Explosives shall not include shotgun shells, cartridges or ammunition for firearms.

(24) "Flammable liquids" shall mean any liquid which emits flammable vapor as set forth in National Fire Protection Association standards, including but not limited to combustible liquids currently used as aircraft or vehicle fuel.

(25) "Law enforcement officer" shall mean any person vested with the power of arrest on an Airport under federal, State, or County authority.

(26) "Limousine" or "limo" shall mean a for hire motor vehicle not equipped with a taxi meter, and providing seating accommodations for not more than eight (8) persons, not including the driver, operating to and from the Airport for hire in accordance with a valid permit or license from a proper governmental authority, but shall not include vehicles designated as "taxicabs," "vans" or "buses."

(27) "Motor vehicle" shall mean a device in, upon or by which a person or property may be propelled, moved, or drawn upon land or water, except a device moved by human or animal power and except aircraft or devices moved exclusively upon stationary rails or tracks.

(28) "Non-operating aircraft" shall mean any aircraft located on an Airport, whether on a tenant leasehold or a public area, which does not possess a current certificate of air worthiness, issued by the Federal Aviation Administration, and is not actively being repaired, i.e., no substantial repair work has been performed on such aircraft for a period in excess of sixty (60) days.

(29) "Officer" shall mean a law enforcement officer.

(30) "Operational Directive" shall mean a written order issued by the Director bearing the designation "Operational Directive" and requiring specific operational procedures or prohibiting specific operations or types of

operations, onto or from an Airport; or establishing designated and restricted uses of various areas of an Airport, and enforceable under Section 25-1.2(c).

(31) "Operator" shall mean any person who is in actual physical control of an aircraft or motor vehicle.

(32) "Owner" shall mean a person in whose name the legal title of an aircraft or a motor vehicle is held or vested. If any aircraft or motor vehicle is the subject of a conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement, and with the immediate right of possession vested in the conditional vendee or lessee or anyone in possession of an aircraft or motor vehicle on an Airport, or in the event a mortgagor of an aircraft or motor vehicle is entitled to the possession, then the conditional vendee, lessee or mortgagor shall be deemed the owner for the purpose of these rules and regulations.

(33) "Park" shall mean to put, leave or let a motor vehicle or aircraft stand or stop in any location whether the operator thereof leaves or remains in such vehicle or aircraft, when such standing or stopping is not required by traffic controls or conditions beyond the control of the operator.

(34) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, committee, assignee or other representative or employee thereof.

(35) "Ramp"—See "Apron".

(36) "Restricted area" shall mean any area of an Airport, locked or posted either to prohibit entry or to limit entry or access to specific authorized persons.

(37) "Rules and regulations" shall mean the Dade County Aviation Department Rules and Regulations, as codified in Chapter 25, Code of Metropolitan Dade County, Florida, including Operational Directives issued thereunder.

(38) "Runway(s)" shall mean those portions of an Airport used for the takeoff and landing of aircraft.

(39) "Security Identification Display Area(s)" or "SIDA" shall mean those areas of the Airport designated by the Department, in accordance with Federal Aviation Regulations, in which each individual in the area is required to display on their person the identification badge issued by the Department or such other form of identification as approved by the Department.

(40) "Security program" shall mean that program developed by the Department relative to the protection and safety of aircraft operations and users of the Airport.

(41) "Solicit" or "solicitation" shall mean to directly or indirectly, actively or passively, openly or subtly, ask or endeavor to obtain by asking, request, implore, plead for, importune, seek, or try to obtain.

(42) "State" shall mean the State of Florida.

(43) "Sunset" or "sunrise" shall mean the time of sunset and sunrise as published by the United States National Weather Service, for the local area.

(44) "Taxi lane" shall mean any portion of an Airport authorized or designated by the Department for the surface maneuvering of aircraft, which are used in common, which may or may not be located within leasehold areas and which are not under control of the Control Tower when the Airports have such tower facilities available.

(45) "Taxicab", "taxi" or "cab" shall mean any automobile that carries persons for a fare, determined by a meter, and that is appropriately licensed as a taxicab by the proper governmental authority.

(46) "Taxiway(s)" shall mean any portion of an Airport authorized or designated by the Department for the surface maneuvering of aircraft, which are used in common, are not located within leasehold areas and which are under control of the Control Tower when the Airports have such tower facilities available.

(47) "Terminal Apron" shall mean that area of the Airport within the AOA designated by Operational Directive or other document of the Department, by posted sign, or by lease agreement for loading and unloading of aircraft passengers and/or cargo.

(48) "Terminal", or "Terminal Building", or "Terminal Area" shall mean any passenger or cargo terminal facility or Airport facilities available to and accessed by the public as designated from time to time by the Department, including all roadways, vehicular circulation areas and parking facilities associated therewith.

(49) "Traffic" shall mean pedestrians and vehicles, either singly or together, while using any Airport area.

(50) "Vehicle" shall mean a device in, upon or by which a person or property, or both may be propelled, moved or drawn upon land or water, including a device moved by human or animal power, except aircraft or devices moved exclusively upon stationary rails or tracks. The term "vehicle" shall include, but

not be limited to, taxis, cars, buses, vans, trucks, buses, limousines and courtesy vehicles of any type or kind.

(51) "Commercial vehicle" shall mean any vehicle used in commercial activity as defined herein, on the Airport.

(52) "Weapon" shall mean a gun, knife, blackjack, slingshot, metal knuckles, or any explosive device, or any other like instrument capable of being utilized to coerce, intimidate or injure an individual.

(53) "Wild animal" shall mean any animal of a species not usually domesticated in the United States nor customarily found in the home.

(54) "Zone taxicab" or "Zone taxi" shall mean a chauffeur-driven for-hire motor vehicle which is a sedan or station wagon operating solely within a zone fare system as provided by County ordinance. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 88-37, § 1, 5-3-88; Ord. No. 95-41, §§ 1—35, 3-7-95)

25-1.2 *Applicability of rules and regulations; Operational Directives.*

(a) Any permission granted a person by the Board, Department or Director, directly or indirectly, expressly or by implication, to enter upon or use an Airport, or any part thereof, is conditioned upon compliance with these rules and regulations and Operational Directives and the payment of any fees or charges established or authorized by the Board, or, if authorized, by the Director, and payable to the County for the use of an Airport or any facility located thereon including any such fees or charges established by the Director and payable to a lessee, management contractor, concessionaire, permittee or franchise holder of the County, or an approved an authorized subcontract thereof, for services rendered to such person; and entry upon or into an Airport by any person shall be deemed to constitute an agreement by such person to comply with such rules and regulations and to pay any such fees and charges.

(b) It shall be unlawful for any person to do or commit any act forbidden by or to fail to perform any act required by these rules and regulations or to fail to pay any fees established and payable pursuant to subsection 25-1.2 hereof.

(c) The Department, through its Director, may from time to time cause to be issued Operational Directives applicable to any Airport. If any such Operational Directive contains a requirement that fees or charges be paid for any operation on or use of an Airport as defined in the Operational Directive, such fees and charges shall be established in accordance with the provisions of subsection 25-1.2(a) hereof (Ord. No. 88-37, § 2, 5-3-88; Ord. No. 95-41, §§ 36, 37, 3-7-95)

25-1.3 *Airport liability.* The County assumes no responsibility or liability for loss, injury or damage to persons or property on the Airport or using Airport facilities not caused by negligence of the County or its employees. (Ord. No. 75-113, § 2, 12-2-75)

25-1.4 *Emergencies.* The Director is empowered to take such action as the Director deems necessary when an emergency exists at an Airport which, in the Director's judgment, presents an immediate threat to public health, security, safety or welfare, or to the operation of an Airport; provided, however, that in the exercise of such power the Director shall promptly notify the governmental agency(ies) or County department(s) having been assigned by the Board or County Manager primary responsibility for the handling and resolution of such emergency, and provided further that the Director's power herein granted shall cease upon the assumption of jurisdiction over such emergency by the governmental agency(ies) or County department(s) and such assumption of responsibility shall not be inconsistent with the requirements of any emergency procedure or program for an Airport adopted and approved by the Board. No action shall knowingly be taken by the Director hereunder or by any County department(s) contrary to any regulation or order of the Federal Aviation Administration or of any other Federal, State or County agency having appropriate jurisdiction. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 38, 3-7-95)

25-1.5 *Trespassing.* Whoever, without being fully authorized, licensed or invited, willfully enters or remains at an Airport, or portion thereof, or having been authorized, licensed, or invited to an Airport, or portion thereof, is warned or ordered by authorized Department personnel or a law enforcement officer to depart, and refuses to do so, commits the offense of trespass. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 39, 3-7-95)

25-1.6 *Other laws.* All applicable provisions of the laws of the State of Florida and ordinances of Dade County, Florida, now in existence or hereafter enacted, are hereby adopted by reference as part of these rules and regulations. (Ord. No. 75-113, § 2, 12-2-75)

25-1.7 *Penalties.* Unless otherwise specifically provided herein, any person violating any of the provisions of these rules and

regulations shall be subject to punishment by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in the Dade County Jail for a period not to exceed sixty (60) days, or both such fine and imprisonment, in the discretion of the Dade County Court. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 40, 3-7-95)

25-1.8 *Jurisdiction.* The violation of any provision hereof shall be triable in the Dade County Court. (Ord. No. 75-113, § 2, 12-2-75)

25-1.9 *Captions.* The captions or heading of sections and subsections in these rules and regulations are inserted for convenience only, and shall not be considered in construing the provisions hereof. (Ord. No. 75-113, § 2, 12-2-75)

25-1.10 *Separability.* If any provision of these rules and regulations or the application thereof to any person or circumstances is held invalid, the remainder of these rules and regulations and the application of such provision to other persons or circumstances shall not be affected thereby. (Ord. No. 75-113, § 2, 12-2-75)

25-2. Personal conduct.

25-2.1 *Handbills.*

(a) No person shall distribute, exhibit or post any commercial handbills, circulars, leaflets or similar material on the Airport.

(b) No person shall throw any handbills, circulars, leaflets or similar material onto the Airport, Airport roads, rights-of-way, streets or sidewalks.

(c) Except as may be permitted pursuant to subsection 25-2.2 hereof, distribution of noncommercial handbills, circulars, leaflets or similar material may be conducted only upon Airport public roads, rights-of-way, streets or sidewalks, in accordance with reasonable procedures established by the Department. (Ord. No. 75-113, § 2, 12-2-75)

25-2.2 *Solicitation of contributions and distribution of materials.*

(a) No person shall solicit alms or contributions of money or other articles of value, for religious, charitable or any other purpose, and receive money or other articles of value, whether in the form of cash, checks, credit or debit vouchers or any other form of negotiable instrument, in the public areas of the Terminal. No person shall conduct or participate in any speechmaking, distributing of pamphlets, books or other written or graphic materials upon the Airport or within its facilities without having delivered a written notice to the Department of his, her or its intent to do so at least five (5) working days prior thereto so that the Department may be fully informed of the activity proposed and take adequate precautions to protect the public health, safety and order, and to assure the efficient and orderly use of Airport property for its primary purpose and function, and to assure equal opportunity for the freedom of expression of others.

(b) The written notice required herein shall state:

(1) The full name, address (and mailing address if different), telephone number of the person furnishing the notice, and, if an organization, the name, address and telephone number of a responsible local officer thereof and the title of such officer.

(2) The purpose or subject of the proposed activity and a description of the means and methods intended to be used in conducting the same.

(3) The date, hours and Airport location desired for the proposed activity and the maximum number of persons proposing to participate therein at any one time or period of time, together with a form of identification card, authenticated copies of which shall be displayed on the outer clothing of each individual participating in the particular activity proposed. Such identification cards shall contain the name of the organization furnishing the notice, the legal name of the individual bearing the card, the signature and title of the official of such organization and the date issued.

(c) The Director shall have the authority to prescribe from time to time restrictions applicable to First Amendment activities at the Airport. Such restrictions shall be subject to the requirements of subsection (d) and may include, but not be limited to, identifying specific locations of First Amendment zones in the Terminal Building and other Airport facilities, limiting the number of persons permitted in such zones, and providing a method for resolving conflicting requests for use of First Amendment zones.

(d) All restrictions prescribed by the Director shall be reasonable and appropriate, and made only after a finding by the Director that the restrictions are necessary to avoid injury, or the likelihood of injury, to persons or property, or to assure the safe and orderly use of the Airport facilities by the public.

(e) Persons having given such written notice to the Director as provided in Section 25-2.2(a) shall be permitted to conduct their activities in or upon the public Airport areas, subject only to the restrictions identified by the Director in a written response sent to the applicant. Such response shall be sent within

five (5) working days of the Director's receipt of the applicant's notice.

(f) If the Director notifies the applicant that his application is denied, the County Attorney's office shall within five (5) days of such denial file an appropriate action in a court of competent jurisdiction and venue for a judicial determination as to whether the proposed activity described in the complaint may be prohibited, naming the applicant as a party defendant. Dade County shall exert every reasonable effort to have the issue heard on its merits without delay and as quickly as legally possible. The burden of showing that the proposed solicitation may be prohibited shall rest with the County.

(g) If the issue for judicial determination is not heard and decided on the merits by the court within ten (10) days from the date the complaint is filed, then the applicant shall be entitled to engage in the activities described in the application, subject only to those restrictions imposed on all other applicants as to time, place and manner of activities, so as to avoid injury to persons or property and to assure the safe and orderly use of the Airport facilities by the public. The applicant may continue to engage in such activities for so long as it may take to reach a final, nonappealed judicial determination. All parties shall thereupon abide by the ruling of such determination.

(h) No person, while engaging in the activities provided for herein, shall seek to delay a person from whom a donation or contribution is sought, or to obstruct, or unreasonably interfere with access to or egress from any airline, concession or washroom facilities or premises, including, but not limited to, passenger concourses, escalators and elevators, nor shall such person in any manner assail, coerce, threaten or physically disturb any member of the public, County, airline or concession employee or any other person for any reason. The activities provided for herein shall not intrude upon or take place in any location or area reserved or zoned for a particular use, including, but not limited to, washrooms, offices, seating areas, baggage claim areas, ticketing areas, restaurants, lounges, concessions, areas devoted to business enterprises and passenger concourses and gate holding areas. No person shall engage in the activity hereunder without first identifying the organization he or she represents in connection with such prospective donation.

(i) No person, while engaging in the activities provided for herein, shall affix any matter, written or graphic, to any Airport structure or facility, nor shall any such matter be left unattended at any location at the Airport except in baggage lockers for a period not exceeding twenty-four (24) hours upon payment of the prevailing fee.

(j) The Director is empowered to wholly or partially restrict the activities provided for herein in the event of emergencies, including but not limited to, strikes affecting the operation of the Airport, aircraft or traffic accidents, riots or civil commotion, power failures, hurricanes, or other conditions tending to disrupt the normal operation of the Airport.

(k) All persons engaged in activities permitted under Section 25-2.2 of the Code shall wear and display identification, approved by the Department, identifying such person and the organization such person represents. In no case shall any person in any activity under this section attempt to identify himself or herself as a representative of the County of the Department. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 90-1, § 1, 1-16-90; Ord. No. 95-41, §§ 41, 42, 3-7-95)

25-2.3 *Preservation of property.* No person shall:

(a) Destroy, injure, deface, disturb, or tamper with any building, sign, equipment, fixture, marker, or any other structure or property on the Airport;

(b) Injure, deface, remove, destroy, or disturb the trees, flowers, shrubs, or other vegetation on the Airport;

(c) Walk, drive or park on a posted lawn or seeded area of the Airport; or

(d) Willfully abandon any personal property on the Airport.

Any person who causes damage to Airport property shall be held liable for such damage. (Ord. No. 75-113, § 2, 12-2-75)

25-2.4 *Entry to the AOA, SIDA or restricted areas.* No person shall enter the AOA, a SIDA area or a restricted area of any County Airport except:

(a) Persons who enter in accordance with security clearance pursuant to the security program established or authorized by the Department, for the particular Airport involved or;

(b) Persons assigned duties on the AOA, a SIDA area or other restricted area of any County Airport bearing proper identification as approved and required herein, or;

(c) Persons who are employees or authorized representatives of the Department or other federal, State or local governmental department or agency, having proper business thereon and bearing proper identification as

approved and required herein. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, §§ 43, 44, 3-7-95)

25-2.5 *Driving on AOA.* No person shall drive upon the AOA at Miami International Airport, unless in accordance with subsections 25-2.4, 25-9.6 and 25-9.7 herein, and unless escorted at all times or be in possession of an AOA driver's permit issued by the Department, or at other County Airports in accordance with Operational Directives for such Airports. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 45, 3-7-95)

25-2.6 *Coin-and currency-operated machines.* No person shall use or attempt to use a coin- or currency-operated machine without first depositing the coins or currency required by the instructions on the machine. (Ord. No. 75-113, § 2, 12-2-75)

25-2.7 *Use and enjoyment of Airport premises.*

(a) No person(s) singly or in association with others shall by his or their conduct or by congregating with others seek to obstruct, delay or unreasonably interfere with any other person or persons from the use and enjoyment of the Airport and its facilities or any part thereof, or seek to obstruct, delay, or unreasonably interfere with other person or persons from passage from place to place, or through entrances, exits or passageways on the Airport.

(b) No person shall use, ride or drive a unicycle, a go-cart, roller skates, roller blades, or a skateboard on or at the Airport, and no person shall walk, drive a motor vehicle or ride a bicycle upon any area of an Airport made available to the public other than on roads, walks, or rights-of-way provided for such purpose.

(c) No person, unless otherwise authorized by lease or Operational Directive, shall use, operate, drive or ride a boat, jet-skis, water scooters or like water vehicles on any waterway or body of water on an Airport nor shall Airport property be used for access of such water vehicle to a waterway or body of water on or adjacent to an Airport. Excluded from this restriction are water vehicles being used by a governmental agency for cleaning or policing such waterway or body of water.

(d) No person, singly or in association with others, shall play any electronic or musical instrument, machine or other device in any public area of Terminal Building or on the Terminal Curbside in such a manner or so loudly as to prevent the quiet enjoyment of others or to cause others not to be able to reasonably hear private conversations and public address announcements, except as part of a musical performance authorized in writing by the Department. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 90-1, § 2, 1-16-90; Ord. No. 95-41, §§ 46, 47, 3-7-95)

25-2.8 *Picketing.*

(a) Lawful picketing, marching or demonstrations on the Airport may be conducted only upon Airport public roads, rights-of-way, streets or sidewalks, in accordance with reasonable procedures established by the Department.

(b) It shall be unlawful to picket, march or demonstrate within the Terminal Building structure at Miami International Airport. (Ord. No. 75-113, § 2, 12-2-75)

25-2.9 *Prohibited conduct.* It shall be unlawful for any person to remain in or on any area, place or facility at an Airport, unless such person has a bona fide purpose for being in such area, place or facility, directly related to the normal and regular usage of such area, place or facility, in such a manner as to hinder or impede the orderly passage in or through or the normal or customary use of such area, place or facility by persons or vehicles entitled to such passage or use. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 48, 3-7-95)

25-2.10 *Sanitation.*

(a) No person shall dispose of garbage, papers, refuse or other forms of trash, including cigarettes, cigars and matches, except in receptacles provided for such purpose.

(b) No person shall dump or dispose of any fill, building material or any other material on any Airport, or in any canal or drainage ditch serving an Airport, except with prior approval of the Department and in such areas and under such conditions as are specifically designated.

(c) No person shall use a comfort station or rest room, toilet or lavatory facility other than in a clean and sanitary manner.

(d) No person shall deposit, blow, or spread any bodily discharge on the ground or pavement anywhere on the Airport or on any floor, wall, partition, furniture, or any other part of a public comfort station, Terminal Building, hangar, or other building on the Airport, other than directly into a fixture provided for that purpose.

(e) No person shall place any foreign object in any plumbing fixture of a comfort station, Terminal Building, hangar, or other building on the Airport. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 49, 3-7-95)

25-2.11 *Intoxication.*

(a) No person shall drink any intoxicating liquors upon any portion of the Airport open to the public, except in airline special service lounges or club rooms or in other places as shall be properly designated by the Director or by lease for on-premises liquor consumption.

(b) No person under the influence of intoxicating liquors or drugs shall operate any motor vehicle or aircraft on the Airport. (Ord. No. 75-113, § 2, 12-2-75)

25-2.12 *Drugs.* No person, other than a duly qualified physician, a certified emergency medical technician (under the direction of a duly qualified physician or as provided by law), a registered nurse, or a duly qualified pharmacist shall, while on an Airport, prescribe, dispense, give away, or administer any controlled substance as defined from time to time by state or federal law to another or have such a drug in his possession, with intent to prescribe, dispense, sell, give away, or administer it to another. Such persons shall not be authorized to offer to sell or to sell such drugs except pursuant to a permit, license or agreement issued by the County. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 50, 3-7-95)

25-2.13 *Model aircraft.* No person shall operate or release any model aircraft, rocket, kite, balloon, parachute (other than in an emergency), or other similar contrivance at or upon the Airport without the prior written approval of the Director. (Ord. No. 75-113, § 2, 12-2-75)

25-2.14 *Animals.*

(a) No person, other than a person who is blind, visually impaired or otherwise disabled, with a seeing eye or other specially trained dog, or a trained dog used for law enforcement purposes, under the control of an authorized law enforcement officer, shall enter the Terminal Building with a domestic animal, unless such animal is to be or has been transported by air and is kept restrained by a leash or otherwise confined so as to be completely under control.

(b) No person shall enter any part of an Airport, with a domestic animal, unless such animal is kept restrained by a leash or is so confined as to be completely under control, whether or not such animal is to be or has been transported by air travel. No person shall bring, carry or deliver any wild animal under his control or custody into the Terminal Buildings of an Airport, without having first obtained a permit from the Department.

(c) Except for animals that are to be or have been transported by air and are properly confined for air travel, no person shall permit any wild animal under his control or custody to enter the Airport.

(d) No person other than in the conduct of an official act shall hunt, pursue, trap, catch, injure, or kill any animal on the Airport; provided, however, that fishing shall be permitted in designated areas.

(e) No person shall ride horseback on the Airport without prior authorization of the Department.

(f) No person shall permit, either willfully or through failure to exercise due care or control, any animal to urinate or defecate upon the sidewalks of the Airport or upon the floor of the Terminal Building or any other building used in common by the public.

(g) No person shall feed or do any other act to encourage the congregation of birds or other animals on or in the vicinity of the Airport. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 51, 3-7-95)

25-2.15 *Weapons.*

(a) No person, other than federal, State or local law enforcement officers on duty or unless otherwise duly authorized by law and the Department, shall carry or transport any weapon on the Airport in a manner contrary to governing law.

(b) No person shall discharge any gun on the Airport, except in the performance of official duties requiring the discharge thereof or in the lawful defense of life or property.

(c) No person shall furnish, give, sell or trade any weapon or simulated weapon on the Airport unless authorized under appropriate lease with or permit issued by the County or as authorized by law. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 52, 3-7-95; Ord. No. 10-24, § 2, 4-6-10)

Note—Florida Statutes § 790.33, as amended, preempts and declares null and void all local ordinances, administrative regulations and rules in the field of firearms and ammunition, with limited exceptions set forth in § 790.33, as amended.

25-2.16 *Lost articles.* Any person finding lost articles at any Airport shall immediately deposit them with an authorized representative of the Department. Articles unclaimed by their proper owner within three (3) months thereafter shall, upon request, be turned over to the finder or otherwise be lawfully disposed of, in accordance with applicable law or Operational Directive. Nothing in this paragraph shall be construed to deny the right of scheduled air carriers or

other Airport tenants to maintain "lost and found" services for property of their passengers, invitees or employees as permitted by law. Articles to which the owner or finder is not entitled to lawful possession shall be forfeited to the Department for disposal in accordance with the provisions of applicable law or County administrative order. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 53, 3-7-95)

25-2.17 *Endangering aircraft or vehicle operations.* No person shall throw, shoot or propel any object in such manner as to interfere with or endanger the safe operation of any aircraft landing at, taking off from or operating on the Airport or any vehicle operating on the Airport. (Ord. No. 75-113, § 2, 12-2-75)

Note—Florida Statutes § 790.33, as amended, preempts and declares null and void all local ordinances, administrative regulations and rules in the field of firearms and ammunition, with limited exceptions set forth in § 790.33, as amended.

25-2.17.1 *Foreign objects on AOA.*

(a) The presence of foreign objects on any portion of the AOA presents a significant safety issue for aircraft and aircraft engines. Foreign objects include natural or manmade items, trash, debris, plastic or metal items or pieces thereof, and the like, any of which can cause damage to aircraft engines or aircraft either by being taken into an engine by reason of wind drafts created by such engine or else being wind-blown into an engine or against an aircraft.

(b) No person shall place, deposit, or cause to be placed or deposited on any area of the AOA, or on any leasehold area in close proximity to or adjoining the AOA, any foreign object defined in subsection 25-2.17.1(a).

(c) Any person who violates subsection (b) above, or who, being on the AOA and being then reasonably able to remove or cause the removal of a foreign object, or to dispose or cause the disposal of a foreign object into a suitable container on or off the AOA, shall be subject to confiscation of that person's identification badge in the manner provided in subsection 25-2.20(h), in addition to the penalty provisions provided for in this Chapter 25, including Section 25-2.26. (Ord. No. 96-80, § 1, 6-4-96)

25-2.18 *False reports or threats.* No person shall make any threat involving aircraft or any facilities or operations at or on the Airport or false report regarding the conduct of operations at or use of the Airport. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 54, 3-7-95)

25-2.19 *Forgery and counterfeit.* No person shall make, possess, use, offer for sale, sell, barter, exchange, pass, or deliver any forged, counterfeit, or falsely altered pass, permit, identification badge, certificate, placard, sign, or other authorization purporting to be issued by or on behalf of the Department, nor shall any information electronically or magnetically encoded thereon be knowingly altered or erased. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 55, 3-7-95)

25-2.20 *Identification badges.*

(a) Those persons authorized to enter the AOA, any SIDA area or other restricted areas at Miami International Airport in accordance with subsections 25-2.4(b) and (c), or at any other County Airport, as established by Operational Directive, shall at all times possess an official identification badge issued or approved by the Department. Identification badges shall be worn conspicuously on the outer garment of the bearer, in plain view above the waist, unless otherwise authorized by the Department.

(b) In the event an identification badge issued by the Department is damaged, lost, or stolen, the company which employs the person to which such was issued shall comply with procedures established by the Department and give immediate written notice of such occurrence to the Department. A duplicate badge shall not be reissued until such notice is received by the Department and either the employee or the employer has paid to the Department the established fee for the issuance of replacement identification badges.

(c) All persons issued an identification badge by the Department, or the company employing such persons, shall pay the Department the established fee for the issuance of original or duplicate identification badges. The company employing persons issued identification badges by the Department shall be solely responsible for the prompt return of the identification badges of employees who have been terminated or transferred from their employment at the Airport, or whose return has been requested by the Department, and for paying to the Department the established fee for the failure to so return the identification badges of such employees.

(d) No person to whom an approved identification badge has been issued by the Department for the purpose of entering the AOA, a SIDA area or other restricted areas of Miami International Airport or other County

Airports shall transfer such badge to any other person or use such badge for personal purposes.

(e) No person shall enter a restricted area at any Airport without possessing the appropriate color zone identification badge authorization for such access, unless otherwise specifically approved by the Department.

(f) No person shall enter a restricted area at any Airport using an identification issued to any other person. In the event a person is discovered wearing the identification badge of another person, unless such other person has previously reported that their identification badge has been lost or stolen, both persons shall be considered to have violated the provisions of this section.

(g) It shall be the responsibility of all persons working in restricted areas at any Airport to ensure that all other persons are properly wearing an appropriate identification badge at all times, in accordance with this section. A failure of a person to challenge another person in a restricted area not visibly wearing an identification badge shall be deemed a violation of this section.

(h) Identification badges issued by the Department shall at all times remain the property of the County. As such, the Department shall at all times have the right to confiscate or demand the return of the identification badge of any person who violates the provisions of this chapter and to demand the return of the identification badges of all persons employed by a company violating this chapter or whose lease, permit or license agreement with the County allowing use of the Airport has expired or been cancelled or is terminated. The Department shall have the right to confiscate or demand the return of Department-issued identification badges for any violations by an individual of the Airport security program required by Federal Aviation Regulations.

(i) Identification badges. In addition to a Code Inspector's right to issue civil violation notices (CVNs) under Chapter 8CC of the Code, any Code Inspector of the Department designated by the Director under Section 25-2.26(a) shall have the power to issue Departmental Safety Violation Notices (SVNs) to persons violating Chapter 25. SVNs shall be on forms established by the Department. Any person to whom an approved identification badge has been issued by the Department who on four occasions within a twelve month period is (a) issued an SVN for a violation of Chapter 25, or (b) issued a CVN and either pays the CVN, fails to appeal the CVN or is found guilty of the violation by a hearing officer, or (c) determined by a Code Inspector to have violated Section 25-9.3, 25-9.4, or 25-9.10(a) shall be required to surrender his or her badge for a period of time as may be determined by the Director by written policy. A person whose badge has been surrendered for any of the foregoing reasons shall have the right to appeal the decision to the Aviation Director or designee, in accordance with procedures established by the Aviation Department for appeals of decisions requiring the surrender of a badge. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, §§ 56, 57, 3-7-95; Ord. No. 10-24, § 3, 4-6-10)

25-2.21 *Security devices and directives.* No unauthorized person shall in any way tamper or interfere with a lock or closing mechanism of any door or gate at Miami International Airport or any other County Airport leading to the AOA, a SIDA area, a restricted area, a private leasehold or offices; nor shall any person otherwise knowingly breach, disobey or disregard any security directive, plan or program at the Airport. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 58, 3-7-95)

25-2.22 *Elevators, moving stairways and moving walkways.* No person shall use an elevator, moving stairway, moving walkway, fixed guideway vehicle or conveyance system contrary to its intended use or any posted restriction(s). (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 59, 3-7-95)

25-2.23 *Consent to inspection.* Any vehicle or motor vehicle and the contents thereof, entering, departing from, or being in the air operations area (AOA) or other restricted areas, shall be subject to inspection by the Director, designated Department employees, or any law enforcement officer, for the purposes of determining ownership of such vehicle and the contents thereof, and for examining the documentation relating thereto. The operation or use of a vehicle or motor vehicle by any person into, from or within the AOA or a restricted area of the Airport shall constitute the consent of the owner, operator and/or user of such vehicle to the aforesaid inspection. Inspections relating to U.S. Customs bonded cargo and customs seals shall be subject to the rules and regulations of the United States Customs Service. (Ord. No. 88-37, § 3, 5-3-88)

25-2.24 *Inspections.* No person shall enter the AOA or a restricted area of the Airport, except persons who enter pursuant to Section 25-2.4 of this chapter, or employees of federal, State or local government bodies then having proper business thereon and bearing

proper identification. No person entering or attempting to enter, being within, or departing from or attempting to depart the AOA or restricted areas of the Airport, shall refuse to produce for inspection at the request of the Director, designated Department employee or any law enforcement officer, a Department identification badge or the contents, or both, of any vehicle, bag, case, parcel, box or container of any kind in his possession. Where the entry into or departure from or attempt thereof is by means of a vehicle or motor vehicle, no person shall refuse to produce for inspection, after such request, a driver's license or Department vehicle permit. No person shall refuse to produce at the request of the Director, designated Department employee or any law enforcement officer any document in his possession relating to the ownership or possession of cargo or freight upon entering, leaving or being within the AOA or any restricted area. (Ord. No. 88-37, § 3, 5-3-88)

25-2.25 *Jostling.*

(a) For the purpose of this section, the term "personal property" shall mean wallets, purses, briefcases, carry-on luggage, parcels and any other materials hand carried by a person in the Terminal Building.

(b) A person shall be guilty of "Jostling" when, in a public place, the person intentionally and unnecessarily:

(1) Places his or her hand in the proximity of a person's personal property; or

(2) Jostles, blocks, crowds or distracts another person(s) at a time when a third person's hand(s) are in proximity of the second person's personal property. (Ord. No. 95-41, § 60, 3-7-95)

25-2.26 *Enforcement.*

(a) All Department employees so designated by the Director shall be responsible for enforcement of all provisions of Chapter 25 of the Code and shall be deemed Code Inspectors under Chapter 8CC of this Code.

(b) In addition to and not in lieu of the penalties provided by Section 25-1.7, any person who violates any provision of Chapter 25 shall be subject to the civil penalties provided by Chapter 8CC. In addition to the provisions of Chapter 8CC of this Code regarding enforcement of civil penalties, failure of any violator to make timely payment of the civil penalty under Chapter 8CC, or make a timely appeal thereof, may, if the violator is authorized to enter SIDA areas of the Airports, result in the revocation of the violator's SIDA access or driving privileges. A person whose SIDA access privileges have been revoked shall have the right to appeal the revocation decision to the Aviation Director or designee, in accordance with procedures established by the Aviation Department for appeals of revocation decisions. (Ord. No. 95-41, § 61, 3-7-95; Ord. No. 10-24, § 4, 4-6-10)

25-3. Commercial activity.

25-3.1 *Soliciting or carrying on business.*

(a) No person, unless duly authorized in writing by the Board, the County Manager or the Department and unless payment of any fees or charges as established from time to time for such activity, shall be paid by such person, shall, in or upon any area of an Airport:

(1) Engage in any business or commercial activity; or

(2) Sell, or offer for sale, any merchandise, food, beverage or service; or

(3) Solicit any business or trade, including the transportation of persons, baggage, or goods, the shining of shoes, or bootblacking; or

(4) Sing, dance, or play any musical instrument; or

(5) Install or place any coin, currency or debit or credit card operated machine for the sale or provision of any merchandise, food, beverage or service of any type or kind, without the prior written approval of the Department.

(b) No person authorized to perform services on the Airport shall refuse to perform such services when requested by any orderly person to do so, except as authorized by federal or State law or regulations. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 88-37, § 4, 5-3-88; Ord. No. 95-41, § 62, 3-7-95)

25-3.2 *Commercial photography, film and recordings.* No person unless authorized in writing by the Department, or when appropriate by permit issued under Section 2-11.14 of this Code, shall take still, motion, or sound motion pictures or sound records or recordings of voices or otherwise for commercial, training or educational purposes, other than news coverage, in public areas of the terminal or on the public areas of any facility under the administration of the Department. As a condition of authorization, the Department may require reimbursement for its costs of personnel, equipment and/or supplies used in support of such activity, and may impose fair and equitable rental rates for extended use of any space under the administration of the Department. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 76-112, § 4, 12-21-76; Ord. No. 95-41, § 63, 3-7-95)

25-3.3 *Building construction and improvements.* No person without written authoriza-

tion from the Department, shall construct or cause to be constructed any buildings or structures, including signs, utility connection or any improvements, modifications (excluding maintenance), or additions to any such buildings or structures, or any paving, excavations, removal of soil or fill material or other improvement to land on the Airport, whether on leaseholds or elsewhere. (Ord. No. 75-113, § 2, 12-2-75)

25-3.4 *Advertising.* No person, unless authorized in writing by the Department, shall post or distribute commercial signs, advertisements, literature, circulars, pictures, sketches, drawings, handbills, or any other form of printed or written commercial matter or material at the Airport. (Ord. No. 75-113, § 2, 12-2-75)

25-3.5 *Storage of property.*

(a) Unless otherwise provided in a lease or other written agreement or permit, no person shall use any area of the Airport for storage of cargo, aircraft, vehicles, motor vehicles, mobile equipment or other property without prior written permission of the Department. If such person uses such area for storage without first obtaining permission, the Department shall have such property removed and stored at the risk and expense of the owner or consignee thereof.

(b) No person shall load cargo on or unload cargo from an aircraft, other than in designated areas established by Operational Directive issued by the Department, or in areas totally contained within an established leasehold or restricted area, authorized for such activity. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 64, 3-7-95)

25-3.6 *Signs.* No person, unless authorized by the Department, shall construct or install any sign at any Airport, unless such sign is a traffic-control device within a leasehold area and is in conformity with State and County regulations. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, §§ 65, 66, 3-7-95)

25-3.7 *Protection of property.* No person authorized to operate equipment, including but not limited to baggage carts, handcarts, wheelchairs, and powered transporters in the Terminal Building, shall do so unless such equipment is properly equipped with protective materials or devices to minimize damage to property and injury to persons. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 65, 3-7-95)

25-3.8 *Tipping.* No person authorized to accept tips for services performed at the Airport shall solicit a tip, or a specific amount of tip, nor harass, insult or display any form of rudeness to the person for whom the service is being performed. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 65, 3-7-95)

25-4. Ground transportation.

25-4.1 *Commercial vehicles.*

(a) Any taxicab licensed pursuant to Section 31-82 of the County Code and operating in compliance with the standards and conditions set forth in Section 31-93(d) of the County Code shall have the right to transport persons and their baggage from Miami International Airport.

(b) Except for taxicabs as set forth in (a) above, no person shall utilize a vehicle for any commercial activity on the Airport, or transport persons, baggage, or goods or any combination thereof to or from Miami International Airport without a valid permit issued by the Department if the Department has issued an Operational Directive requiring such a permit.

(c) No person shall operate a vehicle used in commercial activity contrary to posted signs, or contrary to the terms of any permit or Operational Directive issued by the Department.

(d) Commercial vehicles operating on any Airport contrary to the terms of Operational Directives issued by the Department, or without permits required for such operation, will be subject to enforcement penalties. Violations shall be enforced by authorized law enforcement officers or authorized uniformed traffic enforcement employees of the Department and appropriate fines shall be levied as established by Operational Directives.

(e) Nothing contained herein shall be construed to authorize the operation of a vehicle for hire or courtesy vehicle in violation of any other provisions of the Code of Metropolitan Dade County, specifically including but not limited to Chapter 31

(f) (1) Effective as of the date that the proposed consolidated Rental Car Facility located east of LeJeune Road to be designed and constructed by the Florida Department of Transportation as set forth in Resolution No. R-1268-99, is operational for the participating car rental companies having agreed to operate therein, all ground transportation courtesy vehicles by which customers of ground transportation companies are transported to or from Miami International Airport and the companies' places of business, shall be prohibited from operating on the lower and upper vehicular drives of such Airport and from picking up and dropping off their customers at any Airport facility or location other than the Rental Car Facility

or the Miami Intermodal Center, as designated by Operational Directives. The term "ground transportation courtesy vehicles shall include cars, vans, buses or other forms of vehicular transportation, but shall not include taxis, demand shuttle vans or buses, or for-hire vehicles subject to Chapter 31 of the Miami-Dade County Code. The term "ground transportation companies" include but are not limited to car rental companies, parking lot operators, and hotels and motels.

(2) Notwithstanding subsection (f)(1), the County Manager may exempt certain ground transportation companies from the prohibition contained in subsection (f)(1) and may permit such companies to pick up and drop off customers at a facility other than the Rental Car Facility or Miami Intermodal Center; provided, however, any such exemption shall be effective only after (a) a public hearing has been held at which all representatives of the ground transportation industry are invited to present their views, (b) the County Manager has determined that the exemption shall not adversely affect traffic congestion, air quality and passenger safety, and (c) such exemption has been set forth in an Administrative Order approved by the Board; provided further that any such exemption shall extend for a period of time and under such conditions as the County Manager determines; and provided further that no exemption from the requirements and restrictions of subsection (f)(1) shall be given under any circumstances to any car rental company.

(3) The Aviation Director shall have the authority to issue an Operational Directive from time to time for the following purposes:

(a) To provide for the use of the Terminal Building facilities and roadways by all ground transportation users during the Interim Period from the effective date of this ordinance to the date on which the Rental Car Facility is operational, and during the period thereafter;

(b) To provide for the date on which the Rental Car Facility is deemed operational for purposes of requiring all ground transportation courtesy vehicles subject to this ordinance and the Operational Directive to access their customers at the Rental Car Facility and not at the Terminal Building or other Airport location;

(c) To provide for all aspects of a temporary common shuttle vehicle operation between the Terminal Building and the Rental Car Facility by which ground transportation companies and their customers made subject to the Operational Directive make use of and pay for the costs of the common shuttle vehicle operation until the Airport's MIC MIA automated People Mover System is operational. The Operational Directive may permit the participating car rental companies to operate such a shuttle vehicle operation in their own name or names or through a company selected by them or may require selection of a company by the County through appropriate bidding procedures;

(d) To provide for the use of and payment for the Rental Car Facility, its roadways, and the MIC-MIA People Mover System after the Rental Car Facility and the People Mover System become operational, such Operational Directive to apply to all users of the Rental Car Facility and People Mover system, including the participating car rental companies operating within the Rental Car Facility and all other car rental companies picking up and dropping off their customers at a location or locations outside of the Rental Car Facility as designated by such Operational Directive; and

(e) To set forth the level of fees required to be paid by those car rental companies choosing to pick up and drop off their customers at the curbside or other designated location of the Rental Car Facility rather than to operate within such facility. Such fees may include a Customer Facility Charge or a percentage of gross revenues, or a combination of both. To the extent such fees are based on a percentage of gross revenues of such companies generated by customers picked up or dropped off at the Rental Car Facility, such fees may be less than but shall not exceed the percentage of gross revenues approved by the Board for car rental companies operating within the said Facility.

(4) The Operational Directive shall require all car rental companies operating within the Rental Car Facility to charge and collect from their customers, commencing on and after the date on which the Rental Car Facility is operational, a Customer Facility Charge in the amount of not more than four dollars and sixty cents ($4.60) per day per car rental contract, and every fifth anniversary after such commencement date to increase such amount by an additional twenty-five cents ($0.25) per day per car rental contract, such Customer Facility Charge amounts to be further adjusted periodically so as to enable the County to meet all debt service payments on any loans for the acquisition of the property for and the design and construction of the Rental Car Facility, as well as operating and maintenance expenses related to the

Rental Car Facility and allocated operating and maintenance expenses attributable to the MIC-MIA people mover system connecting the Rental Car Facility with the Airport's Terminal Building; provided, however, that any such periodic adjustments other than the twenty-five cent ($0.25) adjustment every five years shall be presented to the Board of County Commissioners for its review and approval, such adjustments to be approved if they are in accordance with the requirements of the Concession Agreement between the County and the participating car rental companies, the TIFIA Loan Agreement, and the determinations of anticipated debt service payments, operating and maintenance expenses of the RCF, and allocated expenses of the people mover system made thereunder.

(5) The Operational Directive shall require that, (a) commencing no earlier than January 1, 2002, and expiring no later than the effective date of this Ordinance, all car rental companies operating at Miami International Airport that have agreed to serve as participating car rental companies in the Rental Car Facility shall charge and collect from their customers a Customer Facility Charge not to exceed three dollars and twenty-five cents ($3.25) per day per car rental contract, and (b) commencing as of the effective date of this Ordinance and expiring no later than the date the Customer Facility Charge under subsection (4) is effective, all such car rental companies shall charge and collect from their customers a Customer Facility Charge of four dollars ($4.00) per day per car rental contract, with such charges described in (a) and (b) of this subsection to be in addition to all other fees established by contract or Operational Directive, and with such interim Customer Facility Charges to be determined or confirmed by the Aviation Department and set forth in the Operational Directive, for the purpose of defraying ongoing costs applicable to the design and construction of the Rental Car Facility as well as existing costs to the Airport of providing facilities and services to such companies prior to the date on which the Rental Car Facility becomes operational and as additional payment for the companies' privilege of doing business at the Airport. The Operational Directive or contractual provision shall provide that, as to any such fees and to the extent permissible under federal law and any trust indenture applicable to the Airport, such fees shall be held by the Airport in a separate interest-bearing account for the purpose of defraying the costs of the Rental Car Facility.

(6) Except as provided in (4) and (5) above, none of the fees payable for the use of the Rental Car Facility shall be deemed to be fees mandated by the County unless the Operational Directive states that designated fees are so mandated.

(Ord. No. 75-113, § 2, 12-2-75; Ord. No. 79-25, § 15, 3-20-79; Ord. No. 81-85, § 4, 7-21-81; Ord. No. 88-37, §§ 5, 6, 5-3-88; Ord. No. 95-41, §§ 67, 68, 3-7-95; Ord. No. 00-87, § 1, 7-6-00; Ord. No. 04-137, § 1, 7-13-04; Ord. No. 07-109, § 1, 7-24-07)

25-4.2 *Rental cars.* No person shall solicit or engage in the rental car for-hire vehicle business on the Airport without a valid permit issued by the Department. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 79-25, § 15, 3-20-79; Ord. No. 81-85, § 4, 7-21-81)

Cross reference—Licensing and regulations of for-hire passenger motor vehicles generally, § 31-81 et seq.

25-5. Public health.

25-5.1 *Application.* The applicable health laws and regulations of the United States of America, the State of Florida, the County of Dade, and these rules and regulations shall apply to all persons and establishments, whether on or off an Airport, if such persons or establishments are engaged in activities affecting the Airport involving food and beverage service, drinking water service, handling, storage or disposal of water or refuse or any other activity which has a potentially deleterious effect on public health, e.g., food quality, water quality, air quality, or sanitary sewage and industrial waste water or storm water systems.

(Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 69, 3-7-95)

25-5.2 *Food and beverage service.* All matters of public health at the Airport are subject to the applicable United States Public Health Service, Florida State Board of Health and Dade County Department of Health regulations and policies.

(a) Any persons authorized to engage in food and beverage service on the Airport, whether from locations on or off the Airport, to Airport employees, airline passengers or the general public shall secure all required health agency licenses and shall abide by all rules and regulations of such agencies.

(b) All food and beverage establishments, whether on or off the Airport in fixed or mobile operations, engaged in food and beverage service to intrastate, interstate, or international aircraft, shall abide by all rules and

regulations of appropriate federal, state, and local agencies.

(c) No person shall remove, from an aircraft, any food, garbage or trash, except as authorized under federal, State and/or local health regulations.

(Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 70, 3-7-95)

25-5.3 *Control of aircraft drinking water.*

(a) The water piping system in aircraft servicing areas shall be under adequate positive pressure at all times with a vacuum break or approved back-flow prevention device installed to prevent siphoning, and there shall be no cross connections between the potable water system and a system of questionable quality. All drinking and culinary water used in connection with the operation of aircraft in interstate, intrastate, or international commerce shall come from sources approved by the United States Public Health Service, the Florida State Board of Health or the Dade County Department of Public Health; and the installation of all aircraft water piping systems shall comply with the requirements established by these agencies.

(b) Potable water supply points on servicing piers or other locations on the Airport labeled "Aircraft Drinking Water Only" or similar wording indicating the same intent, whether the transfer of water is by direct connection from the hose bib to a mounted hose reel or by portable water truck or cart, shall be used for no other purpose, except in an emergency.

(c) Hoses used to deliver potable water to aircraft shall be constructed of such material and stored and handled in such manner as prescribed by the United States Public Health Service regulations, and used for no other purpose. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 71, 3-7-95)

25-5.4 *Handling and disposal of sanitary waste from aircraft.*

(a) When a removable sanitary waste can is removed from an aircraft, the contents of such can shall be securely enclosed or covered while being transported to a facility for emptying and cleaning.

(b) The sanitary waste accumulated in the fixed waste retention tank on an aircraft shall be discharged through a flexible hose, with a watertight connection to a portable water-tight tank, in order to avoid contamination of the area. Flushing of the retention tank must never be accomplished by direct connection to a potable water distribution system.

(c) All aircraft sanitary waste cans and retention tanks shall be serviced in approved servicing areas only.

(d) All ground facilities and operations for the disposal of sanitary waste and for the cleaning of sanitary waste cans and fixed waste-retention tanks, and all sanitary waste trucks or carts, shall be emptied, flushed, cleaned, and the rinse compartments of same filled at approved servicing areas only.

(e) No water hydrant on the Airport shall be used to service a sanitary waste truck or cart.

(f) All connections in an aircraft sanitary waste discharge line or sanitary tank servicing equipment shall be equipped with positive seals to prevent spillage.

(g) When a defect in an aircraft sanitary waste discharge valve or in a waste tank servicing equipment results in sanitary water spillage or when an improper or illegal discharge of sanitary waste has been made into equipment (valve) pits on the AOA, it shall be the responsibility of the aircraft owner or operator to immediately clean and decontaminate the equipment and ground area soiled. The defective components shall be repaired or replaced before the discharge valve or servicing equipment is placed back in service. The Department may clean up as necessary upon failure by the owner or operator to do so and charge the cost thereof, plus an administrative fee of twenty-five (25) percent, to the owner and/or operator.

(h) The owners or operators of sanitary waste tank trucks shall make any alterations to or add any equipment to such trucks as required by the Department, the Department of Public Health or Dade County Department of Environmental Resources Management, for the sanitary operation of the aircraft sanitary waste disposal system. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, §§ 72, 73, 3-7-95)

25-5.5 *Handling of aircraft and Airport refuse.*

(a) Receptacles used for the storage of aircraft galley paper and liquid waste, as well as garbage and refuse accumulating from operations in aircraft servicing areas, shall be stored, in accordance with standards and procedures approved by all appropriate federal, State and local public agencies.

(b) Garbage and refuse containers used in the Terminal Building areas shall be of a type and design approved by the Department, with the design compatible to the use and location, so as to preclude odor, insects, and vermin. Type, design and location shall assure no interference with the safe opera-

tion of vehicles and/or aircraft operating in its vicinity, and comply with reasonable standards established by the Department.

(c) Under no conditions shall open drums or containers be used for storage of garbage or refuse on the Airport.

(d) The open storage or placement on the Airport of any receptacle, equipment or material, including rubber tires, that holds water and is conducive to mosquito or rodent harborage or breeding is prohibited.

(e) All aircraft and Airport refuse other than sanitary waste shall be disposed of in accordance with applicable County, State and federal standards and procedures. (Ord. No. 75-113, § 2, 12-2-75)

25-5.6 *Waste removal services.*

(a) All operators of waste removal services on the Airport shall secure a permit from the Director and written approval from the Dade County Department of Public Health as to the suitability of the waste removal vehicle, compactors and/or containers.

(b) No vehicle used for hauling trash, dirt or any other waste materials shall be operated on the Airport unless such vehicle is constructed and equipped so as to prevent the contents thereof from blowing, dropping, sifting, leaking, or otherwise escaping therefrom. Approved waste, trash, and garbage compactors and containers shall be allowed at designated locations only. Such areas shall be kept clean and sanitary at all times by the person in control thereof. (Ord. No. 75-113, § 2, 12-2-75)

25-5.7 *Water pollution.* No person shall introduce, or cause or permit to be introduced, in any water system or any surface or underground water at the Airport, any organic or inorganic matter or deleterious substance in such quantity, proportions, or accumulations which are injurious to human, plant, animal, fish or other aquatic life, or property, or which unreasonably interferes with the enjoyment of life or property, or the conduct of business on the Airport. The types and permissible quantities of discharge shall be governed by the then applicable water discharge standards as promulgated by the United States Environmental Protection Agency under the Federal Water Pollution Control Act of 1972, or under any amendment or successor legislation thereto, or as established by State statute or County ordinance, whichever be the most stringent. (Ord. No. 75-113, § 2, 12-2-75)

25-5.8 *Air pollution.*

(a) No person shall introduce, or cause or permit to be introduced in the outdoor atmosphere or about an Airport any one or more air contaminants or combinations thereof, by burning or otherwise, in such quantities and of such duration as to be injurious to human, plant, or animal life, or property, or which unreasonably interfere with the enjoyment of life or property or the conduct of business on the Airport, or which in any way interferes with the operation of aircraft on the ground or in the air. The types and permissible quantities of discharge into the air shall be governed by the then applicable atmospheric discharge standards as promulgated by the United States Environmental Protection Agency under the Federal Clean Air Act of 1980, or under any amendment or successor legislation thereto, or as established by State statute or County ordinance, whichever be the most stringent.

(b) All motor operated vehicles used on a regular basis or stationed at an Airport shall comply with Chapter 24 of the Code regarding prohibitions against motor vehicles as sources of air pollution. While on Airport property, it shall be unlawful for the owner of a commercial vehicle to be operated which:

(1) Emits air contaminants as dark as or darker in shade than that designed as number one on the Ringelmann Chart or of such an opacity equal to or greater than twenty (20) percent for longer than ten (10) consecutive seconds; or

(2) Has had any of its emission control devices, as installed at the time of manufacture, removed, disconnected and/or disabled; or

(3) Is powered by any fuel that may defeat the design purpose of the vehicle's emission control devices, including but not limited to leaded gasoline used in a commercial vehicle designed to be powered by unleaded gasoline.

Any vehicle found to be in violation of the above will be subject to fines and penalties and will be immediately prohibited from operating at an Airport until such deficiency has been corrected and the vehicle has been recertified by the Dade County Department of Environmental Resources Management or any other authorized government agency. In addition, the Department may through Operational Directive impose further restrictions to a classified group of vehicles if the Department determines the emissions from any such group constitutes an environmental hazard.

(c) Operators of all motor vehicles at the terminal shall turn off the vehicle's engine when such vehicle is parked or is waiting other than at a traffic-control device, requir-

ing the vehicle to stop temporarily, or to permit safe passage of persons or other vehicles. Emergency (police and fire) vehicles are exempt under this subsection when the operator of the vehicle is in close proximity to the vehicle, or when a person or police canine is in the vehicle.

(d) Operators of aircraft at the Airport shall turn off the aircraft engine or engines when such aircraft is not actively being taxied or checked in conjunction with maintenance procedures, except for onboard aircraft power units (APU). (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, §§ 74—77, 3-7-95)

25-5.9 *Sanitary sewage and industrial waste water system pollution.* No person, whether on or off an Airport premises, shall introduce or cause or permit to be introduced, in any sanitary sewage and industrial waste water or storm water system under the jurisdiction of the Department, any deleterious substance in such quantities, and for such duration as is or may be injurious to human, plant or animal life, or property, or which unreasonably interferes with the maintenance or operation of the Airport or the County sewage system. The types and permissible quantities of discharge shall be governed by the then applicable sewage discharge standards for sanitary sewage and industrial waste water and storm water systems as promulgated by the appropriate Federal, State and County agencies, whichever are the most stringent. Such effluent shall be discharged only into authorized sewage and waste disposal systems as are provided for such purpose and shall be disposed of in a manner approved by the Department and appropriate controlling agencies. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 78, 3-7-95)

25-5.10 *Quarantine.* International passenger quarantine, animal quarantine and disposition of diseased animals or plants shall be conducted in conformity with all applicable federal, State and County laws and regulations. (Ord. No. 75-113, § 2, 12-2-75)

25-6. Safety hazards, dangerous articles and fueling operations.

25-6.1 *Cleaning of equipment.* No person shall use flammable liquids in the cleaning of aircraft or aircraft engines, propellers or other appliances, equipment or parts of aircraft, unless such cleaning operations are conducted in accordance with National Fire Protection Agency (NFPA) standards and all applicable Dade County codes. (Ord. No. 75-113, § 2, 12-2-75)

25-6.2 *Open-flame operations.* No person shall conduct any open-flame operations in any area on an Airport unless specifically approved in writing by the Department. Any such activities, if authorized, shall be conducted in strict accordance with NFPA standards, the Department's authorization and applicable Dade County codes. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 79, 3-7-95)

25-6.3 *Powder-activated tools.* No person shall use powder-activated tools or fastening devices any place on the Airport without prior written authorization of the Department. (Ord. No. 75-113, § 2, 12-2-75)

25-6.4 *Storage of material.*

(a) No person shall keep or store material or equipment in such manner as to constitute a fire hazard or be in violation of applicable Dade County codes or Operational Directives of the Department.

(b) All storage of material in buildings shall be arranged in height not to extend above the lower or bottom cord of roof trusses and shall not be closer than eighteen (18) inches below sprinkler heads. Storage areas shall provide aisles adequate for passage of Fire Department personnel and equipment throughout the area and between such storage areas and all outside walls. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 80, 3-7-95)

25-6.5 *Storage of hazardous material.* No person shall keep or store any flammable liquids, gases, explosives, signal flares or other hazardous material on an Airport, except in containers and receptacles, and in structures or areas, specifically approved for such storage, in compliance with the requirements of NFPA standards, Federal Aviation Regulations and applicable Dade County codes and as provided in subsection 25-6.22(a) and (b). (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 81, 3-7-95)

25-6.6 *Lubricating oil.*

(a) No person shall keep or store lubricating oils on the Airport, except in containers and receptacles, designed for such purpose, and in structures or areas specifically approved for such storage in compliance with the requirements of the NFPA standards, Federal Aviation Regulations and applicable Dade County codes.

(b) No person shall transport lubricating oils to points of use except in safety cans or vehicles approved for such purpose by applicable Dade County codes.

(c) No person shall store empty lubricating oil drums or cans except in approved areas.

(d) No hydrocarbon products, oil-water mixtures with concentrations of greater than five (5) parts per million hydrocarbons or other industrial waste water shall be dumped or

permitted to drain onto paved or unpaved surface areas of the Airport, directly into Airport drainage ditches, canals, rivers, ponding areas, into Airport storm drains, or directly into the sanitary sewer system. Such matter shall be discharged only into approved industrial waste water collection and treatment systems or disposed of in an alternate manner approved by the Department or the County's Department of Environmental Resources Management. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 82, 3-7-95)

25-6.7 *Waste.* Lessees of hangars, aircraft servicing or maintenance buildings, the Terminal Building, or other Airport areas shall provide suitable metal safety receptacles with operating, self-closing covers for the storage of oily wastes, rags and other rubbish and trash. Unless such requirement is waived in writing by the Department, all exterior waste storage and receptacle areas shall be screened from public view, including from aircraft. All waste within this general classification shall be removed by the lessees from the Airport premises daily, or as required by applicable Dade County codes, whichever shall be the more stringent. (Ord. No. 95-41, § 83, 3-7-95)

25-6.8 *Smoking.* No person shall smoke or carry lighted cigars, cigarettes, pipes, matches or any open flame inside any facility or leasehold designated for bulk fuel storage (a "tank farm") or within fifty (50) feet of any aircraft, or the nearest point of an aircraft being fueled or defueled, or of the site of a flammable liquid spill unless such person is in a building or other enclosed area where smoking is not prohibited. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 84, 3-7-95)

25-6.9 *Cleaning fluids.*

(a) No person shall use flammable substances for cleaning hangars or other buildings on the Airport.

(b) No person shall store flammable cleaning fluids, except in containers with dispensing devices approved by NFPA standards and applicable Dade County codes.

(c) No person shall transport flammable cleaning fluids to points of use except in safety cans approved by NFPA standards and applicable Dade County codes. (Ord. No. 75-113, § 2, 12-2-75)

25-6.10 *Leasehold cleanliness.* All lessees on the Airport shall keep all areas of the premises leased or used by them clean and free of oil, grease and other flammable material. The floors of hangars and other buildings shall be kept clean and continuously kept free of rags, waste material or other trash or rubbish. (Ord. No. 75-113, § 2, 12-2-75)

25-6.11 *Care of aircraft ramp, apron and parking areas.* Any person, including the owners or operators of aircraft and into-plane fuelers, causing overflowing or spilling of oil, grease, fuel, sanitary waste water, any hazardous material or any similar material anywhere on an Airport, shall be responsible for the immediate clean-up of such spillage and notification as required by subsection 25-6.23(e). Upon the default of the responsible person to clean such area, the Department, or other authorized representative of the County, shall provide the necessary cleaning and charge the responsible person for the expense thereof. In the event of a spill which occurred in connection with the fueling or defueling of an aircraft, the responsible party, for purpose of billing for Department incurred clean-up costs, shall be the party named in the "Fuel Spill Incident Report," prepared by the Department. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 85, 3-7-95)

25-6.12 *Doping, spray painting and paint stripping.*

(a) No person shall perform doping processes, spray painting, or paint stripping except in areas or facilities approved for such purposes under NFPA standards and applicable Dade County codes.

(b) No person shall enter or work in a dope room while doping is in process, or in a spray-painting room or area while spray painting is being conducted, unless such person is properly clothed for purposes of safety and self-protection in accordance with NFPA standards and applicable Dade County codes. (Ord. No. 75-113, § 2, 12-2-75)

25-6.13 *Fire extinguishers.* No person shall tamper with fire-extinguishing equipment at the Airport at any time, nor use such equipment for any purpose other than firefighting or emergency fire prevention. All fire-extinguishing equipment shall be maintained in accordance with the adopted recommendations of NFPA, and other applicable Dade County codes. (Ord. No. 75-113, § 2, 12-2-75)

25-6.14 *Use of potentially wind-borne materials.* No person shall use any material, such as oil absorbent or similar material, in such a manner as will create a hazard to persons or property when picked up, swirled or blown about by the blast from an aircraft engine or by a wind. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 86, 3-7-95)

25-6.15 *Operating motor vehicles in hangars.* No person, except in an emergency, shall operate a tractor, tug, or other motor

vehicle in any hangar or other building used for aircraft maintenance facility when an aircraft is present, unless the exhaust system of such tractor, tug, or other motor vehicle is protected by screens or baffles to prevent the escape of sparks or the propagation of flame, in accordance with requirements of NFPA standards and applicable Dade County codes. (Ord. No. 75-113, § 2, 12-2-75)

25-6.16 *Grounding of aircraft in hangars.* No person shall park an aircraft in any hangar or other structure on the Airport, unless the aircraft is grounded in accordance with the requirements of the Federal Aviation Regulations, NFPA standards and applicable Dade County codes as specified in Operational Directives. (Ord. No. 75-113, § 2, 12-2-75)

25-6.17 *Motorized ground equipment near aircraft.* No person shall park motorized ground equipment near any aircraft in such manner so as to prevent it or other ground equipment from being readily driven or towed away from the aircraft in case of an emergency. (Ord. No. 75-113, § 2, 12-2-75)

25-6.18 *Repairing of aircraft.* No person shall repair an aircraft or aircraft engine, propeller, or other aircraft apparatus in any area of an Airport other than an area leased for such purpose or areas, if any, specifically designated by posted sign or Operational Directive for such purpose, except that minor adjustments or repairs may be made while the aircraft is at an aircraft parking position, stand or apron being prepared for departure. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 87, 3-7-95)

25-6.19 *Operating aircraft engines in hangars.* The starting or operating of aircraft engines, including on-board auxiliary power units (APU's), inside any hangar, other than the air rotation of jet engines without ignition, is prohibited. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 88, 3-7-95)

25-6.20 *Heating systems in hangars.* Heating in any hangar shall be only by approved systems or devices as listed by the Underwriters Laboratories as suitable for use in aircraft hangars, and shall be installed in the manner prescribed by applicable Dade County codes. (Ord. No. 75-113, § 2, 12-2-75)

25-6.21 *Electrical equipment and lighting systems.*

(a) Explosion-proof or vapor-proof electrical equipment shall be used as required in areas defined as hazardous by NFPA or Dade County codes. No portable lamp assembly shall be used in any maintenance shelter or hangar without a proper protective guard or shield over such lamp assembly to prevent breakage.

(b) All electric power-operated tools and equipment shall be shut off while not in actual use.

(c) Electrical lighting systems in hangars, aircraft maintenance facilities or other areas where explosive fumes are present shall be as required by NFPA standards and Dade County codes. (Ord. No. 75-113, § 2, 12-2-75)

25-6.22 *Explosives, corrosives, poisons, compressed gases, and radiological materials.*

(a) No person shall store, keep, handle, use, dispense or transport at, to or from the Airport any Class A explosive (as defined by the "Hazardous Material Regulation of the Department of Transportation").

(b) No person shall store, keep, handle, use, dispense or transport at, to or from the Airport any Class B or Class C explosive, Class A poison, or red label materials (as defined by the "Hazardous Material Regulation of the Department of Transportation") in a manner other than in conformity with the applicable regulations of the Air Transport Association of America, the International Air Transport Association, the United States Department of Transportation, and the recommendations of the National Fire Protection Association.

(c) Other than for emergency purposes as defined by Federal Aviation Regulations, no person shall carry a compressed air or gas tank aboard a commercial aircraft, unless such tank is reduced to zero pressure, or is an integral component of the aircraft system. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 89, 3-7-95)

25-6.23 *Fueling and defueling.* The following rules shall govern and control the fueling and defueling of aircraft and motor vehicles at the Airport:

(a) No person shall fuel or defuel an aircraft while an operating engine of such aircraft is running; provided, however, that nothing herein shall prohibit fueling or defueling of an aircraft during aircraft APU operations, and provided further in a situation resulting from an inoperative on-board APU, a jet engine mounted at the rear of the aircraft or on the wing on the side opposite the fueling point may be operated to provide aircraft electrical power during fueling, provided:

(1) The operation follows procedures published by the manufacturer of the aircraft and its operator to assure safety of the operation.

(2) Prior approval is obtained from the Department's Airport operations office.

(3) The Fire Department is on standby watch at the aircraft involved.

(b) As specified by NFPA standards, no person shall place into operation any electrical appliance in an aircraft when the aircraft is being fueled or defueled.

(c) No aircraft shall be fueled or defueled unless the aircraft and the fuel dispensing apparatus shall both be electrically grounded or bonded as required by Federal Aviation Regulations, NFPA standards, Dade County ordinances, and applicable Operational Directives.

(d) When a fuel spill over five (5) feet in diameter occurs, the Fire Department shall be notified immediately and valves and dome covers shall be shut down. If the engine of the fueling vehicle is running at the time of the fuel spill, the vehicle shall be removed from the area unless contrary orders are issued by the senior fire officer at the scene. Conversely, if the engine of a fueling vehicle is shut down at the time of the fuel spill, it shall remain shut down unless a fire has already started or until the senior fire officer at the scene orders the vehicle moved. In no event shall fueling or defueling operations resume following a fuel spill until all areas upon which fuel has spilled or flowed over are thoroughly flushed and the senior fire official at the spill site has issued an order permitting the resumption of fueling operations.

(e) No passenger shall be permitted in any aircraft during fueling or defueling, unless a cabin attendant is present at or near the cabin door and unless a passenger boarding ramp or bridge is in place at the cabin door.

(f) No person shall use any material within fifty (50) feet of the nearest point of an aircraft during fueling or defueling of the aircraft which may cause a static spark.

(g) No person shall engage in aircraft fueling and defueling operations without adequate fire extinguishers within ready reach.

(h) No person shall start the engine of any aircraft when there is a flammable liquid on the ground in the vicinity of such aircraft.

(i) No person shall fuel or defuel an aircraft with fueling hoses and other equipment or apparatus which are not in a safe, sound and nonleaking condition in accordance with NFPA standards.

(j) All hoses, funnels, and appurtenances used in fueling and defueling operations shall be equipped with a positive grounding device in good order to prevent ignition of flammable liquids due to static spark.

(k) The fueling and defueling of aircraft shall be conducted at a distance of at least fifty (50) feet from any hangar or other building unless at a Terminal aircraft loading/unloading gate or fifty (50) feet from any combustion or ventilation air intake to any boiler, heater, or incinerator room in accordance with NFPA standards.

(l) Maintenance and testing of aircraft fueling systems shall be conducted under controlled conditions, in strict compliance with NFPA 410(C) or subsequent replacement publications.

(m) Refueling vehicles shall be stored and maintained outdoors in areas authorized by the Department, except for the accomplishment of minor adjustments or repairs necessary to move such units to the storage area when failure occurs elsewhere on the Airport. No fuel trucks, empty or otherwise, shall be brought into, kept or stored within any building at the Airport, unless said building is used exclusively for that purpose, or in those instances under controlled conditions during approved fueling and defueling operations.

(n) No fueling vehicles other than hydrant carts shall be backed within twenty (20) feet of an aircraft, unless a person is present outside the fueling vehicle to assist the operator thereof.

(o) When a fire occurs in or near a fuel delivery device while servicing an aircraft, the Fire Department shall be notified immediately, fueling shall be discontinued immediately, emergency valves and dome covers shall be shut down at once and the fueling vehicles and equipment shall immediately be removed from the vicinity of the aircraft unless deemed unsafe. Any persons on board the aircraft shall be evacuated and other equipment removed from the area. If necessary, the aircraft shall be towed to a position at a safe distance from buildings and other aircraft. Upon his arrival the senior fire officer will be in charge.

(p) The transfer of fuel from one fuel service vehicle to another (commonly referred to as "tankering") is prohibited within the AOA, except for emergency conditions under the standby watch of the Fire Department, and except for the required resupply of a service vehicle in conjunction with the supply of large quantities of fuel; e.g. for wide-bodied aircraft; provided, however, that all equipment and aircraft must be properly grounded.

(q) No airborne radar equipment shall be operated or ground tested in any area on the Airport where the directional beam of high

intensity radar is within three hundred (300) feet, or the low intensity beam is within one hundred (100) feet, of an aircraft fueling operation, aircraft fueling truck, or aircraft fuel or flammable liquid storage facility, unless an approved shielding device is provided and used during the radar operation.

(r) Aircraft fueling vehicles shall be equipped with storage tanks which are sectionalized into compartments of not over two thousand (2,000) gallons' capacity or in lieu thereof shall be equipped and operated in accordance with alternate procedures approved, in writing, by the Department. Fueling vehicles, which are not in compliance with the requirement for sectionalization or for which alternate full operational procedures have not been approved, may be authorized for continued use only on a restricted basis and only upon specific individual authorization by the Department, in writing. (Ord. No. 77-88, § 1, 12-6-77)

(s) Motor vehicles shall be fueled on the Airport only from approved locations and dispensing devices.

(t) Yearly safety inspection shall mean inspection of equipment and vehicles operated on the AOA for emission controls and safety items such as lights, brakes, windshields, tires, and the like. All safety items shall be in good working order.

(u) The use of automobile fuel products is prohibited for use in aircraft, unless the aircraft is individually certified for the use of such fuel.

(v) No person shall vend, sell, or offer for sale on an Airport any petroleum fuel or lubricating product without authorization in writing from the Department.

(w) No person shall transport onto an Airport, other than by aircraft for use in such aircraft, any fuel product or lubricating product, unless authorized in writing by the Department. Notwithstanding the above, aircraft owners shall not be denied the right to bring fuel and lubricating products onto an Airport for the purpose of self-fueling, provided the transport of the fuel and lubricating products onto the Airport and the self-fueling activities are otherwise in compliance with this chapter and applicable fire and environmental codes, and are otherwise authorized by the lessee of the premises on which such self-fueling activity occurs.

(x) No person shall transport onto an Airport. other than by aircraft for use in such aircraft, any fuel product or flammable material unless in approved containers or vehicles.

(z) All persons fueling aircraft at any gate parking position that is equipped with an operable fuel hydrant connected to the underground fueling system, shall use such hydrant system for aircraft fueling, unless otherwise specifically authorized by the Department on a case-by-case basis.

The applicable Standards and Recommendations of the National Fire Protection Association, as they are amended from time to time, are incorporated herein by reference. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, §§ 90—94, 3-7-95)

25-7. Tenant obligations.

25-7.1 *Structural and decorative changes.* No Airport tenant or lessee shall make or cause to be made any new construction, alterations, additions or improvements of any nature whatsoever, including signs, on or to any leased premises without prior written authorization of the Department. (Ord. No. 75-113, § 2, 12-2-75)

25-7.2 *Damages.* All Airport tenants and lessees shall be fully responsible for the repair of all damages to buildings, equipment, real property, and appurtenances on their leased premises, resulting from its operations or the actions of its employees, agents, licensees or guests. (Ord. No. 75-113, § 2, 12-2-75)

25-7.3 *Use of premises.* No Airport tenant or lessee shall use or permit its leased premises to be used or occupied for any purpose not authorized by its lease or as prohibited by this chapter (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 95, 3-7-95)

25-7.4 *Trailers, trucks; restricted use.* No person shall use or permit the use of any trailed vehicle, truck, bus or van-type vehicle on any Airport for office, storage space, maintenance shop or similar purpose, unless specifically authorized by the Department. (Ord. No. 75-113, § 2, 12-2-75)

25-7.5 *Protection of leased areas.*

(a) No Airport tenant under whose control are any vehicle or personnel gates, doors or any other means of ingress and egress to the AOA or SIDA area at Miami International Airport or at any other County Airport which has a fenced, secured AOA, shall fail to keep the same secured or controlled at all times to prevent the access of unauthorized persons to the AOA. Airport tenants shall be responsible for control and prevention of unauthorized access to the AOA or the leasehold areas of other tenants from the tenant's leased premises.

(b) No Airport tenant under whose control are any vehicle or personnel gates, doors or

other means of ingress or egress to or from the AOA or a SIDA area at Miami International Airport shall fail at all times to have in effect a positive access control program. In no event shall tenant-controlled keys, lock combinations, or the like be allowed off the leased premises without such tenant's knowledge and consent.

(c) The internal security of leased areas at the Airport shall remain the sole responsibility of the lessee. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 96, 3-7-95)

25-7.6 *Common use areas.*

(a) No Airport tenant or other authorized Airport user shall utilize a common use area, including an aircraft gate position in a manner which interferes with the use of such area by another or which departs from established and authorized procedures for the use of such area.

(b) No Airport tenant or other authorized Airport user shall utilize a common use area, including an aircraft gate position, unless properly trained and authorized personnel supplied by such tenant or user are present for purposes of control and coordination during all periods of such use.

(c) Upon occupancy of any common use aircraft gate position, the user assumes full responsibility for compliance with Federal and local security requirements and shall be liable for all fines and penalties resulting from failure to perform or abide by same. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, §§ 97, 98, 3-7-95)

25-7.7 *Public service.*

(a) Aircraft owners and operators utilizing the Terminal at Miami International Airport shall provide, directly or under contract with others, a full range of services, including, but not limited to, porter service, wheelchair services, screening and security services as required by Federal Aviation Regulations, required by its passengers in connection with their use of the Airport. Minimum standards may be established by Operational Directive of the Department.

(b) All Terminal employees, including but not limited to counter and gate agents, porters and security screening, whose prime responsibility is direct service to the public, shall, in addition to any Department issued identification badge, display clearly discernible employer issued personal identification such as a nameplate and company identification on his or her outer garments, in plain view above the waist. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 99, 3-7-95)

25-8. Control of landside traffic.

25-8.1 *Governing law.* The regulation of all traffic using Airport roadways and parking facilities shall be governed by the applicable provisions (including definitions) of the Florida Statutes, Chapter 30 of the Code of Metropolitan Dade County, Florida, and this chapter. (Ord. No. 75-113, § 2, 12-2-75)

25-8.2 *Traffic-control devices.* No person shall operate a vehicle on the upper or lower vehicle drives of the Terminal at Miami International Airport or on any roadways on an Airport, in violation of official traffic-control devices. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 100, 3-7-95)

25-8.3 *Parking.*

(a) No person shall stop, stand or park a vehicle on the upper or lower vehicular drives at the Terminal Building at Miami International Airport, in violation of any official traffic-control device or an oral directive provided by an authorized law enforcement officer or an authorized uniformed traffic enforcement employee of the Department.

(b) No person operating a commercial vehicle for hire shall load or unload persons at curbside loading zones not designated for such purpose for such classification of service within the Terminal Building area of Miami International Airport. Such loading and unloading zones and any restricted use by authorized commercial vehicles, or other vehicles shall be established by the Department and shall be designated by appropriate traffic-control devices, signs or Operational Directives.

(c) No person shall stop, stand or park a vehicle on any Airport roadway or in a curbside area at the terminal, unless so permitted or required by an official traffic-control device or pursuant to subsection 25-8.3(b) above.

(d) No person shall stop, stand or park any vehicle on the upper or lower vehicular drives at the Terminal Building at Miami International Airport, for the purpose of making deliveries of goods, wares or merchandise to the Terminal Building except during times or in areas designated by the Department, or as otherwise posted.

(e) No person shall park or stop a trailer, semitrailer, cargo trailer or other vehicle at any loading pier or dock at the Airport except for the purpose of the immediate loading or unloading of such vehicle, unless otherwise authorized by the Department.

(f) No person shall park or stop a vehicle at the Airport in such a manner as to block any Airport roadway or otherwise impede

the normal flow of vehicular traffic on any Airport roadway, including those roadways to, from or within any Airport facility, without prior notification of and authorization by the Department. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 101, 3-7-95)

25-8.4 *Airport parking facilities.*

(a) No person shall enter or use an Airport motor vehicle parking facility or parking space contrary to its posted or restricted use.

(b) No person shall stop, park or leave a vehicle unattended in any Airport motor vehicle parking facility or parking space or area without having positioned said vehicle in a designated stall or area in such a manner as not to obstruct the proper movement of other vehicles in the parking facility or area or utilization by other vehicles of driveways or adjacent parking spaces.

(c) Public parking facilities.

(1) No person shall park or leave a vehicle unattended in any motor vehicle parking facility, open to the public, without having properly secured a required parking claim check or having paid the required toll, in the case of metered or similarly controlled parking areas.

(2) No person shall remove or attempt to remove any vehicle from an Airport parking facility open to the public without making payment of the parking charge established by the Board, unless authorized by the Department.

(3) No person, unless authorized by the Department, shall remove or attempt to remove a claim check from an Airport parking facility claim check dispensing machine, other than as an operator of a vehicle entering an Airport parking facility, in which case, such person shall remove only one (1) claim check from the dispensing machine.

(4) It shall be unlawful for any person to remove a claim check or checks from, or to otherwise operate, an Airport parking facility claim check dispensing machine, for the purpose of avoiding or enabling another person to avoid payment of the lawful charge of the use of said parking facilities.

(5) No person shall remove or attempt to remove a vehicle from an Airport parking facility by presenting a claim check other than the claim check originally dispensed to the operator of such vehicle at the time that vehicle entered the parking facility.

(6) No person shall present a parking claim check requiring payment of parking fees upon exiting a motor vehicle parking facility which does not indicate an accurate record of the length of time said vehicle was actually within the parking facility for which the time and charges have accrued, inaccuracies of time recording equipment excepted.

(d) Employee parking facilities.

(1) No person shall park or operate a vehicle on any Airport parking facility established or authorized for the use of persons employed at the Airport without complying with all procedures established by the Department for the control of such vehicle and for the use of such parking facility.

(2) No person shall enter such employee parking facilities or use the transportation service provided in support thereof unless possessing and displaying, if requested a valid identification badge issued or approved by the Department.

(3) No person shall allow any other person to use their identification badge, their vehicle and/or vehicle parking decal in order for the other person to use any Airport public or employee parking facility or any employee transportation service. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, §§ 102—104, 3-7-95)

25-8.5 *Removal of vehicles.*

(a) Either law enforcement officers employed by the County's Police Department or specifically designated employees of the Department are authorized to immediately remove or cause the removal of any vehicle, when such vehicle is parked in violation of any provision of these rules and regulations. The operator of any Airport parking facility is authorized to remove or cause the removal of any vehicle from such parking facility to said designated impoundment area when such vehicle is parked in violation of any provision of subsection 25-8.4 of this chapter. Vehicles so removed shall be temporarily impounded on Airport property until the owner has complied with recovery provisions established by the Department or the vehicle is disposed of in accordance with applicable state or local requirements. Without limiting the generality of the foregoing provisions, a vehicle parked in any area or zone designated by signs as a "no parking zone," or "tow away zone," or "parking prohibited" may be removed in accordance with this section.

(b) Whenever any vehicle is moved to the aforementioned temporary impoundment area, a written report of such removal shall promptly be made in accordance with Operational Directives issued by the Department.

(c) The owner of any vehicle so removed to a temporary impoundment area, or his authorized representative, may recover possession of such vehicle within seven (7) days after its removal to the temporary impound-

ment area (unless such period is extended by the Department), upon acceptable proof of ownership and payment of appropriate parking charges accrued up to the time of removal and further payment of storage and towing charges incident to such removal at the Airport. Charges for towing and storage of removed vehicles shall be those approved or authorized by the Board from time to time and posted at the vehicle recovery area.

(d) In the event any such vehicle is not recovered by its owner or his authorized representative from the temporary impoundment area within the period established in subsection 25-8.5(c) above, such vehicle may be considered as abandoned and removed from the temporary impoundment area in accordance with Airport procedures for abandoned vehicles.

(e) The owner or authorized representative of any vehicle removed from the temporary impoundment area as abandoned may recover possession of such vehicle upon proof of ownership and payment of appropriate charges accrued against such vehicle for parking, towing and storage on the Airport in addition to the charges provided in the Code of Metropolitan Dade County, unless state law provides otherwise.

(f) Relocation of vehicles. Either law enforcement officers employed by the County's Police Department, designated employees of the County, or authorized persons under contract to the County shall have the right to relocate properly parked private vehicles, when such is necessary to protect such vehicle or when such vehicle is so parked as to interfere with construction or other like activities on the Airport. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 88-37, § 7, 5-3-88; Ord. No. 95-41, §§ 105, 106, 3-7-95)

25-8.6 *Abandoned vehicles and equipment removal.*

(a) No person shall abandon any vehicle or equipment on the Airport. Either law enforcement officers employed by the County's Police Department or designated Department personnel are authorized to remove or cause the removal, in accordance with applicable state or County regulations, of any abandoned vehicles or equipment to the area of the Airport designated for the impoundment of such by the Department. For the purposes of this section, any vehicle or equipment, except one properly parked in an Airport parking facility, in a parking facility under the control of an Airport tenant of the County, or other area authorized by the Department, which shall have been left unattended upon the Airport for a period of forty-eight (48) hours or more shall be presumed to have been abandoned and may be considered and treated as abandoned.

(b) No person shall park or store a vehicle or equipment in an Airport parking facility, in a parking facility under the control of an Airport tenant of the County, or other area authorized for parking by the Department, which shall have been left unattended or inoperable upon the Airport for a period of sixty (60) days or more without a written permit from the Department or its authorized agent. Vehicles so left unattended shall be presumed to have been abandoned and may be considered and treated as such, in accordance with provisions of subsections 25-8.5 and 25-8.6(a) of this chapter; however, the Department may approve the removal of an abandoned vehicle to a location off the Airport and not require the interim storage of such vehicle in the Airport impoundment area.

(c) Upon the removal of such abandoned vehicle or equipment to the Airport impoundment area the provisions of subsection 25-8.5(b), (c), (d) and (e) of this chapter shall be observed to the extent applicable. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 107, 3-7-95)

25-8.7 *Certain vehicular traffic prohibited.*

(a) No person shall operate any truck, trailer, semitrailer, truck tractor, special mobile equipment, house trailer, dump truck, truck-mounted shovel, crane, transit mixer, or any other vehicle designated for the transportation of property to which machinery has been attached, on any Airport roadway for the purpose of utilizing such roadway as a short-cut thoroughfare between any points outside the boundaries of the Airport, unless otherwise directed by a Police Officer, or pursuant to a written permit issued by the Department.

(b) No person shall operate any vehicle on the Airport contrary to posted load or height limits.

(c) Separate crane clearance authorization is required for all vehicles with a height of fifteen (15) feet or higher operating at any Airport. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 108, 3-7-95)

25-8.8 *Pedestrians.*

(a) No pedestrian shall cross the upper or lower vehicular drives at the Terminal Building, Miami International Airport, except at marked crosswalks.

(b) No pedestrian shall cross any Airport roadway having marked intersection crosswalks, except at such crosswalks.

(c) No pedestrian shall cross or walk upon any other Airport roadway except in conformance with the applicable provisions of Section 30-221 of the Code of Metropolitan Dade County, Florida, as it may be amended from time to time.

(d) Every person operating a vehicle on the Airport roadway shall yield the right-of-way to any pedestrian in a marked pedestrian crosswalk. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 109, 3-7-95)

25-9. Control of vehicular traffic on the air operations area.

25-9.1 *Governing law.* The control of all vehicular traffic on the AOA shall be governed by applicable laws of the state and County, and the rules and regulations prescribed herein as enforced by any designated Department representative or law enforcement officer. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 110, 3-7-95)

25-9.2 *Authority to operate on the air operations area.*

(a) No person shall operate or cause to be operated any motor vehicle on the AOA, unless such operation is required on the AOA and is directly related to an aviation activity on the Airport, the business of the Department, or the business of a tenant, an authorized subtenant or other authorized user of the Airport.

(b) No person shall enter upon the AOA at Miami International Airport other than pursuant to subsection 25-2.20 herein, nor shall any person drive a motor vehicle on the AOA without a motor vehicle identification permit as prescribed by subsection 25-9.7 herein, a valid driver's license as prescribed by subsection 25-9.8 herein, and, unless accompanied by a Departmental escort, or else be in possession of a certificate of completion of the AOA driver training course administered or approved by the Department.

(c) Insurance against personal injury and property damage shall be provided in the amounts required by the Department from time to time for individual Airports. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 111, 3-7-95)

25-9.3 *Yielding to aircraft.* All motor vehicles on the AOA shall yield the right-of-way to aircraft in motion, under all conditions. This requirement shall include vehicles within designated roadways on the AOA. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 112, 3-7-95)

25-9.4 *Crossing runways and taxiways.*

(a) No person at an Airport with an operating control tower shall operate a motor vehicle beyond the hold bars of an active runway, or (i) closer than one hundred fifty (150) feet from the edge of an active runway, or (ii) closer to an active taxiway than as may be provided in the specific Operational Directives for the Airport, or as may subsequently be required by regulations, without first having received clearance to proceed from the control tower.

(b) During periods when a control tower is shut down or at Airports without an operations control tower, no person shall operate a motor vehicle beyond the hold bars of an active runway, or closer to an active taxiway stated in the specific Operational Directives for the Airport, or as may subsequently be required by regulations, without first determining that no aircraft are approaching and transmitting his or her intentions on the appropriate common traffic advisory frequency (C.T.A.F.). Movement across said runway or taxiway shall then be made expeditiously. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 113, 3-7-95)

25-9.5 *Operations near aircraft.* No person, other than the operator of an aircraft servicing vehicle for that aircraft, shall operate a motor vehicle on the AOA at Miami International Airport so as to pass within twenty (20) feet of a parked aircraft, unless traveling on a marked interior service road, or contrary to published vehicle operating procedures, including but not limited to specific routes or zones marked on pavement or regulatory signs. In the case of an aircraft being loaded or unloaded at ground level, on the Terminal Apron no vehicle shall be operated between said aircraft and the Terminal concourses while passengers are enplaning or deplaning. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 114, 3-7-95)

25-9.6 *Two-way radio requirements.* The operator of a motor vehicle requiring clearance to operate on or across an active taxiway or runway at an Airport with an operating control towner shall maintain direct two-way radio contact with the control tower, or in the event a two-way radio is inoperable or unavailable, shall operate said vehicle only under the escort of an authorized motor vehicle equipped with a two-way radio in contact with the control tower. This requirement shall not apply, however, to operators of vehicles authorized by the Department to receive preestablished visual signals from the control tower, or to operators of vehicles fol-

lowing preestablished special procedures of the Department which have been approved by the Federal Aviation Administration. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 115, 3-7-95)

25-9.7 *Motor vehicle identification permits.*

(a) No person shall operate a motor vehicle on the AOA at Miami International Airport without an official motor vehicle identification permit issued pursuant to an Operational Directive of the Department, as defined in subsections 25-9.7(b), (c), and (d), and without company identification conspicuously displayed thereon.

(b) An AOA regular vehicle permit may be issued for each motor vehicle authorized by the Department to operate on the AOA at Miami International Airport on a regular, continuing basis and may be renewed annually or for such longer period as may be determined by the Department. Such permit shall be permanently affixed to the upper center of the windshield, or where there is no windshield, to the driver's side of the vehicle or to such other place on the vehicle as designated by the Department. The driver of a vehicle for which an AOA regular vehicle permit has been issued shall at all times comply with the terms of the permit as established by the Department, which terms shall include the requirement that an AOA driver's certificate be obtained from the Department as a condition of entry on the AOA by such driver, in accordance with Section 25-9.2(b) of this chapter.

(c) An AOA temporary vehicle permit may be issued for temporary, or limited access for each motor vehicle used on the AOA at Miami International Airport for prime contractors and others engaged in construction or other activities for or approved by the Department. This permit shall be conspicuously displayed on the motor vehicle to which it is issued. Unless operating within a designated construction area, any motor vehicle bearing such permit shall, at all times while on the AOA, be under escort by an authorized escort vehicle, unless otherwise authorized by the Department.

(d) An AOA temporary vehicle permit may be issued for a limited area and time for motor vehicles which require occasional or "one-time" access to a specific location on the AOA at Miami International Airport to make authorized pick-ups or deliveries. This permit shall be issued at the discretion of the Department and shall be obtained only at Department-controlled AOA gates to AOA upon clearance by an Airport tenant or by other authorized personnel, and is valid only for the length of time indicated thereon. It shall be returned to an access gate at or prior to the expiration of the allotted time. This permit shall be conspicuously displayed on the motor vehicle to which it is issued. Any motor vehicle bearing such permit shall, at all times while on the AOA, be under escort, unless otherwise authorized by the Director.

(e) All motor vehicle identification permits shall remain the property of the Department, and are not transferable. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 116, 3-7-95)

25-9.8 *Driver's license.* No person shall drive a motor vehicle on the AOA, unless such individual carries on his person at all times a currently valid operator's license for the type vehicle being operated, issued in accordance with federal law or statutes of the State of Florida; provided however, that the Department may require by Operational Directive that operators of specific types and classes of equipment operated on the AOA must obtain operator's licenses for the type of vehicle involved, even though operator's licenses may not then be required for such type of vehicle by state or federal laws. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 117, 3-7-95)

25-9.9 *Designated vehicular routes.* No person shall operate a motor vehicle on the air operations area, except operators of emergency vehicles proceeding in response to an alarm or Department vehicles in the performance of individual duties, unless such person operates on established vehicular routes only. (Ord. No. 75-113, § 2, 12-2-75)

25-9.10 *Speed limits and traffic control.*

(a) No person shall operate any motor vehicle, other than an emergency vehicle proceeding in response to an alarm, on the air operations area at a speed in excess of twenty (20) miles per hour, except as otherwise posted.

(b) No person shall operate any motor vehicle on the air operations area (including the service drives within the Terminal Building at Miami International Airport) in violation of any traffic-control device. (Ord. No. 75-113, § 2, 12-2-75)

25-9.11 *Reckless driving.* No person shall operate a motor vehicle on the air operations area in a reckless manner, so as to indicate a willful or wanton disregard for the safety of persons or property. (Ord. No. 75-113, § 2, 12-2-75)

25-9.12 *Careless driving.* No person shall operate a motor vehicle on the air operations area in a careless manner, which is other

than in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic and use of roadways, weather conditions and all other attendant circumstances, so as not to endanger the life, limb or property of any person. (Ord. No. 75-113, § 2, 12-2-75)

25-9.13 *Vehicle and equipment condition and safety requirements.* No person shall operate a motor vehicle or equipment on the AOA unless such vehicle or equipment is in good operating condition and repair for a unit of its type and is equipped with at least the following safety equipment in fully operable condition:

(a) Motor vehicle lights:

(1) All motor vehicles operated on the AOA, except motor vehicles designed for only one (1) headlight and except tow tugs and other specialized ramp equipment designed with only taillights, shall be equipped with two (2) headlights and one or more red taillights and brake lights.

(2) All headlights and taillights shall be kept lighted between the hours of sunset and sunrise and at all times when passing through unlighted or poorly lighted areas.

(3) Any motor vehicle, other than emergency vehicles, operating on runways or taxiways of the AOA shall display an amber overhead flashing or rotating light at all times while so operating; provided, however that between the hours of sunrise and sunset a motor vehicle not so equipped may so operate if such vehicle displays a checkered flag approved by the Department. The use of red or blue flashing or rotating lights shall be limited to emergency vehicles only.

(4) All motor vehicle lights shall be of sufficient brilliance to assure their capability of being seen, but not so as to temporarily blind others.

(5) All baggage and cargo carts shall be equipped with reflectors or fluorescent tape material, two (2) each on the front, the rear and both sides of the cart. The reflectors shall be standard truck types. If fluorescent tape is used, each piece shall have a reflective surface of not less than fourteen (14) square inches. Reflectors or tape on the front and front sides shall be amber and on the rear and rear sides shall be red.

(b) Motor vehicle brakes:

(1) All motor vehicles operating on the AOA shall be equipped with a properly functioning braking system, suitable for the specific type of equipment being operated.

(2) The operator of a motor vehicle on the AOA shall test the brakes of such vehicle upon approaching an aircraft within such distance as necessary to avoid a collision with such aircraft in the event of brake failure.

(c) Motor vehicle windows and mirrors:

(1) Every motor vehicle operating on the AOA shall be equipped with at least one mirror, so adjusted that the operator of such vehicle shall have a clear view of the road behind for a distance of at least two hundred (200) feet. Exceptions to this requirement are to be requested through the Director, and if justified, authorization will be granted on an individual basis.

(2) The windshields and other windows of a motor vehicle operating on the AOA shall be free of cracks, blisters, discoloration or any other defect causing distortion or obstruction of the vision of the operator thereof.

(3) The use or placing of posters, stickers, signs or other objects on the windshield or other windows of a motor vehicle operating on the AOA, other than those required by the Department or by law, is prohibited.

(4) The vision of the operator of a motor vehicle on the AOA shall not be obstructed by an extended superstructure or load. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, §§ 118—120, 3-7-95)

25-9.14 *Emergency vehicles.* Upon the approach of a Police, ambulance, Fire Department, or other emergency vehicle giving an audible or visual signal, each person operating another motor vehicle on the AOA shall immediately yield the right-of-way to such vehicle, until the emergency vehicle has stopped or passed, unless otherwise directed by an Airport law enforcement officer. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 121, 3-7-95)

25-9.15 *Occupants of motor vehicles.* No person shall, while on the Airport, ride on the running board of a moving motor vehicle, stand up in the body of a moving motor vehicle, ride on the outside of the body of a moving motor vehicle, or ride on such a vehicle with his arms or legs protruding from the body of the vehicle, unless required to do so in the performance of his duties. (Ord. No. 75-113, § 2, 12-2-75)

25-9.16 *Tugs and trailers.*

(a) No person shall operate a tug, trailer, or other motor vehicle, on the AOA, towing a train of baggage or cargo carts in excess of five (5) carts or sixty (60) feet long, unless specifically authorized in writing by the Department.

(b) No person shall operate a baggage cart, container dolly, semi-trailer or any other type of trailer on the AOA unless it is

equipped with proper brakes so that when disengaged from a towing vehicle, propeller slipstreams, jet blasts, or wind will not cause it to come free-rolling.

(c) No person shall tow any equipment unless such equipment has engaged positive locking couplings.

(d) No person shall store any tugs, cargo and baggage carts on the AOA, when not in use, except in storage areas designated by the Department. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 122, 3-7-95)

25-9.17 *Traffic control.* Any person operating a motor vehicle on the AOA shall obey all posted regulatory signs, special signs, pavement markings and traffic signals, and all instructions by the control tower, a designated Department employee, or a law enforcement officer. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 123, 3-7-95)

25-9.18 *Parking.*

(a) No person shall park any motor vehicle or motorized or other equipment on the AOA in areas other than those designated or authorized by the Department, nor in any manner contrary to any posted regulatory signs, traffic-control devices or pavement markings.

(b) No person shall park a motor vehicle or motorized or other equipment on the AOA as to interfere with the use of a facility by others or prevent the passage or movement of aircraft, emergency vehicles or other motor vehicles.

(c) No person shall park a motor vehicle or motorized or other equipment on the AOA in such a manner as to interfere with or prevent an aircraft fueling vehicle from being readily driven away from such aircraft in the event of an emergency. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 124, 3-7-95)

25-9.19 *Motor vehicle accidents.*

(a) Any person operating a motor vehicle on the AOA which is involved in an accident resulting in injury to any person or damage to any property, shall

(1) Immediately stop such vehicle at the scene of such accident or as close thereto as possible,

(2) Notify the Metro-Dade Police Department and an authorized representative of the Department, and

(3) Then return to and remain at the scene of the accident until he has fulfilled the requirements of subsection 25-9.19(b). The vehicle shall be stopped and parked during these events so as to minimize any obstructions to aircraft and other vehicles.

(b) Any person operating a motor vehicle on the AOA which is involved in an accident, as defined in subsection 25-9.19(a) and the owner of such vehicle, if other than the operator thereof, shall make a full report of such accident to the Metro Dade Police Department, and to an authorized representative of the Department as soon after the accident as possible, including the names and addresses of the individuals involved, the registration and license number of the vehicle or vehicles involved, and such other information relevant to the accident on request of any law enforcement officer investigating the same; and the operator of any such motor vehicle involved in such accident shall, upon request, exhibit such licenses, registration or other documents relevant to such accident or the persons or property involved to any law enforcement officer investigating the same.

(c) In the event a law enforcement officer investigating an accident pursuant to subsection 25-9.19(b) has reason to believe that a mechanical failure in a vehicle or equipment involved in accident was or may have contributed to the cause of such accident, said law enforcement officer may impound such vehicle or equipment until such time that a mechanical failure can be ruled out as causing or contributing to the cause of the accident. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, §§ 125, 126, 3-7-95)

25-9.20 *Service and repair of motor vehicles.*

(a) No person shall service, clean, repair, maintain, or overhaul any motor vehicle or motorized or other equipment on the AOA except for immediate minimum repairs required to remove said vehicle from AOA because of a breakdown, or as otherwise approved or authorized by lease or Operational Directive of the Department.

(b) No person shall fuel a motor vehicle or motorized equipment on the AOA in any areas other than those established by the Department, or contrary to any procedures which are established by the Department. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 127, 3-7-95)

25-9.21 *Tampering with motor vehicles.* No person shall move, interfere with, or tamper with any motor vehicle, or put into operation the engine of any motor vehicle, or take or use any motor vehicle part, instrument or tool, without the authorization of the owner. (Ord. No. 75-113, § 2, 12-2-75)

25-9.22 *Contractor's access and operations on the air operations area.*

(a) Access to and egress from the site of construction located on the AOA by motor vehicles, cranes and other equipment belong-

ing to or under the supervision of an Airport contractor shall be gained only via routes, through gates, and at such times as may be established or approved by the Department. Request for access to such sites shall be made to the Department a minimum of twenty-four (24) hours in advance.

(b) Construction equipment shall be operated and stored within the AOA, in accordance with procedures established or approved by the Department. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 128, 3-7-95)

25-10. Aircraft and Aircraft Operations.

25-10.1 *Negligent operations prohibited.* No person shall operate aircraft at the Airport:

(a) In a careless or negligent manner,

(b) In disregard of the rights and safety of others,

(c) Without due caution and circumspection, or

(d) At a speed or in a manner which endangers, or is likely to endanger, persons or property, or if such aircraft is so constructed, equipped or loaded, so as to endanger, or be likely to endanger, persons or property. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 129, 3-7-95)

25-10.2 *Compliance with orders.* All aeronautical activities at the Airport shall be conducted in conformity with the current applicable provisions of the Federal Aviation Regulations and Orders, these rules and regulations, Operational Directives issued by the Department and directions of the air traffic control tower. (Ord. No. 75-113, § 2, 12-2-75)

25-10.3 *Denial of departure.*

(a) The Director may prohibit an aircraft from taking-off from the Airport at any time, under any known circumstances which in the judgment of the Director may result in danger to persons or property on or off the Airport, or for any other justifiable reason. Such justifiable reason may include, but is not limited to, the failure to obtain such departure authorization from the Federal Aviation Administration (FAA), as may be required.

(b) No person shall fuel an aircraft when a specific order has been issued by the Department prohibiting the fueling of such aircraft.

(c) The Department may, at any time, prohibit an aircraft from taking off from an Airport for failure of the aircraft owner or operator to report or pay all required aviation fees, or if the Department has placed a lien on the aircraft in accordance with state statutes, said lien has not been satisfied or satisfactorily resolved. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 130, 3-7-95)

25-10.4 *Payment of fees.* Unless otherwise approved by the Department, no aircraft shall take-off from an Airport unless payment or arrangements for payment of fees and charges, if any, for use of Airport facilities, parking or other services rendered by the Department shall have been made. All aircraft operators, except operators of scheduled air carriers operating under special lease contracts or those whose operations are paid for in advance or who have established a credit account with the Department, upon landing and prior to take-off shall register such landing or take-off with the Department in accordance with Operational Directives issued by the Department. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 131, 3-7-95)

25-10.5 *Denial of use of Airport.* The Director may deny the use of the Airport to any aircraft owner, operator or pilot who violates these rules and regulations and Operational Directives issued by the Department. (Ord. No. 75-113, § 2, 12-2-75)

25-10.6 *Aircraft accidents.*

(a) Any person operating an aircraft involved in an accident on the Airport resulting in injury to any person or damage to any property, shall immediately stop such aircraft at the scene of such accident, or as close thereto as possible so as to minimize the obstruction of other aircraft operations or motor vehicle traffic. The person operating said aircraft shall then comply with Federal Aviation Administration Notification Procedures and notify the Department. Such person shall then return to and remain at the scene of the accident until he has fulfilled all reporting requirements, including those specified in subsection 25-10.6(b).

(b) Any person operating an aircraft involved in an accident on the Airport, of the type specified in subsection 25-10.6(a) and the owner of such aircraft, if other than the operator thereof, shall make a full report of such accident to the Metro-Dade Police Department, and to an authorized representative of the Department as soon after the accident as possible, including the names and addresses of the individuals involved, the description of the property and all aircraft involved, the registration and license number of all aircraft involved, and such other information relevant to the accident on request of any law enforcement officer investigating the same; and the operator of any such aircraft involved in such accident shall, upon request, exhibit such licenses, registrations or

other documents relevant to such accident or the persons or property involved to any law enforcement officer investigating the same.

(c) The owner or operator of an aircraft involved in an accident on the Airport shall not move such aircraft from the scene of the accident until authorized to do so by the appropriate federal agencies and the Director. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 132, 3-7-95)

25-10.7 *Removal of disabled aircraft.*

(a) Aircraft owners, operators and tenants shall be responsible for the prompt disposal of disabled aircraft and parts thereof, unless required or directed to delay such action by the Director or an authorized federal agency.

(b) When a disabled aircraft is blocking or delaying the use of any portion of the AOA, the owner or operator of the aircraft shall make immediate arrangements to have such aircraft moved as soon as an authorized representative of the Department and appropriate governmental agencies have authorized such movement. In the event that removal of the aircraft is not initiated as soon as possible, or is not progressing at a rate acceptable to the Department, the Director shall have the right to initiate action to remove the aircraft at the expense and risk of the owner. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 133, 3-7-95)

25-10.8 *Tampering with aircraft.* No person shall interfere or tamper with any aircraft, or put in motion such aircraft, or use or remove any aircraft, aircraft parts, instruments or tools without appropriate positive evidence of the owner's approval thereof. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 134, 3-7-95)

25-10.9 *Enplaning and deplaning.*

(a) No person shall enplane or deplane passengers or cargo at Miami International Airport except in specific areas, assigned by the Department, designated by posted painted ramp markings, established by Operational Directives, or pursuant to permits issued by the Department or Airport lease agreements with the County. Where a passenger aircraft is being loaded or unloaded at ground level, all passengers shall be channeled by the shortest and safest route across the aircraft apron area, under the direction and supervision of the aircraft operator or his authorized representatives. All such aircraft operators shall load and unload an aircraft through designated restricted areas, in accordance with security and operational procedures established by the Department and Federal Aviation Regulations.

(b) No person operating an aircraft shall enplane or deplane passengers or cargo at Miami International Airport other than at aircraft gates or positions or areas established pursuant to subsection 25-10.9(a). All such operators, when deplaning passengers through any part of such an established or authorized area, that has been restricted by the Department for enplaning passengers that have been previously screened in accordance with Federal Aviation Regulations, must insure that the arriving passengers have previously passed through such established Federal Aviation Administration security screening procedures before entering such designated restricted area, or must make arrangements for physical escort through such restricted area, in accordance with requirements of federal law and Federal Aviation Regulations.

(c) No person operating a general aviation or military aircraft shall enplane or deplane passengers or cargo on the terminal apron at Miami International Airport, without having made prior arrangements thereof with the Department or unless such operation is in accordance with Operational Directives of the Department.

(d) No person operating an aircraft shall enplane or deplane passengers at the terminal apron without having made prior arrangements for all required aircraft and passenger services.

(e) No persons, including scheduled or nonscheduled air carriers, certified helicopter operators, supplemental air carriers, air carrier charterers, or other aircraft operators, shall utilize an Airport for any commercial activities except as are specifically authorized by Operational Directives, permits issued by the Department, lease or other agreement with the County or in accordance with the Airport's Federal Aviation Administration certification.

(f) All fees charged others by the lessee of any exclusively leased aircraft parking position at the Airport, for the use of such parking position shall be subject to approval annually by the Department. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, §§ 135, 136, 3-7-95)

25-10.10 *Cleaning, maintenance and repair of aircraft.*

(a) No person shall clean, paint, wash, polish or otherwise maintain an aircraft, other than in areas approved by the Department for such purpose.

(b) No person, unless authorized by FAA regulations, shall maintain or repair or per-

mit the maintenance or repair of an aircraft at any Airport other than:

(1) At Federal Aviation Administration approved repair station;

(2) At Federal Aviation Regulations, Part 121 airline maintenance station; or

(3) At an area authorized by the Department for such maintenance or repair by an FAA approved and licensed mechanic holding a valid Department approved identification badge and required vehicle entry permit, as appropriate, issued by the Department.

(c) No person, unless an employee of or under contract to an Airport lessee authorized by its lease agreement with the County to perform aircraft maintenance and repair, or an aircraft owner to the extent that self-maintenance is allowed under Federal Aviation Regulations and is otherwise authorized and permitted under the provisions of Chapters 24 and 25 of this Code, shall perform any aircraft maintenance and repair work at any Airport. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, §§ 137, 138, 3-7-95)

25-10.11 *Radio communications.* No person shall operate an aircraft at Miami International Airport, unless such aircraft is equipped with functioning two-way radio, tuneable to and operating on the frequencies set out in notices to airmen as being assigned to the Miami International Airport Control Tower and such other communications equipment as may be required by the Federal Aviation Administration (FAA). Aircraft which land, in emergencies, without functioning required communications equipment shall be required to have such equipment operational before clearing for take-off, unless authorized by FAA Air Traffic Control. (Ord. No. 75-113, § 2, 12-2-75)

25-10.12 *Aircraft equipment.* Except as may be otherwise authorized by the Department pursuant to Section 25-10.17 of the Code, no person shall operate an aircraft on the Airport, other than a helicopter, unless it is equipped with main landing gear, a tail or nose wheel, and wheel brakes, and unless the aircraft has been issued all certificates then required by the FAA to operate at the Airport. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 139, 3-7-95)

25-10.13 *Landing and taking-off.*

(a) No person shall land at or take-off in an aircraft, other than a helicopter, from an Airport having a control tower except on the runway and in the direction assigned by the control tower. Aircraft not requiring a runway, such as a helicopter, shall operate in strict accordance with directions of the FAA Control Tower, where such tower facilities are available and in use.

(b) No person shall land at or take-off from the Airport in a helicopter except at designated helicopter landing and take-off areas, in strict compliance with air traffic control tower procedures or preestablished operational procedures where no tower facilities are available.

(c) Persons landing at or taking-off in an aircraft from an Airport having a control tower shall conform to the air traffic instructions given by the control tower.

(d) No person shall turn an aircraft in order to reverse direction on the runway, unless given specific instructions or authorization to do so by the control tower.

(e) No person shall take-off or land in an aircraft on or from an unserviceable runway, or on or from any ramp area or taxiway, without prior authorization of the Department and Federal Aviation Administration.

(f) Persons landing an aircraft at the Airport shall make the landing runway available to other aircraft by leaving the runway as promptly as possible.

(g) No person shall take-off or land an "engine-out" ferry flight (e.g., three-engine operation of four-engine aircraft) at Miami International Airport, except under the following conditions:

(1) When conducted by Federal Aviation Regulations Part 121 operator, in strict compliance with its FAA approved maintenance program; or

(2) When authorized by a written FAA permit, and, under either condition,

(3) In accordance with established Airport Operational Directives.

(h) Any person operating or controlling an aircraft landing at or taking-off from the Airport shall ensure the aircraft meets applicable federal noise emission standards and maintains engine noise within applicable aircraft engine noise limits as promulgated by the federal government, the State of Florida or Dade County. Aircraft pilots shall utilize thrust and flap management techniques consistent with industry noise abatement guidelines and FAA air traffic control instructions and are encouraged to follow noise abatement programs described in Operational Directives and Bulletins issued by the Department. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 140, 3-7-95)

25-10.14 *Taxiing.*

(a) No person shall taxi an aircraft until he has ascertained that there is no danger of collision with any person or object in the

immediate area by visual inspection of the area, and when available, through information furnished by attendants.

(b) No person shall taxi an aircraft except at a safe and reasonable speed.

(c) No person shall taxi an aircraft onto or across any active runway or taxiway until cleared to do so by the control tower, or where such clearance authorization is not managed by the control tower, until ascertaining that said taxiway or runway is clear of other traffic.

(d) No person shall taxi an aircraft near buildings, parked aircraft, or ground equipment, unless an attendant is present on the ground to assist the operator thereof.

(e) No person shall taxi an aircraft other than in accordance with the taxiing patterns and procedures prescribed for the particular runway to be used or, where applicable, in accordance with the instructions of the control tower.

(f) No person shall push, tow, or back an aircraft away from a designated parking position, in the terminal area or on the apron without assuring that conditions are safe to do so, and in accordance with Operational Directives.

(g) No person shall engage in a power-back an aircraft on any Terminal apron or Terminal aircraft parking position, except at Department approved power-back parking positions, without advance written permission from the Department for such power-back operations and clearance from the FAA control tower for each power-back movement. Except as specifically authorized by the Department, for each power-back movement, the operator of the aircraft shall provide or arrange for the provision of (1) guide persons or wing walkers for each wing, so positioned that vehicles on any adjoining vehicular route will be instructed to stop before the power-back movement commences, and (2) an additional guide person must also be so provided in proper position to provide signals to the aircraft operator to assure safe power-back conditions throughout the movement. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, §§ 141, 142, 3-7-95)

25-10.15 *Airport marking and lighting.* No person shall take-off from, land, park or maneuver an aircraft at the Airport, without complying with all Airport lighting and pavement marking signals and designations, unless the Department or the Federal Aviation Administration has waived such compliance. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 143, 3-7-95)

25-10.16 *Motorless aircraft.* No person shall land at or take-off from Miami International Airport in a motorless aircraft. No person shall land or take-off from any other Airport in a motorless aircraft except as provided by Operational Directive and, where applicable, clearance from the Airport control tower. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 144, 3-7-95)

25-10.17 *Airport operational restrictions.* Unless contrary to Federal Aviation Regulations, the Department shall have the authority to designate or restrict the use of Airports or runways at an Airport with respect to but not limited to, the following types of operations:

(a) Student pilot training.

(b) Training flights.

(c) Experimental flights.

(d) Equipment demonstration.

(e) Air shows.

(f) Maintenance flight checks.

(g) Ultralight aircraft flights.

(h) Parachuting activities.

(i) Towing, pick up or release of any banner.

(j) Hot air balloons.

Such designations or restrictions shall be established through the issuance by the Department of appropriate Operational Directives. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 145, 3-7-95)

25-10.18 *Aircraft parking.*

(a) No person shall park an aircraft at a parking position on the terminal apron, other than pursuant to and for purposes authorized by Operational Directives issued by the Department.

(b) No person shall park an aircraft at a gate position at the Miami International Airport Terminal without having received prior assignment to such gate position from the Department. However, such assignment is not required if said aircraft to be parked is being directly operated by an Airport user which has been given authorization by the Department to assign its aircraft to the gate position involved.

(c) When an aircraft parking position on the Terminal apron is not needed for other aircraft, an aircraft operator may, following assignment of that gate, park at such gate position according to the time and rate schedule established by the Board, or by the Department, if duly authorized by the Board.

(d) When an aircraft parking position on the Terminal apron is needed for other aircraft, an aircraft operator to whom such gate position is assigned shall park at such gate

position no longer than the maximum allowable turn-around time according to aircraft type as established by the Department or as otherwise permitted by lease. Failure of the aircraft operator to remove the aircraft from the gate position within the allotted maximum time shall subject the aircraft operator, in addition to any other penalties prescribed by these rules and regulations, to a charge in accordance with the time and rate schedule established by the Board, or by the Department if duly authorized by the Board, and, if the Department deems it necessary for the efficient operation of the Airport, removal of the aircraft from the gate position at the owner's or operator's risk and expense.

(e) No person shall park an aircraft at the Terminal, or on an apron area, whether leased or not, including designated taxilanes, other than at such positions and in such configurations as may be established by the Department.

(f) No person shall use any area of an Airport, including designated taxiways and taxilanes, other than Department designated public aircraft parking and storage areas, for parking and storage of aircraft, except as otherwise specifically authorized by lease, permit or Operational Directive. Notwithstanding the provisions of any lease or permit to the contrary, if any person uses unauthorized areas, including designated taxiways and taxilanes, without the prior, specific approval of the Department, and the payment of applicable rentals or aircraft parking charges, for aircraft parking or storage, the aircraft so parked or stored may be removed by the Department at the risk and expense of the owner or operator thereof. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 146, 3-7-95)

25-10.19 *Radio ground control.* The operator of an aircraft taxiing or being towed at an Airport having a control tower shall monitor the ground control frequency being used by the control tower and shall remain in direct communication with the control tower at all times when so operating anywhere on the AOA. In addition, all persons taxing or towing an aircraft at Miami International Airport, other than pilots licensed to operate the particular aircraft being taxied, must be certified as having successfully completed the "movement area driver's training program" given by the Department. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 147, 3-7-95)

25-10.20 *Propeller slipstream and jet blast.* No person shall position, start or taxi an aircraft in such a manner that propeller slipstream or jet blast could cause injury to persons or damage to property on the Airport or adjacent to the Airport, or contrary to Operational Directives. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 148, 3-7-95)

25-10.21 *Starting and running aircraft engines.*

(a) No person shall start engines or operate an aircraft unless he is a qualified licensed pilot or mechanic.

(b) Blocks or chocks shall be placed in front of the wheels before starting the aircraft engine or engines, unless the aircraft is provided with adequate parking brakes and the same are in applied position.

(c) (1) An "aircraft engine run-up" is defined as the operation of the engines on an aircraft for any purpose other than for proceeding expeditiously to and from an Airport runway system for takeoff, or for landing or taxiing to and from an approved run-up location. Aircraft engine run-ups include, but are not limited to, engine trim checks, oil pressure checks, propeller checks, various diagnostic tests and aircraft engine idle thrust runs. This definition of aircraft engine run-ups specifically excludes reciprocating engine run-ups performed as part of pretakeoff procedures, such as magneto checks, conducted on a runway run-up pad, and all engine operations in approved test cells. The term "idle thrust" means the minimum power setting on an engine required to maintain constant, stable engine power output. An "aircraft engine idle thrust run" is defined as the idle thrust operation of an aircraft engine for any purpose other than proceeding expeditiously to and from an Airport runway system for takeoff or for taxiing to an approved run-up location.

(2) Miami International Airport nighttime aircraft engine run-ups, as defined in (1) above, are prohibited commencing at 11:00 p.m. every night through 7:00 a.m. on Mondays through Fridays and through 10:00 a.m. on Saturdays and Sundays, unless a specific exemption has been granted by the Department. Exemptions will be granted subject to the following:

(i) All requests for exemption must be made by letter, telephone or radio, at the office designated by the Department, at least one hour prior to the time the run-up is requested. The person requesting the exemption must provide the following information:

Name, title and telephone number of requesting individual

Name of airline and/or owner or other party having custody and control of aircraft
Aircraft registration
Aircraft type
The mechanical and/or operational reason why the run-up is required
The scheduled departure time and flight number of the aircraft
The expected duration of the run-up

(ii) Exemptions will only be granted for aircraft scheduled to depart the Airport during the same prohibition period in which the requested run-up is to occur or within one hour after expiration of such prohibition period and the requesting party provides information, acceptable to the Department, as to why the run-up can not be performed prior to or after the prohibition period for which the exemption is sought.

(iii) All aircraft engine run-ups during the prohibition period, under exemptions granted by the Department, shall be conducted only at the airport's midfield blast fence, unless the aircraft owner or other party in custody and control of the aircraft can demonstrate to the satisfaction of the Department that use of another location will result in less noise and/or air pollution. In the event the midfield blast fence is out of service, the Department shall designate an alternative acceptable location.

(iv) All aircraft engine run-ups during the prohibition period, under exemptions granted by the Department, shall be limited to a maximum period of fifteen (15) minutes, of which the run-up at maximum engine power shall be limited to no more than one minute.

(v) All aircraft engine run-ups during hours not included in the prohibition period shall be conducted only at the midfield blast fence or at other locations which have been authorized for such use by the Department.

(vi) All aircraft engine idle thrust runs during the prohibition period, under exemptions granted by the Department, shall be conducted only at aircraft parking positions in the terminal apron area, or at locations designated by aircraft power-on markers, or at other locations approved by the Department.

(vii) All aircraft thrust runs during the prohibition period, under exemptions granted by the Department, shall be conducted with only a single engine operating, unless multi-engine operation is required for aircraft maintenance purposes and is approved in advance by the Department.

(3) No person shall perform aircraft engine run-ups, at any County general aviation Airport, other than in places on such general aviation Airport and at such times as may be established from time to time in Operational Directives issued by the Department.

(4) The restrictions hereunder shall not apply to any normal pre-takeoff aircraft engine run-ups performed on a run-way run-up pad if the aircraft is departing the Airport.

(5) Notwithstanding the provisions of Section 25-1.7, for the first violation of this Section 25-10.21(c) the operator shall be given a written warning and the person having custody and control of the aircraft at the time of the violation shall be punished by a fine of two hundred fifty dollars ($250.00). For each subsequent violation of this Section 25-10.21(c) by an operator, the provisions of Section 15-1.7 shall apply. In the event that a person having custody and control of an aircraft commits a second violation of this Section 25-10.21(c) within a three (3) month period, said person shall be punished by a fine of five hundred dollars ($500.00). In the event that such a person commits a third violation of this Section 25-10.21(c), within a twelve-month period, in addition to a punishment by fine of five hundred dollars ($500.00), such violation shall also constitute a material breach of the lease agreement or other written agreement by which the person is permitted to use the Airport, and shall, therefore, entitle the County to terminate such agreement. Upon conviction of the person for such third violation, the Director shall direct, to the extent such action is permitted by the agreements, that such agreements be terminated and shall effect the removal or eviction of the person from the Airport facilities.

(d) Noise emanating from aircraft engines during ground operations shall be maintained within the then applicable aircraft engine noise limits as promulgated by the Federal government, the State of Florida, or Dade County, whichever be the most restrictive.

(e) Aircraft shall be parked so that fumes, prop wash and jet blast are not directly blown into non-enclosed passenger holding or loading and baggage make-up areas at the Terminal. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 91-134, § 1, 11-5-91; Ord. No. 95-41, § 149, 3-7-95)

25-10.22 *Aircraft lights.* No person shall park an aircraft at a terminal parking position, or such other areas that may be established by the Department at the Airport, during periods of low visibility or between the hours of sunset and sunrise, unless the wing-

tip lights or other suitable warning lights for such aircraft are kept lighted while the aircraft is so parked, or apron lighting is such that all portions of the aircraft are clearly visible. (Ord. No. 75-113, § 2, 12-2-75)

25-10.23 *Interference with aircraft operations.*

(a) No person shall, while on the Airport, disturb, interrupt or otherwise interfere with:

(1) The enplanement or deplanement of aircraft passengers;

(2) The departure or arrival of any aircraft, other than as permitted in Section 25-10.3; or

(3) Any member of a flight crew aboard an aircraft in the performance of his duties.

(b) The refusal of any person to comply with the request of any member of the flight crew to observe and obey regulations of the Federal Aviation Administration relating to the safety of passengers or aircraft shall constitute disturbance, interruption or interference with a member of a flight crew in the performance of his duties.

(c) No person shall, while aboard an aircraft on the Airport as a passenger, refuse to leave such aircraft upon the request of an agent or representative of the air carrier whose aircraft the person is aboard, when that person has committed an act which is a breach of his contract of carriage under the terms and conditions set out in the air carrier's tariffs. Such acts shall include, but shall not be limited to, violations of the Federal Aviation Regulations concerning fastenings of seat belts, observance of no smoking signs, placement of luggage, consumption of alcoholic beverages, intoxication, and obstruction of aisles and exits.

(d) No person shall, while aboard an aircraft on the Airport as a passenger, refuse to leave such aircraft upon the request of an agent or representative of the owner or operator thereof, when such person has committed an act aboard the aircraft which is an assault, a breach of the peace, an act of intimidation, or a threat against any other person.

(e) No person shall, while aboard an aircraft on the Airport, assault, intimidate or threaten any other person, or commit any act which is a breach of the peace. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 150, 3-7-95)

25-10.24 *Non-Operating Aircraft.*

(a) Because the Board has found and determined that Non-Operating aircraft and component parts pose a danger to the life and safety of users of the Airport and their property, as a result of the possibility of the aircraft and components (1) being blown about in storms, (2) becoming fire hazards, (3) being subjected to vandalism, and (4) interfering with orderly and rapid emergency response efforts of firefighters, police, and ambulance services, no person shall park or store any Non-Operating aircraft on Airport property, including leased premises, for a period in excess of sixty (60) days, without written authorization from the Department.

(b) No person shall store or retain aircraft parts or components being held as inventory anywhere on the Airport, other than in an enclosed, authorized facility, or in a manner approved by the Department, in writing.

(c) Whenever any aircraft is parked, stored, or left in Non-Operating condition on the Airport in violation of the provisions of subsections 25-10.24(a), the Department shall follow the procedures required by law to notify the owner or operator thereof and require removal of said aircraft within fifteen (15) days of receipt of such notice, or if the owner or operator be unknown or cannot be found, the Department shall conspicuously post and affix a notice to the said aircraft, requiring removal of said aircraft within fifteen (15) days from date of posting. Upon the failure of the owner or operator of said aircraft to remove said aircraft within the period provided and unless the Department is required to follow Section 25-10.24(d), the Department shall cause the removal of such aircraft from the Airport. All costs incurred by the Department in the removal of any Non-Operating aircraft as set forth herein shall be recoverable against the owner or operator thereof.

(d) Where any federal or Florida law imposes on the County a specific requirement of notice for the removal of Non-Operating aircraft, such law shall prevail and shall be followed by the Department.

(e) To the extent required by state or federal law, the Department shall submit a proposed removal of aircraft under this section to a pre-taking hearing before a court of competent jurisdiction.

(f) If any registered owner fails or refuses to respond to notices sent under this section or under federal or Florida law, the Department shall be entitled thereafter to proceed as if the aircraft had no identifiable owner and may effect the removal of the aircraft without a pre-taking hearing.

(g) The Department may, but is not obligated to, resort to the administrative hearing provisions of Chapter 8CC of the Code to ef-

fect the removal of such aircraft. If required by federal or state law, the Department shall obtain from a court of competent jurisdiction an order of taking of such non-flyable or derelict aircraft. (Ord. No. 75-113, § 2, 12-2-75; Ord. No. 95-41, § 151, 3-7-95)

25-10.25 *Prohibition on removal of liened aircraft.* No person shall move or remove any aircraft from any Airport, or parts from such aircraft when an official notice of lien has been posted upon such aircraft by the Department. (Ord. No. 95-41, § 152, 3-7-95)

25-10.26 *Waiver by Aviation Director for Governmental Operations.* Notwithstanding any provision, requirement or prohibition stated in Chapter 25, the Aviation Director or his designee shall have the authority to waive any such provision, requirement or prohibition therein in order for any military branch operating on any County owned or operated airport to operate thereon in accordance with governmental requirements applicable to such operations. (Ord. No. 95-191, § 1, 10-17-95)

CHAPTER 26
PARK AND RECREATION DEPARTMENT RULES AND REGULATIONS

ARTICLE I
IN GENERAL

26-1. Rules and regulations adopted.

Any person violating any of the rules and regulations provided in this section shall be punished by:

(1) A fine not to exceed five hundred dollars ($500.00);

(2) Imprisonment in the county jail for a period not to exceed sixty (60) days;

(3) Both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;

(4) Fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or

(5) Completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners.

Rule 1. Definitions When used herein the following definitions shall apply:

(a) The terms "Parks," "Parkways," "Recreational Areas," "Marinas" and other "Areas Operated and Maintained by the Miami-Dade County Park and Recreation Department" are defined to mean parks, wayside parks, parkways, playground, recreation fields, museums, auditoriums, ranges and buildings, natural areas, forests or preserves, lakes, streams, canals, lagoons, waterways, water areas and beaches therein and all public service facilities conducted on grounds, buildings, and structures in Miami-Dade County that are under the control of or assigned for upkeep, maintenance or operation by the Miami-Dade County Park and Recreation Department, and all beaches and ocean areas available to the public in the unincorporated area of the County.

(b) The term "Park Property" when used hereinafter is defined to cover all areas, buildings, locations, and facilities described in the foregoing paragraph.

(c) The terms "Park Department," "the Department" when used hereinafter are defined as "The Miami-Dade County Park and Recreation Department" and the term "Department Director" refers to the Director of said Department

(d) The term "Department Employee" refers to individuals employed by the Park and Recreation Department with responsibilities for the safe management, security, operation or maintenance of park facilities.

(e) In construing the provisions hereof and each and every word, phase or part thereof where the context will permit, the definitions provided in Sections 1.01 Florida Statues shall apply.

TRAFFIC

Rule 2. Traffic ordinances and state vehicle laws The traffic ordinances of this County [Chapter 30 of this Code] and applicable State Vehicle laws shall apply in and about all park property and in addition thereto the traffic regulations contained in this section shall be applicable.

Rule 3. Roads and driveways within parks

(a) No person driving, operating, controlling or propelling any vehicle, motorized, horse drawn or self-propelled, shall use any other than the regularly designated paved or improved park roads or driveways, except when directed to do so by a police officer or department employee. The provisions of this subsection shall not apply to the use of any self-propelled wheelchair, power wheelchair, electric scooter, or other mobility device by an individual with a mobility impairment.

(b) No driver operator of any vehicle shall obstruct traffic or park or stop on any road or driveway except at a place so designated or in case of an emergency beyond his control. If so caused to stop or park for more than fifteen (15) minutes the operator shall report such fact to an officer or park employee. At

places so designed and clearly marked, a vehicle may be stopped for a period of no more than fifteen (15) minutes in order for the occupant to view the scenic features.

Rule 4. Trucks, buses, other heavy vehicles

No truck, commercial vehicle, or bus of any type will be driven on any restricted park road or property without special authorization from the Park and Recreation Department for the purpose of park work, service or activities except that trucks and buses used for transporting persons to a park for recreational purposes will be afforded use of ingress and egress park roads and parking facilities as provided for conventional passenger vehicles.

Rule 5. Non-Motorized Equipment Use

(a) No person shall ride, drive or propel any bicycle, tricycle, skate boards, roller skates, roller blades or similar non-motorized equipment on any but the regular vehicular roads or paved pathways and trails designated for said purpose. No person shall deviate from compliance with all traffic ordinance provisions governing the operation of bicycles while on park property.

(b) No person shall ride, drive or propel any registered motorized vehicle on any but the regular vehicular roads, except that such vehicles, with motors shut off, may be pushed by hand not faster than a walk or carried over grassy areas normally reserved for the use of pedestrians.

(c) The provisions of these subsections shall not apply to the use of self-propelled wheelchair, power wheelchair, electric scooter, or other mobility device by an individual with a mobility impairment.

(d) Violators of this provision shall pay a fine not to exceed one hundred dollars ($100.00) for the first violation and two hundred dollars ($200.00) for each succeeding violation. Provisions of this rule shall not apply to the operation of these vehicles on those portions of park property specifically designated for such use. (Ord. No. 99-80(b)) Parents or guardians will be held strictly accountable for the actions of minors in regards to the prohibitions in the foregoing paragraphs.

Rule 6. Parking

(a) No person shall park a vehicle any place on park property other than in the designated facilities provided for that particular type of vehicle, unless directed otherwise by police officers or department employees who are authorized to designate other areas for parking when conditions so warrant. The provisions of this subsection shall not apply to the use of self-propelled wheelchair, power wheelchair, electric scooter, or other mobility device by an individual with a mobility impairment.

(b) Except for County vehicles or those on official County business no operator of any vehicle shall park or permit to remain parked any vehicle on any driveway, parkway, parking area or other park property except in areas designated as twenty-four-hour boat launching areas between sunrise and sunset or as otherwise posted.

(c) Exception to the provisions of the two (2) foregoing subsections is to be made in reference to the restaurants and leased facilities to permit patrons of these privately operated concessions to enter in and remain in same at any hour when open for business and to use the parking areas set aside for these concessions during the same hours. The Department Director may from time to time designate other similar use areas as exempt from general park closing hours.

(d) No Department employee shall be permitted to accept any fee or gratuity for any service concerning the parking of a vehicle except those employees assigned to areas where a stated fee is charged by the Department.

Rule 7. Use of vehicles

(a) No Operator of a vehicle shall tow another vehicle or wheeled device on park roads except when the towed vehicle is used in transporting a boat into a marina or other designated area or when necessary to remove a disabled vehicle. No tow vehicles shall be allowed on Department managed beaches where the Department shall provide for towing of boats or vehicles and shall be authorized to recover the costs for such service.

(b) No vehicles except those authorized by the Park and Recreation Department to carry passengers for hire or fare will be permitted to so operate in the parks and these vehicles will be the only ones that pedestrians may hail or make prior arrangements for rides.

(c) No person shall abandon, change any parts, repair, wash, grease, wax, polish, or clean a vehicle on any park roadway, parkway, driveway, parking lot or other park property.

(d) No person shall operate any unlicensed or unregistered motorized vehicle of any kind on any park roadway, parkway, driveway, parking lot, or other park property. The provisions of this subsection shall not apply to golf course golf carts and authorized maintenance equipment or vehicles designated primarily for use by individuals with disabilities or in areas specifically designat-

ed for such use. The County Manager may, however, designate with appropriate signage and in accordance with safety regulations, certain areas of parks for use by four wheeled motorized carts or mini-bikes.

PARK PROPERTY

Rule 8. Preservation of property

(a) As all property in all parks is County property no person entering or being within parks or areas operated and maintained by the Park and Recreation Department shall violate the provisions of by offense against property.

(b) No person shall vandalize, deface or destroy any park property or equipment within a park site.

(c) No person shall damage or remove plants or plant materials, trees or parts thereof or any flowers, nuts, seeds, or fruits whatsoever, except that park personnel may be empowered to make such removals and scientists and students of botany may be issued a Special Permit for specimen collecting by the Department Director or his/her designee.

(d) No person shall excavate or remove any artifact from any archaeologically sensitive areas. Of particular concern are Native American burial grounds and living sites.

(e) No person shall make any excavation by tool, equipment, blasting, or other means or utilize metal detectors or shall construct or erect any building or structure of whatever kind, whether permanent or temporary, or run or string any public utility into, upon, across or over any park or recreation lands unless authorized by permit or easement.

(f) No fires shall be built by any person against or adjacent to any park building, structure, tree or plant or near the property of others or in any area of any park except in such areas as are specifically designated for fire building, nor shall any person drop, throw and permit to be scattered by any means, hot coals, lighted matches, burning tobacco products or any other flammable material within any park area or any highway, road or street abutting or contiguous thereto.

(g) No person shall build, light or cause to be lighted, any fire upon the ground or beach or other object in any area except in an approved grill, stove, fireplace or other suitable container, nor shall any person starting a fire leave the area without extinguishing the fire.

(h) No person shall use a grill or other device in such a manner as to burn, char, mar or blemish any bench, table, or other object of park property.

(i) No person shall stand or sit on any fence rail or on any picnic table or any other structure not intended for such use in park or parkway.

Rule 9. Protection and preservation of wildlife

(a) No person shall molest, harm, frighten, kill, net, trap, snare, hunt, chase, shoot or throw or propel by any means missiles at any wildlife roaming free about a park or in captivity in a zoo cage, nor shall any person remove or possess the young of any wild animal or the nest or eggs of any reptile or bird or to collect, remove, possess, give away, sell or offer to sell, buy or offer to buy, or accept as a gift any specimen dead or alive of any animal within a park, unless specifically authorized by the Director of the Park and Recreation Department. This provision is not intended to limit any program for the purpose of control of nuisance wildlife as set forth in Rule No. 10 below.

(b) No person shall disobey posted notice prohibiting feeding zoo animals, birds or reptiles.

(c) No person shall place, dump, abandon or leave any animal, reptile or bird, either wild or domestic on the grounds of any zoo or park.

Rule 10. Control of Nuisance Animals

(a) Definitions. When used in this rule the following terms shall have the meanings set forth below:

(1) Exotic Animal: A non-native animal species that occurs in South Florida, as a result of direct or indirect, deliberate or accidental actions by humans, which shall include, but not be limited to, all domestic, semi-domestic or feral animals.

(2) Native Animal: An animal species that occurs naturally in or is indigenous to South Florida.

(3) Natural Resource Park: A Natural Resource Park shall mean any of the current so designated parks and any park acquired or opened by the Department after the effective date of this ordinance that contains more than two (2) acres (cumulative) of pine rockland, hammock, freshwater wetland, coastal wetland, or scrubby flatwood plant community.

(b) The introduction by any person of any exotic animal and the placement, abandonment or leaving of any animal in a County park or in public areas immediately adjacent to a County park is strictly forbidden.

(c) The feeding by any person of any exotic or native animal in a County park or in the public areas immediately adjacent to a

County park is hereby strictly forbidden unless specifically authorized by the Department Director.

(d) Exotic animals, with the exception of those authorized by the Director, roaming free in County parks are hereby declared to constitute a nuisance. The Park and Recreation Department Director has the authority and responsibility to establish process and procedures to control and remove from the park, the species which are declared to constitute a nuisance.

(e) The Director of the Park and Recreation Department is hereby authorized, in consultation with the Florida Fish and Wildlife Conservation Commission, to declare certain native species located in identified parks to constitute a nuisance. Native species shall be determined to be a nuisance when, in the discretion of the Director of the Park and Recreation Department, in consultation with staff of the Florida Fish and Wildlife Conservation Commission, the number, location, behavior or other characteristics of the native species or the remains of deceased animals constitute a hazard to human health and/or safety or to the resources of the particular park.

Rule 11. Domestic animals

(a) No person shall be permitted to take any domestic animal other than a horse, as provided in Rule 21 below, into any park whether on leash, in arms or running at large, dogs in particular being excluded from parks, and provisions of Miami Dade County Dog Control Ordinance No 58-28 [Sections 5-3—5-15] shall apply to any and all park property, except for those areas specifically designated for dogs or other domesticated animals. The provisions of this subsection shall not apply to the use of a service animal, which means any dog guide or other animal individually trained to work or perform tasks for an individual with a disability.

(b) Cattle, horses, mules, swine, sheep, goats, or fowl shall not be allowed upon park property and all owners or attendants of such animals are charged with the duty of preventing such occurrences. This prohibition does not apply to animals and fowl kept by the Park Department or under its direction.

Rule 12. Aircraft

(a) No person operating, directing, or responsible for any airplane, helicopter, glider, balloon, dirigible, parachute or other aerial apparatus (excluding kites) will take off from or land in or on any park land or waterway, except when human life is endangered or written permission has been obtained from the Department Director. Take off from and landing in any natural resource area, and the environmentally sensitive Deering Estate at Cutler is specifically prohibited except when human life is endangered.

(b) No person operating any aircraft shall do any stunt flying over or fly lower than one thousand (1,000) feet above the highest obstruction located in any park or recreation areas that are considered to be populated areas requiring compliance with Federal Aviation (FAA) Administration regulations regarding same.

Rule 13. Closing of parks

(a) No person shall be or remain in any part of any park that is fenced in or provided with gates between the closing of the gates at night and their reopening on the following day; nor shall any person be or remain in any park not fenced in or provided with gates, between sunset and sunrise or as specifically posted, except in areas designated as twenty-four-hour boat launching areas, except in well-lit areas designated for use until 11:00 p.m. when in the discretion of the Department Director and upon consultation with the neighboring community or the Commissioner of the affected district and the applicable police department, and except that persons and vehicles may pass through such parks without stopping, on the most direct walk or driveway leading from their point of entrance to the exit nearest to their point of destination. The provisions of this section shall not apply to police officers or department employees while in the discharge of their duties nor to persons having a permit in writing issued by the department to be or remain in any part of the parks between such hours. The Department Director has the authority to establish exceptions to the closing hours as set forth above when it is in the interest of the public health, safety or welfare and such exceptions shall be posted.

(b) No person shall enter upon any part of any park, which is in an unfinished state or under construction or withheld from general public usage in the interest of public safety, health and/or welfare unless specifically permitted by the department Director.

RECREATIONAL ACTIVITIES

Rule 14. Recreational activities No person shall engage in recreational or other activities other than those prescribed in certain areas set aside for such purposes. For example, in areas set aside for boating, swimming is prohibited, and in areas set aside for swimming, boating is prohibited.

Rule 15. Games, etc. No person or persons shall engage in rough or potentially dangerous games or practice for same, such as football, baseball, softball, horseshoes, golf, lacrosse, soccer, cricket, rugby, tennis, volleyball, badminton or any other games, practice or exercise involving thrown or otherwise propelled objects such as balls, stones, arrows, javelins, shuttlecocks, radio controlled or model aircraft or engage in rocketeering except in the areas specifically designated and set aside for such recreational usages.

Rule 16. Bathing and swimming

(a) No person, regardless of age, sex, or manner of dress shall swim, wade, or bathe in waters or waterways in or adjacent to any park other than at such places as are provided for such activities and in compliance with the rules of these areas as to hours of the day and safety limitations for such use.

(b) No person, minor or adult, shall enter or be in water at any bathing area wearing, carrying, pushing or towing any flotation device; provided, however, that surfboarding may be engaged in at certain prescribed areas that may from time to time be specifically designated for such sport by posted signs. Notwithstanding the above prohibition, the department is authorized to permit the use of any such device when required to accommodate park supervised programs or the needs of individuals with disabilities.

(c) No person shall erect or cause to be erected any tent, shelter or structure on or in any beach, bathing or wading area in such a manner that a guy wire, rope, extension, brace or support connected or fastened from any such structure to any other structure, stake, rock or other object is necessary, nor shall any structure, tent or shelter lack an obstructed view of the interior from at least two (2) sides.

Rule 17. No person, adult or minor, shall fish in park waters, either fresh or salt, by use of hook-and-line, seine, net, trap, spear, gig or other device except at such places and in such areas as have been prescribed for such usage which will include specified lakes, canals, lagoons, creeks and stretches on ocean beaches marked by moveable signs in areas other than those used for bathing.

* * *

Rule 20. Picnic areas and use

(a) No person will picnic, lunch or cook in any area not specifically designated by and regulated by the Park Managers for such usage. Rule 24 of this code establishes rule for the Picnic Shelter Permit Reservations.

(b) The Park Managers will regulate activities in picnic areas when necessary to prevent congestion and to secure the maximum use for the comfort and convenience of all. If the facilities are crowded, persons holding picnics in any park picnic area, building or structure, will avoid using same to the exclusion of others for an unreasonable time, the determination of what is unreasonable being at the discretion of the Park Manager. Use of the individual grills, together with tables and benches, generally follows the rule of "first come, first served", with use of picnic tables limited to two tables per party, unless specifically authorized by the Park Manager.

Rule 21. Horseback riding No person shall engage in horseback riding in any park or Park Department area other than those where provisions for such is provided by clearly marked bridle paths, trails, and other necessary features and then only upon thoroughly broken and properly restrained animals that are ridden with care, prevented from grazing, straying unattended, untethered to any rock, tree or shrub and not ridden or led on park land other than that so designated.

RECREATIONAL ACTIVITIES BY PERMIT ONLY

Rule 22. Boating

(a) No person shall bring into or operate any boat, yacht, cruiser, canoe, raft or other water craft (except non-motorized toys too small for human occupancy) in any park property watercourses, bays, lagoons, lakes, canals, rivers, ponds, or sloughs other than those designated for such use or purpose by the Park and Recreation Department and then only in strict conformance with Metropolitan Safe Boating Ordinance No. 59-46, [Ch. 7 of this Code].

(b) No person shall moor, anchor or tie up to the bank or any wharf, dock, tree, building, rock or any object or structure on the bank in waters within or contiguous to any park within two hundred (200) feet of the shore line unless the owner, or his representative, of the boat, houseboat, barge, vessel, ship or watercraft of any kind whatsoever, has obtained written permission from the Park and Recreation department, except that if the boat or ship is the property of the government of the United States, or is in distress, or ties up at a dock, wharf or pier designated for such purpose and then only long enough to enable the occupants to obtain repairs, towing service, food, fuel, water, bait, tackle or marine supplies.

(c) Public docks or shore line or bank facilities are provided in parks and recreation areas for dockage and other marine uses and purposes, but shall be used only after arrangements have been made with the park dockmaster who shall assign space and collect reasonable rental charges in accordance with established regulations and rates. Dockmasters shall lend emergency assistance if such should be required.

(d) No motorboats shall be operated on park waters unless equipped to divert their exhaust under water or to otherwise muffle the sound thereof.

(e) Regulations and rules covering conduct in reference to occupancy and use of docking and mooring facilities are set forth on each permit and violation of the same will be punishable by revocation of the permit in addition to any other punishment that may be imposed in accordance with law.

Rule 23. Permit to operate boats for rent or hire

(a) Permission to rent, hire or operate for charge any kind of boat, water craft, whether powered or not, on any park waters or from any park dock, mooring or marina area, shall be reserved for the Park Department or regularly licensed operators. Any boat operating for any commercial activity or for hire, or carrying passengers for money, or contemplating same, before docking or mooring or receiving such passengers at any dock or wharf or landing place or anchorage in the park jurisdiction shall obtain a special permit from the Department.

(b) It shall be necessary for any person operating passenger launches or excursion boats from park waters for rent or hire or carrying passengers for money who desires to maintain a scheduled boat line to land, anchor or tie up in any park area, either seasonal or annual, to make formal written application to the Park Department and upon receiving permission to operate such boat lines or liveries such permittee shall be subject to all the rules and regulations governing the operation of boats in park waters, including the inspection requirements of the Department.

Rule 24. Picnic shelter permit

(a) Normally the larger picnic shelters and their facilities will be used only on reservation which must be obtained in advance and must be for a specific time and duration. However, picnic shelters may be used by the public without charge during unreserved periods. Reservations for picnic shelters shall be subject to the provisions of the permit and use of picnic areas must comply with park rules concerning same.

(b) Unless permitted by the Department Director, financial arrangement in connection with picnics held in a park, either on a reserved basis or otherwise, must be made outside the limits of the park, and the sale of tickets, acceptance of money, soliciting or accepting donations or offerings, in order to defray the expense of a picnic or to realize a profit therefrom is prohibited and subjects a permit holder to immediate cancellation of said permit.

Rule 25. Camping There shall be no camping or overnight stay in parks unless authorized by the Park Manager. Camping in permanent cabins constructed by the Park Department or in privately owned tents erected under Park Department permit and used by groups of persons under adequate supervision are the only types of overnight camping that shall be allowed in the parks. Hence, the bringing into a park and using for overnight occupancy any house trailer, camp trailer, camp wagon, or any other form of moveable structure or special vehicle, except in areas designated for that purpose by the Park Department, is prohibited.

SANITATION

Rule 26. Pollution of waters Using the fountains, drinking fountains, ponds, lakes, streams, bays, or any other bodies of water within the parks, or the tributaries, storm sewers or drains flowing into them as dumping places for any substance or matter or thing which will or may result in the pollution of said waters is strictly prohibited.

Rule 27. Refuse, trash, and destruction of park property

(a) No person shall deposit or drop or place any refuse including bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage, tobacco products or containers of foil upon the ground or on any other park property except in receptacles provided for trash disposal. At no time shall any petroleum products be disposed of on park property except into those containers provided at marina facilities for that purpose.

(b) No person shall bring to or use any water or beverage container made of glass on any beach available to the public in the unincorporated area of the County.

(c) No person shall deposit into any recycle bin or container any material other than that for which it is intended.

UNDESIRABLE ACTS AND BEHAVIOR

Rule 28. Noise No person entering or upon park and recreation areas shall make excessive unnecessary noise and all provisions of Chapter 21-28 and 21-28.1 of the Miami-Dade County Code shall apply to and be enforced in all park areas.

Rule 29. Merchandising, vending, peddling, etc. No person, organization or firm other than licensed concessionaires permitted by and acting under the authority of the Park Department will expose or offer for sale, rent or trade, any article or thing, or station or place any stand, cart, or vehicle for the transportation, sale or display of any article or merchandise within the limits of any park or recreation area.

Rule 30. Advertising and publicity and signs No person shall advertise or obtain publicity through any means whatsoever within or upon any park property, except as permitted by Article 6 of the Miami-Dade County Home Rule Charter. To insure compliance, specific approval in advance and in writing from the Department Director is required and such approval shall be so worded as to prohibit damage to or marring of park property or vegetation, disturbance of park patrons or the display of anything unsightly or in disharmony with park beauty.

Rule 31. Public demonstration, gatherings, performances, speeches, etc. The County Manager in conjunction with the Park and Recreation Department Director has the responsibility and authority to establish guidelines for the permitting for demonstrations, gatherings, performances or other mass assemblages at County parks. Such rules and regulations shall be codified in Administrative Order 8-3, as amended, and be readily accessible to the public.

Rule 32. Under the influence of drugs and/or alcohol intoxication No person who is intoxicated or under the influence of drugs will be permitted entry to parks or recreation areas and if discovered therein will be ejected forthwith.

Rule 33. Intoxicating liquors, beer, wine, etc. Drinking of alcoholic liquors or beverages and the bringing of such into the park areas shall be permitted only under the circumstances set forth in the following paragraphs:

(a) At certain special specifically designated facilities where meals or lunches are served under concession privileges, the sale of alcoholic liquors or alcoholic beverages by such concessionaire or his employees will be permitted under strict regulation, being restricted to certain hours of the day and under the special authorization and control of the Department. Such sales shall be made only in individual cups (not in original packages or otherwise in bulk) and shall be served for consumption on the immediate premises of the concession and such sales of beer and wine are to be permitted only in open containers for consumption on the immediate premises of the concession except that the sale of unopened containers through concessions furnishing boats will be permitted.

(b) At picnic parties during hours of noon to sundown; and can only be consumed at picnic shelter areas or areas specifically designated by the Department Director. Special events as designated by the Department Director shall be exempt from the provisions of this paragraph.

(c) Owners of boats or vessels regularly docked or moored at or in park marina areas, or occupants of cabanas, shall be permitted to transport alcoholic liquors or beverages across park properties for use on board said boats, vessels, or in cabanas only.

(d) Unless authorized in writing by the Director of the Park and Recreation Department. the consumption of alcoholic beverages is specifically prohibited by those directing, participating in, or spectators of any athletic events. However, under no circumstance shall the Director of the Park and Recreation Department authorize the consumption of alcoholic beverages at youth activities and programs organized by the County or self-organized and authorized under permit by the Department.

Rule 34. Proper use of facilities

(a) No person over the age of ten (10) shall occupy such seats or benches or enter into such pavilions or other park structures or sections thereof that are reserved or designed by the Park Department for the exclusive use of the opposite sex unless providing personal assistance to a person with a disability, when no unisex facility exists. Children ten (10) years of age and under entering such opposite sex facilities must be accompanied by a parent or guardian.

(b) No person will loiter in or around any restroom, dressing room or bathhouse, picnic shelter, wooded or natural area.

Rule 35. Gambling No person or organization shall conduct raffles, bingo games, or card games for money or drawings for prizes or participate in any other forms of gambling within park limits.

ENFORCEMENT AND OBEDIENCE TO RULES

Rule 36. Authority of Miami-Dade Police Department officials and Park Department officials

(a) It shall be the duty and responsibility of the Miami-Dade Police Department to enforce all State laws, County ordinances, and in conjunction with Department employees, enforce all regulations and rules as well as all provisions of permits issued by the Park and Recreation Department within the following areas of the County:

(1) All parks and other areas maintained and operated by the Miami-Dade County Park and Recreation Department;

(2) All beaches and ocean areas east of the State designated erosion control line and made available to the public in the unincorporated area of the County and in municipalities.

ARTICLE III
THE SHANNON MELENDI ACT

26-37. Definitions.

As used in this article the following terms shall have the following meanings:

A. *Community-based Organization (CBO)* shall refer to any not-for-profit agency, group, organization, society, association, partnership, or individual whose primary purpose is to provide a community service to improve or enhance the well-being of the community of Miami-Dade County at large or to improve or enhance the well-being of certain individuals within this community who have special needs.

B. *Child Event Worker* shall refer to any full-time or part-time employee, agent, volunteer, independent contractor, or employee or volunteer of an independent contractor of a carnival or fair that hosts amusement rides in a park owned or operated by Miami-Dade County. The following persons shall be exempted from this definition:

(1) Law enforcement personnel;

(2) Emergency or fire rescue personnel;

(3) Persons conducting deliveries; and

(4) Military recruitment personnel.

C. *Conviction* shall refer to a determination of guilt of a criminal charge which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

D. *Park vendor* shall refer to any full-time or part-time employee, agent, volunteer, independent contractor, or employee or volunteer of an independent contractor that has a contract with, or permit from, Miami-Dade County to rent or sell food, beverages, sporting equipment, or any other goods or services in a park owned or operated by Miami-Dade County. The following persons and events shall be exempted from this definition:

(1) Law enforcement personnel;

(2) Emergency or fire rescue personnel;

(3) Persons conducting deliveries;

(4) International or national sporting events;

(5) One-day events; and

(6) Carnivals, festivals, trade shows, and fairs that do not host amusement rides.

E. *Professional Background Screener* shall refer to any person, company, organization or agency which, for monetary fees, dues, or on a not-for-profit basis, regularly engages in whole or in part in the practice of researching and assembling criminal history information on specific persons for the purpose of furnishing criminal history reports to third parties.

F. *Programming Partner* shall refer to any Not-For-Profit Program Service Provider that is selected by the Department under Article II of this chapter and the accompanying Administrative Order to provide programs in County Park and Recreation Facilities.

G. *Sexual Offender* shall include any individual who meets the criteria of a "sexual predator" as defined in Section 775.21(4) of the Florida Statutes, or a "sexual offender" as defined in Section 943.0435 of the Florida Statutes, or who is listed on the National Sex Offender Public Website owned or operated by the United States Department of Justice.

H. *Violent felony* shall refer to the following felonies: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking.

I. *Volunteer* shall refer to any individual performing volunteer duties for a CBO, for a Programming Partner, for the Miami-Dade Park and Recreation Department as a child event worker, or as a park vendor for more than three (3) days in any six (6) month period. Students volunteering in order to fulfill high school graduation requirements shall be exempted from this definition.

26-38. Background checks required for child event workers, park vendors, and programming partner or community-based organization (CBO) employees and volunteers.

A. Upon adoption of this ordinance [Ord. No. 08-07], employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall secure a nationwide criminal background check of all existing child event workers, park vendors, employees, and volunteers whose duties require physical presence on park property owned or operated by Miami-Dade County. In addition, prior to employing or allowing to volunteer a person whose duties would require physical presence on park property owned or operated by Miami-Dade County, employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall secure a nationwide criminal background check of all such prospective child event workers, park vendors, employees or volunteers.

The nationwide criminal background checks shall be conducted by a Professional Background Screener and shall include a report as to whether each child event worker, park vendor, staff member or volunteer is listed on the National Sex Offender Public Registry, and a comprehensive report and analysis, obtained from no less than two independent databases/sources, on the nationwide criminal history of such child event worker, park vendor, staff member or volunteer.

B. Every three (3) years thereafter, employers of park vendors, and Programming Partners and CBOs shall secure nationwide criminal background checks for existing park vendors, staff members, and volunteers whose duties require physical presence on park property owned or operated by Miami-Dade County. However, employers of child event workers shall secure nationwide criminal background checks for existing child event workers whose duties require physical presence on park property owned or operated by Miami-Dade County every year thereafter.

C. Any child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO who:

(1) Has been convicted of a violent felony or conspiracy to commit a violent felony within the past five (5) years; or

(2) Has been convicted of a felony involving the trafficking of a controlled substance within the past (5) years; or

(3) Has two (2) or more convictions for a violent felony, for conspiracy to commit a violent felony, or involving the trafficking of a controlled substance; or

(4) Is a sexual offender or a sexual predator; or

(5) Has failed to provide the employer, Programming Partner or CBO with proof of United States citizenship or legal immigration status in the United States,

shall be prohibited from working or volunteering on park property owned or operated by Miami-Dade County. All child event workers, park vendors, and staff members and volunteers of a Programming Partner or CBO shall submit to their employer, to the Programming Partner, or to the CBO an affidavit affirming that no work or volunteer duties will be performed on park property owned or operated by Miami-Dade County in violation of this subsection and that any arrest will be reported to his/her employer within forty-eight (48) hours of such arrest.

D. Employers of child event workers shall maintain copies of the results of the criminal background checks required by this section for a period of two (2) years from the date they were secured, and employers of park vendors, Programming Partners, and CBOs shall maintain such copies for a period of three (3) years from the date they were secured. Employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall maintain the affidavits required by Section 26-38.C. and the copies of the proof of United States citizenship or legal immigration status until the person is no longer a child event worker, park vendor, staff member, or volunteer.

Employers of child event workers, employers of park vendors, and Programming Partners and CBOs shall, upon request, provide copies of these documents to Miami-Dade County or to any law enforcement personnel with jurisdiction.

E. Every child event worker, park vendor, and staff member and volunteer of a Programming Partner or CBO shall wear, in a conspicuous and visible manner, an identification badge that contains his/her photograph and full name while working or volunteering on park property owned or operated by Miami-Dade County, except when in costume and during a performance. The identification badge shall be of a size, design, and format approved by the Miami-Dade Park and Recreation Department.

F. Penalties and Enforcement.

(1) It shall be unlawful for an employer of child event workers, an employer of park vendors, or a Programming Partner or CBO to knowingly permit or allow any child event worker, park vendor, staff member, or volunteer to work or volunteer on park property owned or operated by Miami-Dade County in violation of Section 26-38

(2) It shall be unlawful for any child event worker, park vendor, or staff member or volunteer of a Programming Partner or CBO to work or volunteer on park property owned or operated by Miami-Dade County in violation of Section 26-38

(3) Any person who shall violate a provision of Section 26-38, or who shall knowingly or willingly provide false or erroneous information to his/her employer, or fail to comply therewith, or with any of the requirements thereof, shall upon conviction thereof in the County Court, be punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment.

(4) Any person who violates or fails to comply with Section 26-38 may be subject to civil penalties in accordance with Chapter 8CC of this Code. Each day of violation or noncompliance shall constitute a separate offense.

26-39. Miami-Dade Park and Recreation Department employees and volunteers.

A. Upon adoption of this ordinance [Ord. No. 08-07], the Miami-Dade Park and Recreation Department shall secure a nationwide criminal background check of all existing employees and volunteers whose primary duties require physical presence on park property owned or operated by Miami-Dade County. In addition, the Miami-Dade Park and Recreation Department shall secure a nationwide criminal background fingerprint check prior to employing, or allowing to volunteer, a person whose primary duties would require physical presence on park property owned or operated by Miami-Dade County. This nationwide criminal background fingerprint check shall be conducted through the Florida Department of Law Enforcement.

B. Every three (3) years thereafter, the Miami-Dade Park and Recreation Department shall secure nationwide criminal background checks for existing employees and volunteers whose primary duties require physical presence on park property owned or operated by Miami-Dade County. These nationwide criminal background checks shall be conducted by a Professional Background Screener and shall include a report as to whether each employee or volunteer is located on the National Sex Offender Public Registry, and a comprehensive report and analysis, obtained from two independent databases/sources, on the nationwide criminal history of such employee or volunteer.

C. Any employee or volunteer of the Miami-Dade Park and Recreation Department who:

(1) Has been convicted of a violent felony or conspiracy to commit a violent felony within the past five (5) years; or

(2) Has been convicted of a felony involving the trafficking of a controlled substance within the past (5) years; or

(3) Has two (2) or more convictions for a violent felony, for conspiracy to commit a violent felony, or involving the trafficking of a controlled substance; or

(4) Is a sexual offender or a sexual predator; or

(5) Has failed to provide the Miami-Dade Park and Recreation Department with proof of United States citizenship or legal immigration status in the United States,

shall be prohibited from working or volunteering on park property owned or operated by Miami-Dade County. All employees and volunteers of the Miami-Dade Park and Recreation Department shall submit to the Miami-Dade Park and Recreation Department an affidavit affirming that no work or volunteer duties will be performed on park property owned or operated by Miami-Dade County in violation of this subsection and that any arrest will be reported to his/her employer within forty-eight (48) hours of such arrest.

D. The Miami-Dade Park and Recreation Department shall maintain copies of the results of the criminal background checks required by this section for a period of three (3) years from the date they were secured. The Miami-Dade Park and Recreation Department shall maintain the affidavits required by Section 26-39.C. and shall maintain copies of the proof of United States citizenship or legal immigration status until the person is no longer an employee or volunteer.

E. Every employee and volunteer of the Miami-Dade Park and Recreation Department shall wear, in a conspicuous and visible manner, an identification badge that contains his/her photograph and full name while working or volunteering on park property owned or operated by Miami-Dade County,

except when in costume and during a performance. The identification badge shall be of a size, design, and format approved by the Miami-Dade Park and Recreation Department.

F. Penalties and Enforcement.

(1) It shall be unlawful for any volunteer of the Miami-Dade Park and Recreation Department to volunteer on park property owned or operated by Miami-Dade County in violation of Section 26-39

(2) Any volunteer who shall violate a provision of Section 26-39, or who shall knowingly or willingly provide false or erroneous information to the Miami-Dade Park and Recreation Department, or fail to comply therewith, or with any of the requirements thereof, shall upon conviction thereof in the County Court, be punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment.

(3) Any volunteer who violates or fails to comply with Section 26-39 may be subject to civil penalties in accordance with Chapter 8CC of this Code. Each day of violation or noncompliance shall constitute a separate offense.

CHAPTER 26A
SANITARY NUISANCE

26A-2. Sanitary nuisances generally.

(a) *Definition*. A sanitary nuisance is the commission of any act, by an individual, municipality, organization or corporation, or the keeping, maintaining, propagation, existence or permission of anything, by an individual, municipality, organization or corporation, by which the health or life of an individual, or the health or life of individuals, may be threatened or impaired or by which or through which, directly or indirectly, disease may be caused.

(b) *Presumption of nuisance injurious to health*. The following conditions existing, permitted, maintained, kept or caused by any individual, municipal organization or corporation, governmental or private, shall constitute prima facie evidence of maintaining a nuisance injurious to health:

(1) Untreated or improperly treated human waste, garbage, offal, dead animals or dangerous waste materials from manufacturing processes harmful to human or animal life and air pollutants, gases and noisome odors which are harmful to human or animal life.

(2) Improperly built or maintained septic tanks, water closets or privies.

(3) The keeping of diseased animals dangerous to human health.

(4) Unclean or filthy places where animals are slaughtered.

(5) The creation, maintenance or causing of any condition capable of breeding flies, mosquitoes or other arthropods capable of transmitting diseases, directly or indirectly to humans.

(6) Any other condition determined to be a sanitary nuisance as defined in this chapter.

26A-4. Penalties for violation.

Any person found guilty of creating, keeping or maintaining a nuisance injurious to health shall be punished by imprisonment in the County Jail not to exceed sixty (60) days or by a fine not exceeding two hundred dollars ($200.00), or by both such fine and imprisonment.

26A-5. Duty of police to report nuisances or unsanitary conditions.

It shall be the duty of Police Officers to report to the Department of Public Health any nuisance or unsanitary condition which comes to their attention in the course of their official duties.

26A-8. Smoking, holding of lighted tobacco products prohibited in elevators; display of signs.

The smoking or carrying of lighted cigarettes, cigars, cigarillos, pipe tobacco and other tobacco products on all elevators available to and used by the general public is found to be injurious and dangerous to the public health, determined to be a sanitary nuisance and a fire hazard, and is hereby prohibited. The use of any spark, flame or fire producing device is similarly prohibited in all elevators in the County. A sign reading "Smoking Prohibited by Law" shall be permanently and conspicuously placed in each elevator available to and used by the general public by the owner or lessee of the building in which such elevator is located.

26A-9. Smoking, holding of lighted tobacco products in certain mercantile stores; display of signs.

It shall be unlawful for any person to smoke or carry a lighted cigar, cigarette, cigarillo or pipe, or use any spark, flame, match or fire producing device in any mercantile store in the County:

(a) Designed or arranged to accommodate more than one hundred (100) persons, or

(b) In which more than twenty-five (25) persons are employed, or

(c) Which voluntarily elects, by and through the action of its management, to be included within this section.

This prohibition shall apply to restrooms, restaurants, coffee shops, soda fountain counters, executive offices or beauty parlors in such mercantile stores. Every person, or his agent, having control of such store premises in which smoking or the carrying of lighted objects is prohibited by or under the authority of this ordinance, shall conspicuously display upon the premises a sign reading "Smoking Prohibited by Law."

26A-10. Smoking, holding of lighted tobacco products prohibited on premises of food stores; display of signs; exceptions.

The smoking, carrying or holding of lighted cigarettes, cigars, cigarillos, pipe tobacco and other tobacco products in areas within mercantile stores wherein food products are available for purchase by consumers for off-premises consumption tends to create unhygienic conditions injurious to the public health and is hereby prohibited. This prohibition shall not apply to restrooms, restaurants, coffee shops and soda fountain counters within such mercantile stores. Every person or corporation, or agent of such person or corporation, having control of such store premises in which smoking, carrying or holding of lighted tobacco products is prohibited shall post conspicuously within such store signs reading "Smoking Prohibited By Law." A similar sign shall also be posted on each door affording public access into the premises.

CHAPTER 28A
SEAPORT SECURITY AND OPERATIONS

28A-1. Legislative intent.

The intent of the County Commission in enacting this chapter is to accomplish the following goals and purposes at the Port of Miami:

(1) Improve security.

(2) Retain certain of the present identification procedures, and adopt certain new procedures providing greater security protection.

(3) Curb theft and fraud within Miami-Dade County relating to goods or merchandise constituting freight or cargo within the Port of Miami.

(4) Establish rules and regulations governing seaport security and operations.

(5) Preserve the public peace by preventing crime, detecting, arresting and prosecuting violators of Chapter 28A of the Code of Miami-Dade County, and protecting the rights of persons and property within Miami-Dade County.

28A-2. Definitions; applicability of chapter provisions; disclaimer of liability; right of access of public officers, etc.; use and enjoyment of premises; offenses and penalties.

28A-2.1. Definitions. Words not specifically defined in this Section 28A-2 which relate to maritime and shipping industries or practices, processes and equipment shall be construed according to their general usage in the shipping industry. The definitions contained in this section shall apply to Chapter 28A, Code of Miami-Dade County.

(1) *Abandon* shall mean to forsake, desert, give up and surrender one's claim or right.

(2) *Area of cargo operations* and *ACO* shall mean that portion of the Port of Miami (also known as the "port terminal facility") which is primarily devoted to the holding and handling of cargo and freight, and which the Director designates as an area in which limited ingress and egress is required for the safety, protection or security of the public and the cargo and freight within it.

(3) *Authorized* shall mean acting under or pursuant to a written contract, license, permit, instruction or other evidence of right issued by the Board or the Manager or his designee.

(4) *Board* shall mean the Board of County Commissioners of Miami-Dade County, Florida.

(5) *Bus* shall mean a passenger motor vehicle designed to accommodate no less than twenty-one (21) passengers, exclusive of the driver.

(6) *Cargo* shall mean the load, lading, goods or merchandise conveyed or consigned for transit upon any vessel or vehicle or stored at a port terminal facility.

(7) *Carrier of freight* shall mean any person who is engaged or holds himself out as willing to be engaged in carriage of freight or passenger baggage by water or land between any point in the port and a point outside the port.

(8) *Checker* shall mean any person employed to verify freight loaded, off-loaded or stored at the port, particularly freight handled by longshoremen. The term shall include foremen and crew leaders.

(9) *Commercial activity* shall mean (a) the shipping, transferring, exchanging, trading, buying, hiring, or selling of commodities, goods, services, freight or property of any kind on the port, (b) engaging in any conduct on the port for revenue-producing purposes, whether or not revenues ultimately are exchanged, obtained, or transferred on the port, or (c) the offering or exchange of any service on the port as a part of, or condition to, other revenue-producing activities or services on or off the port.

(10) *County* shall mean Miami-Dade County, State of Florida.

(11) *Courtesy car, courtesy van,* and *courtesy vehicle* shall mean "courtesy vehicle" as defined in Section 25-1.1 of the Code of Miami-Dade County, except that the word airport shall be substituted by the word port, as defined in Section 28A-2.1.

(12) *Department* shall mean the Miami-Dade County Seaport Department, also known as the Dante B. Fascell Port of Miami-Dade.

(13) *Director* shall mean the administrative head of the Seaport Department, appointed by the County Manager, the deputy or acting Director, or the Director's designee.

(14) *Domestic animal* shall mean any animal of a species usually domesticated in the United States and customarily found in the home.

(15) *Explosives* shall mean any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon application of heat, flame or shock, or any device, the primary purpose of which is to function by explosion. The term "explosives" includes, but is not limited to, dynamite, nitroglycerine, trinitrotoluene ammonium nitrate when combined with other ingredients to for an explosive mixture, or other high explosives, detonators, safety fuses, squibbs, detonating cords, igniter cords and igniters. Explosives shall not include shotgun shells, cartridges or ammunition for firearms.

(16) *For-hire passenger motor vehicle,* and *limousine* shall mean such terms as defined in Section 31-81 of the Code of Miami-Dade County. "Passenger motor vehicle" shall mean such term as defined in Section 31-102 of the Code of Miami-Dade County.

(17) *Freight* shall mean cargo and passenger baggage carried, consigned or stored at any port terminal facility.

(18) *Law Enforcement Officer* shall mean any person employed and vested with the police power of arrest under federal, state or county authority.

(19) *Longshoreman* shall mean an employee of a stevedore or stevedoring firm at the port whose work consists of the freight loading or unloading of vessels at the port or the movement of freight incidental to, immediately prior to, or following such loading or unloading of a vessel.

(20) *Minibus* shall mean a passenger motor vehicle designed to accommodate between twelve (12) and twenty (20) passengers, exclusive of the driver.

(21) *Motor vehicle* shall mean a device in, upon or by which a person or property may be propelled, moved or drawn upon land or water. However, a device moved solely by human or animal power, or aircraft, or a device moved exclusively upon stationary rails or tracks shall be defined as a "vehicle," rather than as a "motor vehicle."

(22) *Operational directives* shall refer to instructions, directives, rules and regulations pertaining to the operation of the Port of Miami, including Port of Miami Tariff No. 10 as amended, prepared and promulgated from time to time by the Director. When approved by the Board of County Commissioners, these operational directives shall have the same force and effect as County ordinances.

(23) *Operator,* with respect to a vehicle or motor vehicle, shall mean any person in actual physical control thereof. "Operator," with respect to maritime or shipping services, shall mean any person carrying on the business of furnishing wharf, dock, warehouse or other terminal services or facilities.

(24) *Owner* shall mean a person holding legal title to a vehicle or motor vehicle, or in the event that such vehicle is the subject of a mortgage, conditional sale or lease, then the person in whom the immediate right of possession thereof is vested.

(25) *Natural person* shall be defined as a human being and shall not include a corporation a partnership, an association, a trustee, a receiver, or a governmental entity.

(26) *Parking enforcement specialist* shall mean any department employee who successfully completes a training program established and approved by the Police Standards and Training Commission and is certified by the Commission to be a parking enforcement specialist.

(27) *Passenger van* shall mean a passenger motor vehicle designed to accommodate no more than eleven (11) passengers, exclusive of the driver.

(28) *Person* shall be as defined in Section 1.01(3). Florida Statutes, including a natural

person and a corporation, a partnership, an association, a trustee, or a receiver. Person shall also include municipal, governmental and public bodies and their agents when such bodies or agents are using the port terminal facility.

(29) *Port* shall mean the Dante B. Fascell Port of Miami-Dade, also known as the Port of Miami, and shall include Dodge Island and Lummus Island, port terminal facilities, and that area described as the "Miami Harbor" in the "Port of Miami Terminal Tariff," or any amendment thereto (issued by the County Manager under Administrative Order No. 4-4, pursuant to Section 4.02 of the Home Rule Charter).

(30) *Port security officer* shall mean any individual employed by the Department for the purposes of maintaining security at the port.

(31) *Port terminal facility* shall include, but not be limited to: harbor, channel, turning basin, anchorage area, jetty, breakwater, waterway, canal, lock, tidal basin, wharf dock, pier, slip, bulkhead, public landing, warehouse, terminal, refrigerating and cold storage plant, railroad and motor terminal for passengers and freight, rolling stock, railroad connection, sidetrack or siding, car ferry pipeline, shop administrative building, booth or office, tunnel, causeway, bridge, fence, parking lot, conveyors and appliances of all kinds for the handling, storage, inspection and transportation of freight and passenger traffic, whether between land and water or between two (2) vessel carriers.

(32) *Port watchman* shall mean any watchman, gateman, roundsman, private investigator, guard, guardian or protector of property (whether employed by an person, carrier of freight, or the Department) to perform services in such capacity on any portion of the port, but shall not mean any Law Enforcement Officer.

(33) Restricted area shall mean all areas of cargo operations and cruise operations, including (1) cruise passenger baggage terminals and (2) cruise passenger loading areas and all areas locked or posted as restricted areas.

(34) *Shipping industry* shall refer to the movement of persons and property by water, and the means by which such movement is accomplished, and shall include, but not be limited to, the following:

(a) *Common carrier by water* as defined in the Shipping Act of 1916, as amended, in 46 U.S.C. 801,

(b) *Common carrier* as defined in the Interstate Commerce Act, as amended, 49 U.S.C. 1, when engaged in the transport of cargo or freight to or from a port terminal facility,

(c) *Motor carrier* and *private carrier of property by motor vehicle* as defined in the Interstate Commerce Act, as amended, in 49 U.S.C. 303, when engaged in the transport of cargo or freight to or from a port terminal facility,

(d) *Air carrier, foreign air carrier* and *agent* as defined in 49 U.S.C. 1301 when engaged in the transport of cargo or freight to or from a port terminal facility,

(e) *Vessel* as defined in the Shipping Act of 1916, as amended, 46 U.S.C. 801,

(f) *Forwarding* or *forwarder* as defined in 46 U.S.C. 801 and 49 U.S.C. 1002(5),

(g) Employees, agents, servants or independent contractors of the above, and

(h) Any person (including any governmental body) carrying on the business of furnishing a wharf, dock, warehouse or other port terminal facility in connection with any of the above.

(35) *Stevedore* shall mean a contractor (but not including employees thereof) who for compensation moves, agrees to move, consigns or agrees to consign freight on a vessel, whether publicly or privately owned, at a port terminal facility that lies between a point in the port and a point outside the port. "Stevedore" shall also include a contractor (but not including employees thereof) who for compensation, performs or agrees to perform labor or services incidental to the movement of freight on a vessel at a port terminal facility; such movement of freight shall include the movement of freight into or out of containers which have been, a being or will be carried on vessels.

(36) *Taxicab* shall mean any such term as defined in Section 31-81 of the Code of Miami-Dade County.

(37) *Traffic* shall refer to pedestrians, vessels and vehicles, while operating within any port area.

(38) *Waterborne freight* shall mean freight carried or consigned for carriage on a vessel.

(39) *Weapon* shall mean a gun, knife, blackjack, slingshot, metal knuckles, or any explosive device, or any other like instrument capable of being utilized to coerce, intimidate or injure an individual.

(40) *Wild animal* shall mean any animal of a species not usually domesticated in the United States nor customarily found in the home. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 81-88, § 1, 7-21-81; Ord. No. 88-116, § 1, 12-6-

88; Ord. No. 97-161, § 1, 9-23-97; Ord. No. 98-78, § 1, 6-2-98; Ord. No. 00-29, § 3, 2-24-00)

28A-2.2. Applicability of Chapter 28A provisions.

(a) Any permission granted to a person, corporation, partnership, or other legal entity by the Board, County Manager or Director, directly or indirectly, expressly or by implication, to enter upon or use the port, including the area of cargo operations and restricted areas, is conditioned upon compliance with Chapter 28A and operational directives and the payment of any and all fees or charges established and payable to the County; such fees and charges shall include any and all fees or charges established or approved by the Board or the County Manager; and entry upon or into port property by any person shall be deemed to constitute an agreement by such person to comply with such rules and regulations and to pay any such fees and charges.

(b) It shall be unlawful for any person to do or commit any act forbidden by or to fail to perform any act required by these rules and regulations or to fail to pay any fees established and payable pursuant to Chapter 28A

(c) The Department, through its Director, may from time to time cause to be issued operational directives applicable to any port property. If any such operational directive contains a requirement that fees or charges by paid for any operation on or use of a port facility or property as defined in the operational directive, such fees and charges shall be established in accordance with the provisions of Chapter 28A. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-2.3. Port liability. The County assumes no responsibility or liability for any loss, injury or damage to persons or property at the port, nor in connection with the use of a port terminal facility. The placing of property of any nature, including freight on seaport property pursuant to port tariff, shall not be construed, under any circumstances, as a bailment of that property by Miami-Dade County; and Miami-Dade County, its officers, employees and agents shall not be considered as bailees of any property whatsoever. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-2.4. Access of public employees and law enforcement officers. Department employees and law enforcement officers shall have free and full access to and from any and all places and things on the port to make inspections and/or enforce the provisions of this chapter. No person shall obstruct or interfere with any Law Enforcement Officer or any designated Department employee conducting such inspection and/or enforcement or in the performance of any other power or duty required of such officer or employees. Provided, however, that such free and full access shall be subject to all appropriate federal statutes and regulations enforced by the U.S. Customs Service or other agency of either state or federal governments. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-2.5. Offenses and penalties. Every person who violates any provision of Chapter 28A shall be punished by a fine not to exceed five hundred dollars ($500.00), or imprisonment in the Miami-Dade County Jail for a period of not more than sixty (60) days, or both; provided, however, that parking and pedestrian violations shall be punished by a fine not to exceed the maximum allowable fine prescribed by the Laws of the State of Florida and/or the Code of Miami-Dade County, Florida. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 98-78, § 1, 6-2-98)

28A-2.6. Emergencies. The Director is empowered to take such action as the Director deems necessary when an emergency exists at a port facility or property which, in the Director's judgment, presents an immediate threat to public health, security, safety or welfare, or to the operation of a port facility or property; provided, however, that in the exercise of such power the Director shall promptly notify the governmental agency(ies) or County department(s) having been assigned by the Board or County Manager primary responsibility for the handling and resolution of such emergency, and provided further that the Director's power herein granted shall cease upon the assumption of jurisdiction over such emergency by the governmental agency(ies) or County department(s) and such assumption of responsibility shall not be inconsistent with the requirements of any emergency procedure or program for a port facility or property adopted and approved by the Board. No action shall knowingly be taken by the Director hereunder or by any County department(s) contrary to any regulation or order of the Federal, State or County agency having appropriate jurisdiction. (Ord. No. 97-161, § 1, 9-23-97)

28A-2.7. Trespassing. Whoever, without being fully authorized, licensed or invited, willfully enters or remains at a port facility or property, or a portion thereof, or having been authorized, licensed or invited to a

port facility or property, or portion thereof, is warned or ordered by authorized Department personnel or a law enforcement officer to depart, and refuses to do so, commits the offense of trespass. (Ord. No. 97-161, § 1, 9-23-97)

28A-2.8. Other laws. All applicable provisions of the laws of the State of Florida, now in existence or hereafter enacted, are hereby adopted by reference as part of these rules and regulations. (Ord. No. 97-161, § 1, 9-23-97)

28A-2.9. Jurisdiction. The violation of any provision hereof shall be triable in the Miami-Dade County Court. (Ord. No. 97-161, § 1, 9-23-97)

28A-2.10. Severability. If any provision of these rules and regulations or the application thereof to any person or circumstances is held invalid, the remainder of these rules and regulations and the application of such provision to other persons or circumstances shall not be affected thereby. (Ord. No. 97-161, § 1, 9-23-97)

28A-3. Procedures governing the area of cargo operations and other restricted areas.

28A-3.0. Access. No person shall enter an area of cargo operations or other restricted area unless clearly displaying an identification card allowing for such access or first being authorized to do so by the Director, a designee of the Director, or a law enforcement officer. Notwithstanding the foregoing, this Section 28A-3.0 shall not apply to properly ticketed cruise vessel passengers engaged in cruise vessel embarkation or disembarkation. (Ord. No. 81-88, § 1, 7-21-81; Ord. No. 97-161, § 1, 9-23-97)

28A-3.1. Consent to inspection. Any vehicle or motor vehicle, and the contents thereof, entering, departing from or being within the area of cargo operations or other restricted area shall be subject to inspection by the Director, Departmental employees, or any Law Enforcement Officer for the purposes of determining ownership of such vehicle, the contents thereof, and for examining the documentation relating to the said contents; such inspection shall be subject to the rules and regulations of the U.S. Customs Service related to bonded cargo and customs seals. The operation or use of a vehicle or motor vehicle by any person into, from or within the area of cargo operations or a restricted area of the port shall constitute the consent of the owner, operator or user of such vehicle to the aforesaid inspection. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-3.2. Inspections. No person shall enter an area of cargo operations or other restricted areas of the port except persons who enter pursuant to Section 28A-5, cruise vessel passengers engaged in cruise vessel embarkation or disembarkation or employees of federal, State or local government bodies then having proper business thereon and bearing proper identification required by the provisions of this Chapter 28A. No person entering or attempting to enter, being within, or departing from or attempting to depart the area of cargo operations or restricted area of the port shall refuse to produce for inspection at the request of the Director or Department employee or any Law Enforcement Officer a Department identification badge and/or the contents of any vehicle, bag, case, parcel, box or container of any kind in his possession. Where the entry into or departure from or attempt thereof is by means of a vehicle or motor vehicle, no person shall refuse to produce for inspection, after such request, a driver's license or department vehicle permit. No person shall refuse to produce at the request of the Director or Department employee or any Law Enforcement Officer any document in his possession relating to the ownership or possession of freight within the area of cargo operations or any restricted area. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-3.3. Control of vehicular traffic. Control of all vehicular traffic on the port shall be governed by the laws of the State of Florida, the Code of Miami-Dade County and operational directives. No person shall enter, operate or cause to be operated any vehicle or motor vehicle in the area of cargo operations or any other restricted area unless such entrance or operation is required for a cargo, passenger or business activity within such area and is authorized by the Department. No person shall operate any vehicle or motor vehicle within the area of cargo operations or other restricted area without a vehicle or motor vehicle identification decal as prescribed by Section 28A-4. Notwithstanding the foregoing, no decal is required of local, state or federal governmental vehicles. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97; Ord. No. 98-78, § 2, 6-2-98)

28A-3.4. Parking.

(a) No person shall park any vehicle or motor vehicle within the port in areas other than those designated or authorized by the Director or by operational directive, or in any other manner contrary to any posted Department sign, traffic control device or pavement

marking. No person shall park any vehicle or motor vehicle within the port in a manner that will interfere with the use of a facility or area by others or obstruct passage or movement of emergency vehicles or other vehicles.

(b) Parking, to the extent available, may be provided for personnel employed in the area of cargo operations or other restricted area, but will be restricted to areas designated by the Director. It shall be a violation of the provisions of this chapter for such personnel to park a vehicle in any area other than those expressly designated by the Director.

(c) Whenever any vehicle or motor vehicle is improperly or illegally parked or positioned as to obstruct traffic, or is reasonably likely to cause a hazard to the health or safety of persons lawfully on the property, or impedes or is likely to impede the movement or handling of freight or passengers by reason of its position or condition, or is apparently abandoned on the port (as defined in Chapter 705, Florida Statutes), then the Director, his agents or a Law Enforcement Officer may remove the offending vehicle or motor vehicle.

(d) The owners of vehicles or motor vehicles removed pursuant to subsection 28A-3.4(c) may reclaim same and shall be required to pay appropriate charges accrued against such vehicle for parking, removal and storage on the port.

(e) Parking enforcement specialists and law enforcement officers are hereby authorized to issue uniform parking tickets. If the vehicle is unattended, the ticket may be attached to the vehicle in a conspicuous place. The owner of said motor vehicle must answer to the charge placed against him within thirty (30) days as provided in Section 30-389.2 of this Code. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 81-88, § 1, 7-21-81; Ord. No. 97-161, § 1, 9-23-97)

28A-4. Identification permit for vehicles and motor vehicles.

28A-4.1. Vehicle and motor vehicle identification generally. Any person employed at the port on a permanent basis and driving a motor vehicle onto port premises and all persons owning, leasing, or operating one (1) or more vehicles or motor vehicles operating on the port and entering into or departing from the ACO or a restricted area (other than cruise vessel passengers engaged in vessel embarkation or disembarkation) shall obtain and maintain a current identification permit for each vehicle from the Department. Such permit may be a numbered decal reflecting the authorization to enter into the ACO or restricted area. Application for such permit must be accompanied by copies of the vehicle registration, certificate of insurance and the applicant's driver's license, as well as the driver's license of all anticipated operators of such vehicle or motor vehicle. The completed application for such permit (one (1) for each vehicle or motor vehicle) shall be submitted in duplicate on a form designed by Miami-Dade County. The owner or operator of such vehicle shall cause the permit to be permanently affixed to the vehicle or motor vehicle for which the permit was issued, and in a manner and place specified by the Director, so that it shall be plainly visible. Such permits shall be renewed by the vehicle or motor vehicle owner in a manner prescribed by the Director, annually before its expiration. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-4.2. Temporary vehicle, motor vehicle and construction vehicle identification permit.

(a) A temporary limited identification permit, in the form of a pass, may be issued by the Director to the operator of a vehicle or motor vehicle for occasional or one-time access to a specific area within the area of cargo operations or restricted area or for a vehicle or motor vehicle engaged in construction activities within the port and approved by the Director. An owner of such vehicle shall obtain a permit at the Director's office or at the area of cargo operations upon approval by the Director. When issued it shall identify the vehicle or motor vehicle operator, operator's address, operator's driver's license number and issuing state and be valid only for the area designated, parking area (if any) and duration stamped on its face. The owner and operator of such vehicle shall cause it to be plainly visible at all times on the vehicle or motor vehicle to which it is issued. The permit shall be returned at the control gate when departing from the area of cargo operations or restricted area or at the Director's office when departing from other portions of the port.

(b) A record of such temporary permits shall be maintained at the control gate. Any vehicle or motor vehicle operator who enters or who operates a vehicle or motor vehicle within the area of cargo operations more than five (5) times during a four-week period on a temporary permit may be denied a temporary identification permit and be required to obtain a permanent identification permit therefor. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-4.3. Report of changes in data in application for vehicle or motor vehicle permits. The owner, as defined in subsection 28A-2.1(16), shall report, in writing, to the Director or the office where the identification permit was originally processed, certain changes in the data on any application for a temporary, permanent, or construction vehicle, or motor vehicle permit within thirty (30) days of any of the following changes, namely:

(1) New vehicle license plate (tag or decal) number;

(2) Any change in data on vehicle registration certificate or driver's license of applicant;

(3) Sale or other disposition of the registered vehicle, including the name and address of the transferee of any interest therein;

(4) Change of vehicle color, motor or title number;

(5) Loss or damage to permanent, temporary or construction vehicle or motor vehicle permit;

(6) Change of regularly assigned place of employment;

(7) Change of applicant's employer; or

(8) Change in home address or business address of owner of the registered vehicle.

Failure to report such changes by an owner or operator within ten (10) days of the change will result in the suspension of the current vehicle identification permit and shall cause operator's access to area of cargo operations or restricted area to be revoked until the change information is furnished. False statements in the change information shall be a violation of Chapter 28A. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-4.4. Identification of commercial or leased vehicles or motor vehicles.

(a) All owners and operators of commercial vehicles or motor vehicles operated or used within the port shall comply with Section 8A-276, Code of Metropolitan Miami-Dade County.

(b) Before any leased vehicle or motor vehicle is authorized entry into the area of cargo operations or any restricted area, the operator thereof upon demand by the Director or Department employee or any Law Enforcement Officer shall comply with Section 28A-4 hereof and shall also present a legible copy of the agreement authorizing the use of the said vehicle by the operator or his employer. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-4.5. Ground transportation.

(a) Any taxicab licensed pursuant to Section 31-82 of the County Code and for which a permit issued under Section 31-93(d) of the County Code is current and valid shall have the right to transport persons and their baggage from the Port of Miami.

(b) Except for taxicabs as set forth in (a) above, no person shall transport another person or baggage by mini-bus, bus, passenger van, limousine, or any other passenger motor vehicle, or courtesy vehicle from the port, or engage in commercial activity on the port, without a valid permit issued by the Director and payment of any fee established in the Port of Miami Terminal Tariff.

(c) It shall be unlawful for the operator of any motor vehicle to park in the ACO or any restricted area or in any loading zone for any longer period than is necessary to load or discharge persons or baggage.

(d) No person shall operate a motor vehicle contrary to posted signs.

(e) No person shall solicit or engage in the rental car business on the port without a valid permit issued by the Director and payment of any fee established in the Port of Miami Terminal Tariff.

(f) Nothing contained herein shall be construed to authorize the operation of a passenger motor vehicle or courtesy vehicle in violation of any other provisions of the Code of Metropolitan Miami-Dade County, specifically including but not limited to Chapter 31. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 81-85, § 4, 7-21-81; Ord. No. 88-116, § 2, 12-6-88; Ord. No. 97-161, § 1, 9-23-97)

28A-5. Identification cards for persons.

28A-5.1. Persons who may enter area of cargo operations or restricted area. No person, other than cruise vessel passengers engaged in the process of cruise vessel embarkation or disembarkation, shall have entry to any area of cargo operations or any restricted area unless such person possesses a current Seaport-issued identification card authorizing such access or whose access is otherwise expressly authorized under Chapter 28A. Identification cards shall be worn conspicuously on the outer garment of the bearer, in plain view above the waist. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-5.2. Plan for issuance. The Director shall devise, maintain and, as required, revise a plan for the issuance of identification cards to all port employees and non-port employees working on the port. Such plan shall provide various levels of security clearance

based on the security requirements of distinct areas of the port.

Such plan shall provide for ready identification of various clearance levels, based on card color: green for port employees; red for non-port employees with security access to restricted areas; blue for non-port employees with access to non-restricted public access areas; and white for non-port temporary employees which require no more than five (5) days access to port property; or such other color scheme as may be designated by the Director.

With the exception of temporary identification cards, each identification card shall:

(a) Be issued for a period not to exceed four (4) years;

(b) Contain a photo of the cardholder;

(c) Contain a physical description of the cardholder, to include but not be limited to height, weight, and date of birth of cardholder;

(d) Contain the name, title, and employer, or in the case of a port employee the employing department and division or section, of cardholder; and

(e) Contain a unique serial number not to be repeated on any other identification card. (Ord. No. 97-161, § 1, 9-23-97; Ord. No. 98-78, § 3, 6-2-98; Ord. No. 07-57, § 1, 4-24-07)

28A-5.3. Application.

(a) The application for a permanent identification card is to be a public record filed in writing and shall contain the applicant's:

(1) Full current name and any previous names and aliases used;

(2) Current residential address and all residential addresses within the past five (5) years;

(3) Date and place of birth;

(4) Current employer and any previous employer within the past five (5) years;

(5) Social Security number and driver's license number as well as a copy of the applicant's driver's license to be made by Seaport Security Division personnel from the original document;

(6) Specific reason for entry into the area of cargo operations or restricted area;

(7) A photo of applicant taken by the Department at the time of application submission;

(8) Fingerprints authenticated by the Miami-Dade Police Department on an identification record form furnished by the Director of the Miami-Dade Police Department.

(9) Prior felony convictions or entries of findings of guilt (whether pursuant to a plea of guilty or nolo contendere or a judgment of conviction entered by a court of competent jurisdiction);

(10) Signed authorization to conduct a criminal or other background check on the applicant; and

(11) Signatures of applicant, and employer for non-port employees or immediate supervisor for port employees.

(b) Pending final action on an application for an identification card, or for individuals on the Port for no more than five (5) total days per calendar year, the Director or his or her designee may issue a temporary identification card to non-port employees.

(c) In addition to the information required in subsection (a) above, the Director may require the applicant to produce such further facts and evidence as may be necessary to determine whether or not the applicant possesses the qualifications necessary for an identification card.

(d) The making of a false statement in the application for an identification card under this section shall be grounds for refusal to issue the card and also shall be a violation of Chapter 28A

(e) The Director may conduct or require a criminal and/or financial background check on any applicant, and may conduct or require such other background checks as the Director deems necessary.

(f) No applicant for a Seaport identification card who, within the last ten (10) years, (i) has had a felony conviction or (ii) against whom a finding of guilty has been entered on a felony charge, shall be issued an identification card, except in the case of a Grandfathered Applicant, which shall be governed by subsection (g) below.

(g) No Grandfathered Applicant for a Seaport identification card, who within the last ten (10) years, (i) has had a felony conviction or (ii) against whom a finding of guilty has been entered on a felony charge shall be issued an identification card, provided, however, that any felony falling within one of the following two categories shall not be considered:

(A) Any felony conviction or finding of guilt more than five (5) years prior to the effective date of this ordinance; and

(B) Any felony conviction or finding of guilt less than five (5) years prior to the effective date of this ordinance other than

(a) Cargo theft;

(b) Smuggling;

(c) The possession with intent to sell or distribute, sale,or trafficking of narcotics or any other controlled substance;

(d) Dishonesty, fraud, or misrepresentation;

(e) Felony theft under Chapter 812, Florida Statutes, or its federal counterpart; or

(f) Any violent crime committed with a weapon.

A "Grandfathered Applicant" for purposes of this subsection and subsection (f) means a person employed at the Seaport as of the effective date of this ordinance or who, prior to the effective date of this ordinance, was employed at the Seaport. Nothing in this section shall be construed to treat a felony conviction or a finding of guilt of a Grandfathered Applicant occurring subsequent to the effective date of this ordinance any differently than such a conviction or finding of guilt would be treated for an applicant under section (f),

(h) Any applicant denied an identification card based on subsections (f) or (g) above may appeal the decision to an appeals committee, The appeals committee shall consist of five members, a member of the Miami-Dade Police Chiefs' Association, excluding the Director of the Miami-Dade Police Department, on a rotating basis, each member to serve for a period of one (1) year, the Special Agent in charge of the U.S. Customs Service in Miami or a designee, a representative of the employee's employer or, at the employer's option, the association representing the employer, the Port Director or his or her designee, and a union, labor, or employee representative. The appeals committee shall determine whether the employee shall be issued an identification card based on procedures issued by the County Manager in an administrative order.

(i) The Director shall issue said identification card after the applicant has met the requirements of Section 28A-5 and, if applicable, the appeals committee has determined the applicant shall be issued an identification card. Alternatively, if the appeals committee determines that the applicant shall be denied a card, the Director shall issue the applicant a letter so stating. In either event, the applicant or the Director, as the case may be, shall have available the review procedures of Section 28A-7

(Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97; Ord. No. 98-78, § 3, 6-2-98; Ord. No. 07-57, § 2, 4-24-07)

28A-5.4. Identification card for persons. Identification cards issued by the Department shall at all times remain the property of the County. As such, the Department shall at all times have the right to confiscate or demand return of the identification card of any person who violates the provisions of this chapter and to demand the return of the identification card of all persons employed by a company violating this chapter or whose lease, permit or license agreement with the County allowing use of the port has expired or has been canceled or is terminated. The identification card shall be valid for one (1) year from the date of issuance, unless sooner canceled or surrendered. Application for or acceptance of a card or pass under Sections 28A-5.3 or 28A-5.6 or entry into the area of cargo operations or other restricted area by any person shall subject such person to the reporting requirements of Section 28A-5.4. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97; Ord. No. 98-78, § 3, 6-2-98)

28A-5.5. Report of changes in data on application for identification card for a person. Any holder of a personal identification card shall report in writing to the Director (i) immediately any felony arrests, convictions, or findings of guilt, and, (ii) within ten (10) days of the change any other change of data in an application for a personal identification card. Failure to report such changes within the time provided or the making of a false statement in any change in information submitted shall constitute grounds for suspending the use of the card; false statements or material omissions in the change information shall be a violation of Chapter 28A. The Director or his designee may suspend or revoke the use of the card based on any felony arrest, conviction, finding of guilt or other just cause, and may reinstate the use of the card when, in his discretion, circumstances warrant, provided, however, that such power to suspend, revoke or reinstate may not be exercised in conflict with a decision of the appeals committee as set forth in Section 28A-5.3(h). Any person whose identification card has been suspended or revoked may appeal the decision to the appeals committee set forth in Section 28A-5.3(h). (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97; Ord. No. 98-78, § 3, 6-2-98)

28A-5.6. Denial of identification card. An application for an identification card to enter into the area of cargo operations or other restricted area shall be denied by the Director if the applicant refuses to answer or falsely answers any question listed in Sections 28A-5.2 or 28A-5.4, or refuses to produce documents to verify statements made on the application. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-5.7. Identification card or pass for a person: Loss, transfer, alteration or posses-

sion of altered identification cards, passes or department documents.

(a) A person who has lost his or her valid identification card, after identifying himself or herself to the satisfaction of the Seaport Security Division, shall be issued a new identification card after such person submits a completed application for a replacement card and, upon payment of a replacement charge as set by Administrative Order.

(b) An identification card for a person shall not be transferable at any time for any purpose.

(c) No person shall retain or have in his or her possession and shall promptly return to the Director or his or her designee, any card, permit, pass, badge or other means of identification issued by the Director after it has expired or when such person is no longer employed on the port or upon request by the Director or his or her designee that it be returned or when otherwise required by ordinance or otherwise. Such retention shall constitute a violation of Chapter 28A of the Code of Miami-Dade County.

(d) No person shall forge, counterfeit, alter, erase, obliterate or transfer any identification card, permit, pass, lease, record, form, badge or other instrument or document issued or maintained by the County Manager or Director, pursuant to Chapter 28A. No person shall have in his possession any forged, counterfeited, altered, erased, obliterated or transferred identification card, permit, pass, lease, record, form, badge or other instrument or document issued or maintained by the County Manager or Director pursuant to Chapter 28A. No person shall have in his possession the identification card of another individual.

(e) In the event that any person who has an application on file for an identification card enters an area of cargo operations or a restricted area without valid identification card or being otherwise authorized, such person may have the identification card or other authorization under Chapter 28A suspended or revoked. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 81-88, § 1, 7-21-81; Ord. No. 97-161, § 1, 9-23-97; Ord. No. 98-78, § 3, 6-2-98)

28A-6. Licensing and permits for stevedores.

28A-6.1. Miami-Dade County stevedore licenses. No person, shall act as a stevedore within Miami-Dade County, Florida, unless such person is a natural person and has first obtained a stevedore license from the Board after examination. The application for a stevedoring license shall be made by a natural person only and shall be submitted under oath to the Director for consideration by the County Manager. The County Manager shall present the application with his recommendation to the Board. No person shall employ a stevedore to perform services as such within Miami-Dade County, Florida, unless such stevedore is licensed by the Board. The issuance of a Miami-Dade County stevedore license shall not entitle the holder thereof to perform stevedoring services at or with the Port of Miami absent the issuance of a stevedore permit to the licensee or the firm by which the licensee is employed. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97; Ord. No. 00-29, § 1, 2-24-00)

28A-6.2. Port of Miami stevedore permits. No person shall act as a stevedore within the Port of Miami without first having obtained a stevedore permit from the Director. The application for a stevedoring permit for the Port of Miami shall be made by a person, including a corporation or partnership, and shall be submitted under oath to the Director. The Director shall not consider an application for a stevedore permit unless the applicant has a stevedore license or employs a natural person so licensed. The Director shall examine the qualifications of the applicant and shall issue the permit only if the criteria established in Section 28A-6 are met. No person shall employ a stevedore to perform stevedoring services within the Port of Miami unless such stevedore has a stevedoring permit and either has a stevedore license or employs a natural person so licensed. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97; Ord. No. 00-29, § 1, 2-24-00)

28A-6.3. Application for County stevedore license and Port of Miami stevedore permit.

(a) Each application for a County stevedore license or Port of Miami stevedore permit shall be filed together with a personal character form furnished by the County Manager or the Director and completed and sworn to by the applicant. If the person applying for a stevedore permit is a corporation or other non-natural person, the personal character form shall be completed by the chief executive officer of the entity on behalf of the entity.

(b) The applications for the County stevedoring license and the Port of Miami stevedore permit shall require the applicant to report in writing any affiliation, as an employee, partner, associate, officer, trustee, director or owner of greater than a twenty (20) percent share (directly or indirectly) of or any person, corporation, partnership, joint

venture, association, firm, business trust, syndicate, municipal or other governmental body which may directly or indirectly be involved with the shipment or handling of freight. If so affiliated, the application must be accompanied by a written list of such affiliations and the names and addresses of persons or members of any such corporation, partnership, joint venture, association, firm, business trust, or syndicate. The name and address of each person holding a controlling financial interest in the corporation, partnership, joint venture, association, firm, business trust, or syndicate, according to the definition of "controlling financial interest" contained in Section 2-11.1(b)(8), Code of Metropolitan Miami-Dade County, shall be provided by the applicant.

(c) All stevedore permit holders shall keep all ownership and controlling interest information current over the course of the stevedore permit. A stevedore permit holder shall notify the director in writing, with a copy to the County Manager, of any change in the identity of persons holding a "controlling financial interest" in the permit holder contemporaneously with the occurrence of such change, and state in its notice whether the underlying transaction was approved by the Committee on Foreign Investment in the United States ("CFIUS) pursuant to 50 U.S.co App. SS2170, if applicable, and if so, the date of such approval. The port director shall have the authority to request that a background investigation of such persons be performed by the Miami-Dade Police Department.(Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97; Ord. No. 00-29, § 1, 2-24-00; Ord. No. 07-57, § 3, 4-24-07)

28A-6.4. Procedure for obtaining County stevedore license and/or Port of Miami stevedore permit.

(a) A County stevedore license application may be obtained at the office of the Director, where, upon completion, it shall be returned. The Director shall forward it to the Miami-Dade Police Department for the purpose of conducting a criminal background check. The Miami-Dade Police Department shall process the application and return it to the Director with a memorandum indicating either that the applicant has passed or failed the criminal background check. The Director shall forward his recommendations with the application to the County Manager for his consideration pursuant to Section 28A-6.1.

(b) A Port of Miami stevedore permit application may be obtained from the office of the Director, where, upon completion, it shall be returned. The Director shall forward it to the Miami-Dade Police Department for the purpose of conducting a criminal background check. Following processing, the Miami-Dade Police Department shall return it to the Director with a memorandum indicating either that the applicant has passed or failed the criminal background check. The Port Director, in making his determination as to the issuance or denial of the permit, shall, in addition to the criteria set forth in subsection (c) below, make findings as to the need or lack of need for such permit.

(c) The County Manager and the Seaport Director shall, after examination, issue stevedore licenses and permits, respectively, to competent and trustworthy persons in such numbers as they deem necessary for the efficient operation of the county waterfront and Port of Miami facilities. The criteria for issuance shall, in the case of a permit in addition to the needs determination contained in subsection (b) above, include, but shall not be limited to, the following:

(1) The physical ability of the port, the waterways, and the Miami River facilities, respectively, to handle the vessel(s), passengers, freight or support services necessary therefor, which may be proposed by the applicant, including plans (if any) approved by the Board for proposed facilities expansion;

(2) The total and peak quantities of passengers or freight;

(3) The frequency of dockings;

(4) Special demands upon or savings to the County;

(5) The inability or refusal of license or present permit holders, respectively, to adequately serve new or existing business;

(6) The financial strength of the applicant, including the ability to secure insurance, indemnity and performance bonds;

(7) The pendency or entry of any proceeding, judgment or order of any court or regulatory body respecting the ability of the applicant, its affiliates, and/or its principals or operating offices to conduct a stevedoring business;

(8) The experience of the applicant, its affiliates, principals or operating officers;

(9) Efficient operation of the port, having due regard for the business of the port, harbor and channels; and

(10) The applicant's work-related safety record over the last five (5) years, including, without limitation, the frequency or severity or both of work-related accidents, injuries or deaths; and citations, judgments, consent de-

crees, notices of violation or rulings issued by OSHA and other regulatory agencies.

(Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97; Ord. No. 98-78, § 4, 6-2-98; Ord. No. 00-29, § 1, 2-24-00; Ord. No. 08-114, § 1, 10-7-08)

28A-6.5. Denial of County stevedore license or Port of Miami permit.

(a) A County stevedore license or Port of Miami permit shall be denied to any person or entity required to submit an application in Section 28A-6.3 if the person or entity, or any officer, member, or shareholder of greater than a twenty (20) percent share thereof; (i) has been convicted of a felony within the last ten (10) years or (ii) has had a finding of guilt entered against him, her or it on a felony enumerated in subsection (i); except in the case of a Grandfathered Applicant, which shall be governed by subsection (b) below.

(b) A County stevedore license or Port of Miami permit shall be denied to any Grandfathered Applicant required to submit an application in Section 28A-6.3 if the person or entity, or any officer, member, or shareholder of greater than a twenty (20) percent share thereof; (i) has been convicted of a felony within the last ten (10) years or (ii) has had a finding of guilt entered against him, her or it on a felony enumerated in subsection (i); provided, however, that any felony falling within one of the following two categories shall not be considered:

(A) Any felony conviction or finding of guilt more than five (5) years prior to the effective date of the ordinance from which this section derives; and

(B) Any felony conviction or finding of guilt less than five (5) years prior to the effective date of the ordinance from which this section derives other than cargo theft; smuggling; possession with intent to sell or distribute, sale, or trafficking of narcotics or other controlled substance; any violent crime committed with a weapon; fraud, misrepresentation, embezzlement, bribery, forgery, false pretenses or any other felony under Chapters 812, 817, 837, or 838, Florida Statutes, or their federal counterparts.

A "Grandfathered Applicant" for purposes of this subsection and subsection (a) above means a person or firm working on the Seaport as of the effective date of the ordinance from which this section derives or who, prior to the effective date of the ordinance from which this section derives, worked on the Seaport. Nothing in this section shall be construed to treat a felony conviction or a finding of guilt of a Grandfathered Applicant occurring subsequent to the effective date of the ordinance from which this section derives any differently than such a conviction or finding of guilt would be treated for an applicant under section (a).

(c) Any applicant for a County stevedore license or Port of Miami permit denied a license or permit based on subsections (a) or (b) above may appeal the decision to the appeals committee set forth in Section 28A-5.3(h). The Director shall issue a license or permit if the applicant otherwise qualifies and the appeals committee has determined the applicant shall be issued a license or permit. Alternatively, if the appeals committee determines that the applicant shall be denied a license or permit, the Director shall issue the applicant a letter so stating. In either event, the applicant or the Director, as the case may be, shall have available the review procedures of Section 28A-7. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97; Ord. No. 98-78, § 4, 6-2-98)

28A-6.6. Duration; grounds for suspension or revocation. A Miami-Dade County stevedore license or Port of Miami stevedore permit issued by the Board or Director, respectively, shall expire on January fifteenth annually. Upon expiration, a license or permit may be renewed by the Director when all the applicable requirements and procedures set forth in Sections 28A-6.1 through 28A-6.8 and Port of Miami Tariff No. 010, as amended, have been met. Failure of any person to timely file an application for renewal of a Miami-Dade County stevedore license or a Port of Miami stevedore permit shall cause the same automatically to lapse. In the event that a license or permit lapses, the holder may petition the County Manager or Director, respectively, for reinstatement of such license or permit. For good cause shown, the County Manager or Director, respectively, may reinstate such a license or permit to renewal status. A stevedore license or permit shall be subject to suspension or revocation upon a determination by the Mayor or Designee that the frequency or severity or both of work-related accidents, injuries or deaths, or citations, judgments, consent decrees, notices of violation or rulings issued by OSHA or other regulatory agencies, warrants a suspension or revocation. The Mayor or Designee shall provide notice of suspension of [or] revocation to the license or permit holder by certified mail ten (10) days before the license or permit is revoked or suspended. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-

97; Ord. No. 00-29, § 1, 2-24-00; Ord. No. 08-114, § 1, 10-7-08)

28A-6.7. Transfer of Miami-Dade County stevedore license or Port of Miami stevedore permit.

(a) No stevedoring licenses or permits shall be transferable except as follows: When a licensee or permittee shall have a bona fide sale of the business which he is so licensed or permitted to conducted, he may obtain a transfer of such license or permit to the purchaser of the said business only if the application of the purchaser shall be approved by the Director and the Board under the same procedures provided for in Sections 28A-6.1 through 28A-6.6.

(b) Immediately and automatically upon the death of a holder of a stevedore license or permit, the license or permit shall terminate; however, any insurance, bond, covenant, indemnity, guarantee or monetary obligation to Miami-Dade County arising from the stevedore business at or prior to such death shall remain in full force and effect and shall be binding upon the estate, any beneficiary, devisee, heir at law, creditor or personal representative (as those terms are defined in Chapter 731, Florida Statutes, and particularly Section 731.201 [thereof]).

(c) Where a holder of a Port of Miami stevedore permit is the only permit holder employed with a stevedore firm on the port, but has no "controlling interest" (as defined in Section 2-11.1(b)(8), Code of Metropolitan Miami-Dade County) in the firm, and the permit holder ceases to hold such permit, then the Director shall give a preference in issuing the next available permit to a natural person who is also employed by said stevedoring firm and who files an application and qualifies pursuant to Sections 28A-6.1 through 28A-6.7. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-6.8. Reporting of work-related accidents and injuries and regulatory actions. The holder of a stevedore license or permit shall report to the Director within three (3) days:

(a) All work-related accidents, injuries and deaths that occur as part of, relate to, are caused by, or arise out of the license or permit holder's operations at the Port of Miami or in Miami-Dade County; and

(b) All citations, judgments, consent decrees, notices of violation or rulings issued by OSHA or other regulatory agencies to the license or permit holder whether at the Port of Miami, in Miami-Dade County or elsewhere.

(Ord. No. 08-114, § 2, 10-7-08)

28A-7. Administrative review procedure.

28A-7.1. Administrative review. Any person, including the County, aggrieved with any action or inaction by the Director and/or the Department, may file a written request with the County Manager within ten (10) days of the action or inaction. Such person shall be entitled to an appeal before a hearing examiner assigned by the County Manager or his designee from a list supplied by the American Arbitration Association. Such hearing examiners may be paid a fee for their services but shall not be deemed County officers or employees within the purview of Sections 2-10.2, 2-11.1 or otherwise. The hearing examiner shall conduct a hearing after notice and shall transmit his findings of facts, conclusions, and any recommendations together with a transcript of all evidence taken before him and all exhibits received by him, to the Manager who may sustain, reverse or modify the action at issue. Such hearings shall be conducted insofar as is practicable in accordance with the rules of civil procedure governing the procedure in the Circuit Court, except as may be provided in this Code or by rules adopted by the Board of County Commissioners. Any interested party may procure the attendance of witnesses and the production of records at such hearings in the manner provided by Section 2-50. Any person appearing before a hearing examiner under the provisions of this section has the right, at his own expense, to be accompanied, represented and advised by counsel or other qualified representative. (Counsel shall mean a member of the Florida Bar.)

28A-7.2. Reserved.

28A-8. Identification.

28A-8.1. Identification cards. Failure to produce identification cards by all persons required to possess identification cards pursuant to Section 28A-5 within the port shall be cause for immediate removal from the port and shall be grounds for such further actions as may be authorized by law. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-8.2. Persons exempted. This Section 28A-8 shall not be applicable to any person who is a master, member of a ship's crew or personnel of a ship's crew, when the ship is located within the area of cargo operations or other restricted area, upon a showing of such identification as may be required by the Director or authorized Department personnel. This section is also not applicable to Law Enforcement Officers in the course of their official duties. (Ord. No. 78-65, § 1, 10-4-78;

Ord. No. 97-161, § 1, 9-23-97; Ord. No. 98-78, § 6, 6-2-98)

28A-8.3. Duty to report violations. All law enforcement officers and persons required to possess identification cards pursuant to Section 28A-5 shall be under a continuing duty to promptly report the presence of (1) any unauthorized persons in a restricted area and (2) any unauthorized persons on the port without a conspicuously placed identification card. (Ord. No. 97-161, § 1, 9-23-97)

28A-9. Freight security.

28A-9.1. Pickup or delivery. No person shall operate or use any vehicle or motor vehicle in the area of cargo operations or other restricted area to transport freight of any kind without an identification permit. All such persons must have a written pickup or delivery order pertaining to each vehicle or motor vehicle to be loaded or unloaded in the ACO or other restricted area. The aforesaid pickup or delivery order shall be a bill of lading or an order form or on a letterhead of the firm owning the freight or of the agent of the owner of the freight. Such order must be signed by an officer of the company or person authorized to sign such an order. Said order must describe the freight, the amount to be loaded, the vessel and the bill of lading numbers and marks, if any, on the freight. Any person not having such written order shall not enter the area of cargo operations or other restricted area. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-9.2. Illegal loading. No person shall knowingly allow any freight from the port to be loaded or carried aboard a vessel unless it is properly documented and manifested as freight to be loaded on that vessel. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 97-161, § 1, 9-23-97)

28A-9.3. Missing freight, reports.

(a) Whenever any shortage or suspected shortage is discovered as to any freight, an official company representative or company supervisor in charge of the freight or its movement at the time of the discovery of such shortage shall immediately notify the Miami-Dade Police Department. Such official company representative shall be responsible for giving all pertinent information concerning such freight or movement to the investigating Law Enforcement Officer and shall render all reasonable assistance to the officer.

(b) The official company representative or supervisor in charge of the cargo at the time the shortage is discovered shall, within twenty-four (24) hours from the time of discovery, complete an original and five (5) copies of the "Preliminary Cargo Security Incident Report" form available in the office of the Director. The original report shall be forwarded to the Miami-Dade Police Department. The remaining copies shall be distributed as indicated on the form.

(c) All Port of Miami stevedore permit holders shall, if they have knowledge, immediately notify the Miami-Dade Police Department of the arrival or scheduled arrival of any shipment by land or water at the port of any firearms, weapons, destructive devices, explosives, or electric weapons or devices, as defined in Section 790.001, Florida Statutes, or any hazardous material, as defined in 49 U.S.C. 1802. Notification shall occur with the receipt of the freight by the stevedore with actual knowledge of its contents, or with the receipt by the stevedore of the freight manifest revealing the nature of the freight, whichever occurs first. Failure of any Port of Miami stevedore permit holder to notify the Miami-Dade Police Department as required herein shall constitute a violation of Chapter 28A of the Code of Metropolitan Miami-Dade County. (Ord. No. 78-65, § 1, 10-4-78; Ord. No. 95-200, § 1, 11-7-95; Ord. No. 97-161, § 1, 9-23-97; Ord. No. 98-78, § 7, 6-2-98)

Note—Florida Statutes § 790.33, as amended, preempts and declares null and void all local ordinances, administrative regulations and rules in the field of firearms and ammunition, with limited exceptions set forth in § 790.33, as amended.

28A-9.4. Seaport department fee for use of customs vehicle inspection facility located at Port of Miami.

Section 709 of the Port of Miami Tariff No. 10 is hereby amended and restated as follows:

All vehicles which use the Seaport Department's Vehicle Examination Facility for the purpose of being inspected or processed by U.S. Customs, in accordance with Public Law 98-673 or otherwise, will be assessed a usage fee in the amount of $7.50 per vehicle, which shall be collected by the Seaport Department. (Ord. No. 95-200, § 1, 11-7-95; Ord. No. 97-161, § 1, 9-23-97)

28A-9.5. Allocation of portion of seaport collected user fees to auto theft task force to enhance support security operations.

Two dollars and fifty cents ($2.50) of every seven dollars and fifty cents ($7.50) collected by the seaport pursuant to section 28A-9.4 of this chapter shall be allocated to the Miami-Dade County Multi-Agency Auto Theft Task Force for purposes of enhancing security at,

and interdicting the flow of stolen motor vehicles through the Port of Miami. (Ord. No. 95-200, § 1, 11-7-95; Ord. No. 97-161, § 1, 9-23-97)

28A-10. Port watchmen, private security personnel.

(a) All port users shall furnish their own port watchmen or security personnel when they have, within the port, freight or other personal property which is described in Section 28A-9(c).

(b) All watchmen and security personnel employed by users of the port must comply with the provisions of Chapter 493, Florida Statutes.

(c) Any person who intends to utilize watchmen or security personnel must give advance notification of such intended use to the Metro-Miami-Dade Police Department and the Director or his designee.

(d) No person who has knowledge of the utilization of watchmen or special security personnel by any port user or person shall reveal the location or place of employment thereof within the port except to an authorized representative of the port or any State or federal law enforcement agency.

28A-11. Fees.

The fee schedule for all licenses, permits and identification cards required by Chapter 28A shall be set and established by Port of Miami Terminal Tariff No. 010 or by an administrative order of the County Manager and approved by the Board of County Commissioners; provided, however, that such issuance fee shall not preclude the port from imposing additional fees for the privilege of doing business on the port, as established separately in the Port of Miami Terminal Tariff.

28A-12. Prohibited conduct.

28A-12.1. It shall be a violation of this chapter for any person to remain in or on any public area, place or facility at the port, in such a manner as to hinder or impede the passage of pedestrians or vehicles.

28A-12.2.

(a) If, after the issuance of such permit or license, any holder of a stevedore license or other license or permit (other than a Seaport identification card, which is governed by sections 28A-5.3(f) and (g) above and section 28A-5.5 above), or any officer, stockholder of greater than a twenty (20) percent share, or member thereof, is convicted of a felony involving cargo theft; smuggling; usage, sale, possession, or trafficking of narcotics or other controlled substance; felony theft; any violent crime committed with a weapon; fraud, misrepresentation, embezzlement, bribery, forgery false pretenses or any other felony under Chapters 812, 817, 837 or 838, Florida Statutes, or their federal counterparts, or against whom a finding of guilt is entered in a previously enumerated felony case, such permit or license shall be immediately rescinded.

(b) Any holder of a stevedore license or other license or permit whose license or permit has been revoked under subsection (a) above may appeal the decision to the appeals committee set forth in Section 28A-5.3(h). (Ord. No. 81-88, § 1, 7-21-81; Ord. No. 97-161, § 1, 9-23-97; Ord. No. 98-78, § 9, 6-2-98)

28A-13. Personal conduct.

28A-13.1. Handbills.

(a) No person shall distribute, exhibit or post any commercial handbills, circulars, leaflets of similar material on port property.

(b) No person shall throw any handbills, circulars, leaflets or similar material onto the port, port roads, rights-of-way, streets or sidewalks.

(c) Except as may be permitted pursuant to subsection 28A-13.2 hereof, distribution of noncommercial handbills, circulars, leaflets or similar material may be conducted only upon port public roads, rights-of-way, streets or sidewalks, in accordance with reasonable procedures established by the Department. (Ord. No. 97-161, § 1, 9-23-97)

28A-13.2. Solicitation of contributions and distribution of materials.

(a) No person shall solicit alms or contributions of money or other articles of value, for religious, charitable or any other purpose, and receive money or other articles of value, whether in the form of cash, checks, credit or debit vouchers or any other form of negotiable instrument, in the public areas of the port. No person shall conduct or participate in any speechmaking, distributing of pamphlets, books or other written or graphic materials upon port property or within its facilities without having delivered a written notice to the Department of their intent to do so at least five (5) working days prior thereto so that the Department may be fully informed of the activity proposed and take adequate precautions to protect the public health, safety and order, and to assure the efficient and orderly use of port property for its primary purpose and function, and to assure equal opportunity for the freedom of expression of others.

(b) The written notice required herein shall state:

(1) The full name, address (and mailing address if different), telephone number of the person furnishing the notice, and, if an organization, the name, address and telephone number of a responsible local officer thereof and the title of such officer.

(2) The purpose or subject of the proposed activity and a description of the means and methods intended to be used in conducting the same.

(3) The date, hours and port facility desired for the proposed activity and the maximum number of persons proposing to participate therein at any one time, together with a form of identification card, authenticated copies of which shall be displayed on the outer clothing of each individual participating in the particular activity proposed. Such identification cards shall contain the name of the organization furnishing the notice, the legal name of the individual bearing the card, the signature and title of the official of such organization and the date issued.

(c) To the extent permitted by law, the Director shall have the authority to prescribe from time to time content neutral restrictions applicable to First Amendment activities at the port. Such restrictions shall be subject to the requirements of subsection (d) and may include, but not be limited to, identifying specific locations of First Amendment zones on port property, limiting the number of persons permitted in such zones, and providing a method for resolving conflicting requests for use of First Amendment zones.

(d) All restrictions prescribed by the Director shall be reasonable and appropriate, and made only after a finding by the Director that the restrictions are necessary to avoid injury, or the likelihood of injury, to persons or property, or to assure the safe and orderly use of port facilities by the public.

(e) Persons having given such written notice to the Director as provided in Section 28A-13.2(a) shall be permitted to conduct their activities in or upon the public areas of the port, subject only to the restrictions identified by the Director in a written response sent to the applicant. Such response shall be sent within five (5) days of the Director's receipt of the applicant's notice.

(f) If the Director notifies the applicant that their application is denied, the County Attorney's office may file an appropriate action in a court of competent jurisdiction and venue for a judicial determination as to whether the proposed activity described in the complaint may be prohibited, naming the applicant as a party defendant.

(g) No persons, while engaging in the activities provided for herein, shall seek to delay a person from whom a donation or contribution is sought, or to obstruct, or unreasonably interfere with access to or egress from any cruiseline, concession or washroom facilities or premises, including, but not limited to, passenger terminals, escalators and elevators, nor shall such person in any manner assail, coerce, threaten or physically disturb any member of the public, County, cruiseline or concession employee or any other person for any reason. The activities provided for herein shall not intrude upon or take place in any location or area reserved or zoned for a particular use, including, but not limited to, washrooms, offices, seating areas, baggage claim areas, ticketing areas, restaurants, lounges, concessions, areas devoted to business enterprises and passenger concourses and gate holding areas. No person shall engage in the activity hereunder without first identifying the organization he or she represents in connection with such prospective donation.

(h) No person, while engaging in the activities provided for herein, shall affix any matter, written or graphic, to any port structure or facility, nor shall any such matter be left unattended at any location at the port except in baggage lockers for a period not exceeding twenty-four (24) hours upon payment of the prevailing fee.

(i) The Director is empowered to wholly or partially restrict the activities provided for herein in the event of emergencies, including but not limited to, strikes affecting the operation of the port, shipping or traffic accidents, riots or civil commotion, power failures, hurricanes, or other conditions tending to disrupt the normal operation of the port.

(j) All persons engaged in activities permitted under Section 28A-13.2 of the Code shall wear and display identification, approved by the Department, identifying such person and the organization such person represents. In no case shall any person in any activity under this section attempt to identify himself or herself as a representative of the County of the Department. (Ord. No. 97-161, § 1, 9-23-97)

28A-13.3. Preservation of property. No person shall:

(a) Destroy, injure, deface, disturb or tamper with any building, sign, equipment, fixture, marker or any other structure or property on the port;

(b) Injure, deface, remove, destroy or disturb the trees, flowers, shrubs, or other vegetation on the port;

(c) Walk, drive or park on a posted lawn or seeded area of the port; or

(d) Willfully abandon any personal property on the port.

Any person who causes damage to port property shall be held liable for such damage. (Ord. No. 97-161, § 1, 9-23-97)

28A-13.4. Entry to restricted areas. No person shall enter any restricted area of a port except;

(a) Persons who enter in accordance with security clearance pursuant to the security program established or authorized by the Department; or

(b) Persons assigned duties on a restricted area of the port bearing proper identification as approved and required herein; or

(c) Persons who are employees or authorized representatives of the Department or other Federal, State or local government department or agency, having proper business thereon and bearing proper identification as approved and required herein. (Ord. No. 97-161, § 1, 9-23-97)

28A-13.5. Coin- and currency-operated machines. No person shall use or attempt to use a coin- or currency-operated machine without first depositing the coins or currency required by the instructions on the machine. (Ord. No. 97-161, § 1, 9-23-97)

28A-13.6. Use and enjoyment of port premises.

(a) *Not to be obstructed.* Save and except in the area of cargo operations and in restricted areas, no person(s) singly or in association with others shall by his or their conduct or by congregating with others seek to obstruct, delay or unreasonably interfere with any other person or persons use and enjoyment of the port and its facilities or any part thereof, or seek to obstruct, delay, or unreasonably interfere with the passage of any other person or persons from place to place, or through entrances, exits or passageways on the port.

(b) *Vehicles.* No person shall use, ride or drive a unicycle, a go-cart, roller skates, roller blades, skateboards or similar vehicle on or at the port, and no person shall drive a motor vehicle or ride a bicycle upon any area of the port made available to the public other than on roads, walks, or rights-of-way provided for such purpose.

(c) (i) No person, unless authorized by lease, operational directive, or otherwise, shall use, operate, drive or ride a boat, canoe, jet-skis, water scooter or other water vehicle whether motorized or not within one hundred (100) feet of any Seaport bulkhead line, within two hundred (200) feet of any Seaport berthing area occupied by a vessel, within five hundred (500) feet of the bow and one hundred (100) feet of the port side, starboard side and stern of a commercial cruise ship, tanker, barge, ferry or freighter that is underway and making way upon the channels of the Port of Miami, or in any manner that constitutes a hazard to safe navigation. Excluded from this restriction are water vehicles used by a governmental agency for official purposes in such waterway or body of water.

(ii) Any person, corporation, partnership, limited partnership, association or other business entity which is convicted of violating this sub-section shall be punished by a fine not to exceed five hundred ($500) dollars or by imprisonment in the County jail for not more than thirty (30) days or by both such fine and imprisonment.

(iii) This sub-section shall be enforced by the Miami-Dade Police Department and by the police forces with jurisdiction over the Seaport.

(d) No person, singly or in association with others, shall play any electronic or musical instrument, machine, or other device in any public area of any cruise terminal building or on the cruise terminal curbside in such a manner or so loudly as to prevent the quiet enjoyment of others or to cause others not to be able to reasonably hear private conversations and public address announcements, except as part of a musical performance authorized in writing by the Department. (Ord. No. 97-161, § 1, 9-23-97; Ord. No. 00-75, § 1, 6-6-00)

28A-13.7. Picketing.

(a) Lawful picketing, marching or demonstrations on the port may be conducted only upon port public roads, rights-of-way, streets or sidewalks, in accordance with reasonable procedures established by the Department.

(b) It shall be unlawful to picket, march or demonstrate within a restricted area or cruise terminal building at the Seaport of Miami.

(c) Chapter 28A shall not be construed to limit in any way any rights granted or derived from any other statute or any law guaranteeing employees the right to organize in labor organizations, bargain collectively themselves or through labor organizations or other representatives of their choice. (Ord.

No. 97-161, § 1, 9-23-97; Ord. No. 98-78, § 10, 6-2-98)

28A-13.8. Prohibited conduct. It shall be unlawful for any person to remain in or on any area, place or facility at the port, unless such person has a bona fide purpose for being in such area, place or facility, directly related to the normal and regular usage of such area, place or facility, in such a manner as to hinder or impede the orderly passage in or through or the normal or customary use of such area, place or facility by persons or vehicles entitled to such passage or use. (Ord. No. 97-161, § 1, 9-23-97)

28A-13.9. Sanitation.

(a) No person shall dispose of garbage, papers, refuse or other forms of trash, including cigarettes, cigars and matches, except in receptacles provided for such purpose.

(b) No person shall dump or dispose of any fill, building material or any other material on the port, except with prior approval of the Department and in such areas and under such conditions as are specifically designated.

(c) No person shall use a comfort station or rest room, toilet or lavatory facility other than in a clean and sanitary manner.

(d) No person shall deposit, blow or spread any bodily discharge on the ground or pavement anywhere on the port or on any floor, wall, partition, furniture, or any other part of a public comfort station, terminal building, or other building on the port, other than directly into a fixture provided for that purpose.

(e) No person shall place any foreign object in any plumbing fixture of a comfort station, terminal building, or other building on the port. (Ord. No. 97-161, § 1, 9-23-97)

28A-13.10. Intoxication.

(a) No person shall drink any intoxicating liquors upon any portion of the port open to the public, except in special service lounges or club rooms properly designated by the Director or by lease for on-premises liquor consumption.

(b) No person under the influence of intoxicating liquors or drugs shall operate any motor vehicle on the port. (Ord. No. 97-161, § 1, 9-23-97)

28A-13.11. Drugs. No person, other than a duly qualified physician, a certified emergency medical technician (under the direction of a duly qualified physician or as provided by law), a registered nurse, or a duly qualified pharmacist shall, while on the port, prescribe, dispense, give away, or administer any controlled substance as defined from time to time by State or Federal law to another or have such a drug in his possession, with intent to prescribe, dispense, sell, give away, or administer it to another. Such persons shall not be authorized to offer to sell or to sell such drugs except pursuant to a permit, license or agreement issued by the County. (Ord. No. 97-161, § 1, 9-23-97)

28A-13.12. Animals.

(a) No person, other than a person who is blind, visually impaired or otherwise disabled with a seeing eye or other specially trained dog, or who is accompanied by a trained dog used for law enforcement purposes under the control of an authorized law enforcement officer, shall enter the cruise terminal building with a domestic animal, unless such animal is to be or has been transported by sea and is kept restrained by a leash or otherwise confined so as to be completely under control.

(b) No person except law enforcement personnel using a dog trained for law enforcement purposes, shall enter any part of the port, with a domestic animal, unless such animal is kept restrained by a leash or is so confined as to be completely under control, whether or not such animal is to be or has been transported by sea travel. No person shall bring, carry or deliver any wild animal under his control or custody into the cruise terminal buildings of the port, without having first obtained a permit from the Department.

(c) Except for animals that are to be or have been transported by sea and are properly confined for sea travel, no person shall permit any wild animal under his control or custody to enter the port.

(d) No person other than in the conduct of an official act shall hunt, pursue, trap, catch, injure, or kill any animal on the port.

(e) No person except law enforcement personnel shall ride horseback on the port without prior authorization of the Department.

(f) No person shall permit, either willfully or through failure to exercise due care or control, any animal to urinate or defecate upon the sidewalks of the port or upon the floor of the terminal building or any other building used in common by the public.

(g) No person shall feed or do any other act to encourage the congregation of birds or other animals on or in the vicinity of the port. (Ord. No. 97-161, § 1, 9-23-97; Ord. No. 98-78, § 10, 6-2-98)

28A-13.13. Lost articles. Any person finding lost articles at the port shall immediately deposit them with an authorized representative of the Department. Articles un-

claimed by their proper owner within three (3) months thereafter shall, upon request, be turned over to the finder or otherwise be lawfully disposed of, in accordance with applicable law or operational directive. Nothing in this paragraph shall be construed to deny the right of scheduled shipping or other port tenants to maintain "lost and found" services for property of their passengers, customers, invitees or employees as permitted by law. Articles to which the owner or finder is not entitled to lawful possession shall be forfeited to the Department for disposal in accordance with the provisions of applicable law or County administrative order. (Ord. No. 97-161, § 1, 9-23-97)

28A-13.14. False reports or threats. No person shall make any threat involving shipping or any facilities or operations at or on the port or false report regarding the conduct of operations at or use of the port. (Ord. No. 97-161, § 1, 9-23-97)

28A-13.15. Forgery and counterfeit. No person shall make, possess, use, offer for sale, sell, barter, exchange, pass or deliver any forged, counterfeit, or falsely altered pass, permit, identification badge, certificate, placard, sign or other authorization purporting to be issued by or on behalf of the Department, nor shall any information electronically or magnetically encoded thereon be knowingly altered or erased. (Ord. No. 97-161, § 1, 9-23-97)

CHAPTER 30
TRAFFIC AND MOTOR VEHICLES

ARTICLE I
IN GENERAL

30-202. Definitions.

The following words and phrases, when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(1) *Alcoholic beverages* means all beverages containing more than one (1) percent of alcohol by weight. The percentage of alcohol by weight shall be determined by measuring the weight of the standard ethyl alcohol in the beverage and comparing it with the weight of the remainder of the ingredients as though said remainder ingredients were distilled water. It is the intent of this subsection that the volume and weight tables for standard ethyl alcohol and distilled water as established by the National Bureau of Standards shall be conclusive regardless of the actual weight which variance from the weight of distilled water is due to the adding of sugar, flavoring, or other ingredients used in making the final product.

(1.01) *All terrain vehicle (ATV).* Any motorized off-highway vehicle 50 inches (1270 mm) or less in width, having a dry weight of 600 pounds (273 kg) or less, traveling on three (3) or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and having handlebars for steering control.

(1.1) *Authorized emergency vehicles.* Vehicles of the fire department (fire patrol), police vehicles, such ambulances and emergency vehicles of municipal departments or public service corporations operated by private corporations, and emergency vehicles of the Department of Transportation, as are designated or authorized by the Department or the Chief of Police of an incorporated city or any Sheriff of the various counties.

(2) *Bicycle.* Every vehicle propelled solely by human power, or any moped or any motor-driven cycle propelled by a pedal-activated helper motor with a manufacturer's certified maximum rating of one and one-half (1½) brake horsepower, upon which any person may ride, having two (2) tandem wheels, and including any device generally recognized as a bicycle though equipped with two (2) front or two (2) rear wheels, except such vehicles with a seat height of no more than twenty-five (25) inches from the ground when the seat is adjusted to its highest position, and except scooters and similar devices.

(3) *Bus.* Any motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) *Business district.* The territory contiguous to, and including a highway when fifty (50) percent or more of the frontage thereon, for a distance of three hundred (300) feet or more, is occupied by buildings in use for business.

(5) *Cancellation.* Cancellation means that a license which was issued through error or fraud is declared void and terminated. A new license may be obtained only as permitted in this chapter.

(6) *Crosswalk.*

(a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on oppo-

site sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

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

(7) *Daytime.* Daytime means from a half hour before sunrise to a half hour after sunset. Nighttime means at any other hour.

(8) *Department.*

(a) Any reference herein to Department shall be construed as referring to the Department of Highway Safety and Motor Vehicles, defined in Section 20.24, F.S., or the appropriate division thereof.

(b) Any reference herein to Department of Transportation shall be construed as referring to the Department of Trans- portation, defined by Section 20.23, F.S., or the appropriate division thereof.

(9) *Director.* Director of the Division of the Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles.

(10) *Driver.* Any person who drives or is in actual physical control of a vehicle, on a highway, or who is exercising control of a vehicle or steering a vehicle being towed by a motor vehicle.

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

(12) *Farm tractor.* Any motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(13) *Flammable liquid.* Any liquid which has a flash point of seventy (70) degrees Fahrenheit, or less, as determined by a Tagliabue or equivalent closed-cup test device.

(14) *Gross weight.* The weight of a vehicle without load plus the weight of any load thereon.

(14.1) *Holidays.* Where used in this chapter or on authorized signs erected by authorized official agencies shall, in addition to Sundays, mean those entire days declared by law of the State of Florida to be legal holidays, to wit: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

(15) *House trailer.*

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

(b) A trailer or a semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in paragraph (a), but which is used instead permanently or temporarily for the advertising, sales, display or promotion of merchandise or services, or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

(16) *Implement of husbandry.* Any vehicle designed and adapted exclusively for agricultural, horticultural or livestock raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways.

(17) *Intersection.*

(a) The area embraced within the prolongation or connection of the lateral curblines; or, if none, then the lateral boundary lines of the roadways of two (2) highways which join one another at, or approximately at right angles; or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two (2) roadways thirty (30) feet or more apart, then every crossing of two (2) roadways of such highways shall be regarded as a separate intersection.

(18) *Laned highway.* A highway, the roadway of which is divided into two (2) or more clearly marked lanes for vehicular traffic.

(19) *Limited access facility.* A street or highway especially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement or only a limited right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be parkways from which trucks, buses, and other commercial vehicles shall be excluded; or they may be freeways open to use by all

customary forms of street and highway traffic.

(20) *Local authorities.* Includes all officers and public officials of the several counties and municipalities of this State.

(21) *Motor vehicle.* Any vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(22) *Motorcycle.* Any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor.

(23) *Motor-driven cycles.* Every motorcycle and every motor scooter with a motor which produces not to exceed five (5) brake horsepower, including every bicycle with motor attached.

(24) *Official traffic control signal.* Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

(25) *Official traffic control devices.* All signs, signals, markings, and devices, not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(25.1) *Open container* means any bottle, can, cup, glass, or other receptacle containing any alcoholic beverage which is open, which has been opened, which has its seal broken, or which has had its contents partially removed. The term "open container" includes a receptacle located in any unlocked glove compartment. The term does not include a receptacle located in the trunk of the motor vehicle or, if the motor vehicle is not equipped with a trunk, in some other cargo area not normally occupied by the driver or passengers.

(26) *Operator.* Any person who is in actual physical control of a motor vehicle upon the highway, or who is exercising control over or steering a vehicle being towed by a motor vehicle.

(27) *Owner.* A person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner, for the purposes of this chapter.

(27.1) *Parcel trunk.* Any truck with a length not exceeding sixteen (16) feet, and any fixed-bodied, six-bay, side-loading truck regardless of length.

(28) *Park or parking.* The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers as may be permitted by law under this chapter.

(29) *Pedestrian.* Any person afoot, or on roller skates, or riding in or by means of any coaster, toy vehicle (without a motor) or similar device.

(30) *Person.* Any natural person, firm, copartnership, association, or corporation.

(31) *Pneumatic tire.* Any tire in which compressed air is designed to support the load.

(32) *Pole trailer.* Any vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(33) *Police officer.* Any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations including Florida Highway Patrolmen, sheriffs, deputy sheriffs and municipal police officers.

(33.1) *Portable street scooter.* Any vehicle consisting of a long footboard between two small end wheels, controlled by a foldable upright steering handle attached to the front wheel.

(34) *Private road or driveway.* Any way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(35) *Radioactive materials.* Any materials or combination of materials which emit ionizing radiation spontaneously, in which the radioactivity per gram of material, in any form, is greater than two-thousandths (0.002) microcuries.

(36) *Railroad.* A carrier of persons or property upon cars operated upon stationary rails.

(37) *Railroad sign or signals.* Any sign, signal or device erected by authority of a public body or official or by a railroad and intend-

ed to give notice of the presence of railroad tracks or the approach of a railroad train.

(38) *Railroad train.* A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

(39) *Residence district.* The territory contiguous to, and including, a highway not comprising a business district when the property on such highway, for a distance of three hundred (300) feet or more, is in the main, improved with residences or residences and buildings in use for business.

(40) *Revocation.* Revocation means that a licensee's privilege to drive a motor vehicle is terminated. A new license may be obtained only as permitted by law.

(41) *Right-of-way.* The right of one (1) vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless one (1) grants precedence to the other.

(42) *Road tractor.* Any motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon independently or any part of the weight of a vehicle or load so drawn.

(43) *Roadway.* That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two (2) or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(44) *Saddle mount.* An arrangement whereby the front wheels of one (1) vehicle rest in a secured position upon another vehicle. All of the wheels of the towing vehicle are upon the ground and only the rear wheels of the towed vehicle rest upon the ground.

(45) *Safety zone.* The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked by adequate signs or authorized pavement markings as to be plainly visible at all times while set apart as a safety zone.

(46) *School bus.* Any motor vehicle that complies with the color and identification requirements of Chapter 234, F.S., and used to transport children to or from school or in connection with school activities, but not including buses operated by common carriers in urban transportation of school children.

(47) *Semitrailer.* Any vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon, or is carried by, another vehicle.

(48) *Sidewalk.* That portion of a street between the curblines, or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

(49) *Special mobile equipment.* Any vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: ditchdigging apparatus, well boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling grades, finishing machines, motor graders, road rollers, scarifiers, earth moving carry alls and scrapers, power shovels and draglines, and self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck-mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(50) *Stand or standing.* The halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers, as may be permitted by law under this chapter.

(51) *State road.* Any highway designated as a state maintained road by the Department of Transportation.

(52) *Stop.* When required means complete cessation from movement.

(53) *Stop or stopping.* When prohibited means any halting even momentarily, of a vehicle whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a law enforcement officer or traffic control sign or signal.

(54) *Street or highway.* The entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic.

(54.1) *Sundays.* The term "Sunday" or "Sundays" includes both Sundays and holidays as the same are defined herein.

(55) *Suspension.* A licensee's privilege to drive a motor vehicle is temporarily withdrawn.

(56) *Through highway.* Any highway or portion thereof on which vehicular traffic is

given the right-of-way, and at the entrances to which vehicular traffic from intersecting highways is required to yield right-of-way to vehicles on such through highway in obedience to either a stop sign or yield sign, or otherwise in obedience to law.

(57) *Tire width.* Tire width is that width stated on the surface of the tire by the manufacturer of the tire, provided the width stated does not exceed two (2) inches more than the width of the tire contacting the surface.

(58) *Traffic.* Pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any street or highway for purposes of travel.

(58.1) *Traffic director.* That person who is responsible for the planning and geometric design of streets, highways and abutting lands and with operation thereon as the use is related to the safe, convenient and economic transportation of persons and goods. Whenever the term "traffic director" or "director of traffic and transportation" or other similar term is used herein, the same shall refer to the Administrator of the Traffic and Transportation Department of Miami-Dade County.

(59) *Trailer.* Any vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle.

(60) *Truck.* Any motor vehicle designed, used or maintained primarily for the transportation of property.

(61) *Truck operator.* Any motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(62) *Migrant farm worker.* Any person employed in the planting, cultivating or harvesting of agricultural crops who is not indigenous to or domiciled in the locale where so employed. *Carrier of migrant farm worker* means any person who transports or who contracts or arranges for the transportation of migrant farm workers to or from their employment by motor vehicle other than a passenger automobile or station wagon, except a migrant farm worker transporting himself or his immediate family, and except the owner, or manager or a fulltime employee of the owner or manager of the crops where such migrant farm worker is employed.

(63) *Vehicle.* Every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. The term shall include but not be limited to boats mounted on trailers, recreational vehicles and motor homes.

30-203. Applicability of chapter.

This chapter shall pertain to all violations hereof within the County, and supersedes and nullifies any and all municipal ordinances or codes and any and all County ordinances or codes relative to the regulation of traffic and its enforcement, except as otherwise provided in Chapter 25 of this Code. This chapter is applicable in all the unincorporated and incorporated areas of the County.

30-264.1. Voluntary registration.

Any person owning a bicycle may register it at the nearest County or participating municipal fire station. Registration shall consist of filling out a registration form and affixing a plastic sticker to the registered bicycle. The Miami-Dade Police Department shall furnish the registration forms and plastic stickers to all County fire stations and to the fire stations of any municipality wishing to participate in the County voluntary registration program.

30-264.2. Required registration of bicycles sold by retail dealers.

Any dealer who sells bicycles shall fill out a registration form for, and affix a plastic sticker to each bicycle sold. The Miami-Dade Police Department shall furnish registration forms and plastic stickers to all retail dealers engaging in the sale of bicycles. The retail dealer shall forward the completed registration form to the Miami-Dade Police Department within two (2) weeks of the sale of any bicycle.

30-264.3. Defacing or removing serial numbers.

(1) It shall be unlawful for any person to deface or remove from any bicycle the serial number imprinted thereon.

(2) It shall be unlawful to sell or purchase any bicycle on which the serial number has been defaced or removed without first registering same as provided in Sections 30-264.1 through 30-264.5.

(3) All violations of this section shall be punishable by fine not to exceed two hundred fifty dollars ($250.00) or imprisonment not to exceed thirty (30) days in the County Jail, or both, in the discretion of the County Judge.

30-264.4. Reports of stolen or recovered bicycles.

Every police officer, including municipal police officers, who in the regular course of

duty, receives a report of a stolen bicycle or recovers an abandoned or stolen bicycle, shall notify the Miami-Dade Police Department of such theft or recovery within twenty-four (24) hours therefrom.

30-264.6. Penalty.

Every person found guilty of a violation of any of the provisions of Sections 30-264.1 through 30-264.5.1 shall be punishable by a fine of not more than one hundred dollars ($100.00) or by impounding of such person's bicycle or portable street scooter for a period not to exceed ninety (90) days, or both unless otherwise provided herein.

30-273. Use of bicycle paths and bikeways by motor vehicles, motorcycles and motor-driven cycles prohibited.

No person shall operate a motor vehicle, motorcycle or motor-driven cycle on any designated bicycle path or bikeway or usable path for bicycles adjacent to a roadway.

30-283. Required position and method of turning at intersections; exception for buses.

The driver of a vehicle intending to turn at an intersection shall do so as follows:

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

(2) The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered. A person operating a bicycle intending to turn left in accordance with this section shall be entitled to the full use of the lane from which such a turn may legally be made. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) In addition to the method of making a left turn described in subsection (2), a person operating a bicycle intending to turn left shall have the option of following the course described hereafter: The rider shall approach the turn as close as practicable to the right curb or edge of the roadway. After proceeding across the intersecting roadway, the turn shall be made as close as practicable to the curb or edge of the roadway on the far side of the intersection. Before proceeding, the bicyclist shall comply with any official traffic control device or police officer regulating traffic on the highway along which he intends to proceed.

(4) This section shall not apply to the owner or operator of any bus where the size of the bus renders impossible strict compliance with the requirements of this section.

(5) The State, County and local authorities in their respective jurisdictions may cause official traffic control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection. When such devices are so placed, no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such devices.

30-285.1. No turns; exception for buses.

(a) Whenever authorized signs, markers or buttons indicate that no right or left or U-turn is permitted, no driver shall disobey the direction of such signs, markers, or buttons except as provided in subsection (b).

(b) Whenever authorized signs prohibiting right or left or U-turns include the words "except buses" the driver of a bus as defined in Section 30-202(3), may execute the otherwise prohibited turning movement after yielding the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard and to pedestrians lawfully within the intersection or crosswalk. Any operator of a regularly scheduled bus may turn or change lanes or direction of travel contrary to traffic signs and markings, controlling the direction of travel of vehicles, where such movement is necessary for that bus to continue over the established route providing regularly scheduled service.

30-292. Stopping, standing or parking prohibited in specified places.

(1) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic control device, no person shall:

(a) Stop, stand or park a vehicle:

1. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
2. On a sidewalk;
3. Within an intersection;
4. On a crosswalk;

5. Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless the Division of Road Operations of the Department of Transportation indicates a different length by signs or markings;

6. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

7. Upon any bridge or other elevated structure upon a highway, causeway or within a highway tunnel, where parking is not provided for thereon;

8. On any railroad tracks;

9. On a bicycle path;

10. At any place where official traffic control devices prohibit stopping;

11. On the roadway side of any vehicle stopped or parked at the edge or curb of a street.

12. At any place where disabled access is provided, including but not limited to: an access aisle adjacent to an accessible parking space, curb ramp, ramp, or accessible path of travel such as sidewalks and bicycle paths. Any violation of this section shall result in a fine of one hundred fifty dollars ($150.00).

(b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

1. In front of a public or private driveway;

2. Within fifteen (15) feet of a fire hydrant;

3. Within twenty (20) feet of a crosswalk at an intersection;

4. Within thirty (30) feet upon the approach to any flashing signal, stop sign or traffic control signal located at the side of a roadway;

5. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance (when property sign-posted);

6. On an exclusive bicycle lane;

7. At any place where official traffic control devices prohibit standing.

(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of, and while actually engaged in, loading or unloading merchandise or passengers:

1. Within fifty (50) feet of the nearest rail of a railroad crossing, or bridge;

2. At any place where official signs prohibit parking.

(2) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such a distance as is unlawful.

30-293. Additional parking regulations.

(1) Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the right-hand wheels parallel to and within twelve (12) inches of the right-hand curb or edge of the roadway.

(2) Except when otherwise provided by local ordinance, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within twelve (12) inches of the right-hand curb or edge of the roadway, or its left wheels within twelve (12) inches of the left-hand curb or edge of the roadway.

(3) Local authorities may, by ordinance, permit angle parking on any roadway, except that angle parking shall not be permitted on any State road unless the Department of Transportation as determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

30-367. Licensing of vehicles.

Every vehicle, at all times while driven, stopped or parked upon any highways, roads or streets of this County shall be licensed in the name of the owner thereof in accordance with the laws of Florida, unless such vehicle is not required by the laws of Florida to be licensed in this State, and shall, unless otherwise provided by statute, display the license plate or both of the license plates assigned to it by the State, one (1) on the rear and if two (2), the other on the front of the vehicle, each to be securely fastened to the vehicle outside the main body of the vehicle, in such manner as to prevent the plates from swinging, with all letters, numerals, printing, writing, and other identification marks upon the plates clear and distinct and free from defacement, mutilation, grease and other obscuring matter, so that they shall be plainly visible and legible at all times one hundred (100) feet from the rear or front. No license plates other than those furnished by the State shall be used; provided, however, if the vehicle is not required to be licensed in this State, the license plates on such vehicle issued by another state, or by a territory, possession or district of the United States, or a foreign country, substantially complying with the provisions hereof, shall be considered as complying with this chapter.

30-369.1. Storage, transportation of flammable liquids in motor vehicles prohibited; exceptions.

It is a violation of this chapter for flammable liquid to be stored within or transported by motor vehicle except:

(1) Pursuant to Section 30-369 of the Code of Miami-Dade County, Florida; or

(2) In the fuel tank of a motor vehicle; or

(3) In a container which meets or exceeds the standards delineated in Section 16.63(5) of the Miami-Dade County, Florida, Fire Prevention and Safety Code.

30-371. School bus regulations.

(A) *Definitions.* The following words and phrases when used in this section shall have the meanings ascribed to them in this section.

(a) "Person" shall mean natural persons, associations of persons, firms, partnerships and corporations.

(b) "Public school bus" shall include those motor vehicles owned, operated, rented or leased by any County board pursuant to and in compliance with Chapter 234, Florida Statutes.

(c) "Private school bus" shall mean all motor vehicles not included in the definition of "public school bus" and which are being used for the transportation of children to and from schools, kindergartens, nursery schools and day care centers, both public and private. "Private school bus" shall also include those vehicles which are being used for the transportation of children to and from activities connected with the regular operation of any clubs, associations, institutions or corporations, whether organized for profit or not for profit. Provided, however, that this section specifically excludes from its provisions any school bus whether public or private complying with the requirements of Chapter 234, Florida Statutes; and further excludes motor vehicles subject to and meeting the requirements of the Florida Public Utilities Commission and operated by carriers operating under the jurisdiction of such commission; and further excludes any vehicles operated by or under the purview of the State or any political subdivision thereof or under a franchise issued by a municipality or the Public Service Commission; and further excludes motor vehicles of the type commonly called pleasure cars when such vehicles are used by individuals and not operated in the "for hire" transportation of children.

(d) "Operated" shall include the words owned, under the control of, under the supervision of, or operated by contractual agreement with other persons, firms, corporations or partnerships.

(e) "Driver" shall be deemed to include any person driving or in actual physical control of a private school bus, while transporting children whether or not compensated, paid, or reimbursed in any way for such services.

(f) "Children" shall mean any person under the age of twenty-one (21) years.

(g) "For hire" shall mean transportation of children for compensation on the public highways.

(h) "CSD" means the Miami-Dade County Consumer Services Department.

(B) *Inspection certificate.* Upon and after the effective date of this section, it shall be unlawful for any person to drive, operate, stop or park, or for the owner to cause or knowingly permit to be driven, operated, stopped or parked on any public street, road, highway, or on any facilities owned or operated by any governmental unit within this County in the transportation of children, any private school bus, as defined in this section, unless such private school bus displays on the vehicle a valid and unexpired school bus certificate of inspection issued by the CSD.

(C) *Issuance of inspection certificates.* All private school buses shall be inspected by the CSD and inspection certificates shall be issued upon compliance with the standards set out below.

(D) *School bus seating capacity.* A private school bus shall transport no more children than can be seated therein so that each child has sufficient space for his shoulders and buttocks to come into full contract with the seat and seat back and sufficient knee space so that no child's knees must touch the back of the seat or other obstruction when the child is seated with his back in full contact with the back of the seat.

(E) *Inspection certificate application forms.* To obtain the County inspection certificate required under this section, the following procedures shall be followed:

(a) The owner shall obtain from the CSD an application for a County private school bus inspection.

(b) The owner shall then present said application to the officer or person in charge of the designated inspection station together with the private school bus designated in the application for inspection.

(F) *Inspection certificate.* When the inspection of a private school bus by the CSD and the application for the inspection comply with the provisions herein provided, the owner or his agent, upon payment of the inspec-

tion fee, established by administrative order, shall receive a County private school bus inspection certificate to be then and there attached to the windshield of said vehicle. The certificate shall state that the private school bus was determined to be safe at the time of the inspection, the expiration date of the certificate of inspection, and such other information as may be required by this section.

(G) *Prerequisites to issuance of certificate.* No County private school bus inspection certificate may be issued to any motor vehicle unless:

(a) The vehicle nowhere bears either the word "school bus" or the word "stop" upon its exterior. Provided, however, that every private school bus, while being operated as a private school bus, must bear the identifying name of the school or organization for which it is operated or the name of the owner thereof on the sides of said vehicle and further provided that it must bear a sign on the rear of the vehicle stating—"Caution—Transporting Children". The lettering shall be readily visible and readable at a distance of fifty (50) feet with lettering substantially three (3) inches in height of a two-eighths inch stroke of a contrasting color to the vehicle. These letters shall be of a material visible at night.

(b) Safety equipment shall meet the standards prescribed for a private school bus by the laws and regulations of the State of Florida and shall include the following equipment:

(1) Nonleaking exhaust system;

(2) First-aid kit;

(3) At least one (1) dry-chemical type fire extinguisher of at least two and one-half (2½) pound capacity, readily accessible to driver. Such fire extinguisher shall bear label of Underwriters' Laboratories, Inc. showing rating of not less than 10-B:C. Such extinguisher must carry evidence of current inspection;

(4) Windows shall be unbroken tempered or laminated safety glass and windshields shall be unbroken laminated safety glass to conform to United States of America Standards Institute "American Standard Safety Code for Safety Glazing Material for Glazing Motor Vehicles Operating on Land Highways" ASA Standard Z-26.1-1966, July 15, 1966;

(5) Inside rear view mirror capable of giving the driver clear view of motor vehicles approaching from the rear and outside left and right rear view mirror; and

(6) Seats securely anchored conforming to Federal Motor Vehicle Safety Standards contained in 49 Code of Federal Regulations, Part 371, or, original equipment seats or, custom seats substantially conforming to original equipment seats in respect to anchorage, backrest and padding. There shall be no auxiliary seating accommodations such as temporary or folding jump seats in such vehicles.

(c) The owner presents the CSD a certificate of automobile insurance applicable to the private school bus and written in a company authorized to do business in Florida. The amount of insurance shall be carried in the sum of not less than ten thousand dollars ($10,000.00) for bodily injury, or death resulting therefrom, to any one (1) pupil and shall, for any one (1) accident be not less than five thousand dollars ($5,000.00) multiplied by the rated seating capacity of the vehicle. Such certificate of insurance shall indicate that no material change or cancellation of the policy will be effective without first giving thirty (30) days' written notice to the CSD.

(d) It shall be the duty of the CSD to enforce compliance with the foregoing requirements by refusing to authorize inspection or issue an inspection certificate until full compliance has been made.

(H) *Right of inspection unaffected.*

(a) The issuance of a private school bus inspection certificate shall not affect the right of CSD employees and police officers to inspect said vehicle at all times to determine if said vehicle or its operation meets the standards prescribed by the CSD.

(b) Any police officer authorized to administer or enforce the motor vehicle laws of this State and County may require the driver of a private school bus to stop and submit such vehicle and its equipment to an inspection, and such test with reference hereto as may be appropriate, to determine that such private school bus is in a safe operating condition, and that it complies with the provisions of this section.

(I) *Time for inspection.* Private school buses seating twenty-four (24) or more passengers shall be inspected by CSD annually. Any private school bus seating less than twenty-four (24) passengers shall be inspected semi-annually for each half year such private school bus is operated.

(J) *Notice of rejection for noncompliance.* When any private school bus shall be presented for inspection in compliance with this section and is found not to comply with the provisions herein or possesses equipment which does not comply with the requirements as herein provided, the officer or person in charge of the inspection of the same

shall affix a "Notice of Rejection" to the windshield of the private school bus presented for inspection. Such notice shall state the reason for rejection and shall inform the owner or operator thereof that he will be permitted seventy-two (72) hours (which shall be exclusive of Sundays and holidays) in which to make the required adjustment and in which to present such private school bus at the same inspection station for re-inspection. It shall be unlawful to transport any children in a school bus which bears a "Notice of Rejection" on its windshield.

(K) *Fee required.* The fee for the issuance of a County private school bus certificate shall be established by the Board of County Commissioners and implemented by administrative order.

(L) *Requirement and issuance of County private school bus chauffeur registration.* It shall be unlawful for any person to drive a private school bus over any street in Miami-Dade County without first having obtained a chauffeur's registration from the CSD pursuant to Chapter 31, Article V of this Code.

(M) *Driver compliance.* It shall be unlawful for any person to operate or cause to be operated a private school bus upon the streets of this County unless all of the provisions of this section have been complied with.

(N) *Obedience to section.* It is unlawful for any person to do any act forbidden by, or fail to perform any act required by this section. It is unlawful for the owner or any person employing or otherwise directing the driver of the vehicle to require or knowingly permit the operation of a private school bus in any manner contrary to this section.

(O) *Applicability of section.* It is provided that this section shall pertain to all violations hereof within the County, and supersedes and nullifies any and all municipal sections or codes relative to the regulation of private school buses as defined herein. This section is applicable in the incorporated and unincorporated areas of the County.

(P) *Jurisdiction of the County Court.* Except for chauffeur's civil violations, the violation of any provision of this section shall be within the jurisdiction of the County Court.

(Q) *Penalty for violation.* All violations of this section, except civil violations by chauffeurs, shall be punishable by a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed thirty (30) days in the County Jail, or both, at the discretion of the County Court Judge. Civil violations by chauffeurs shall be processed under Chapter 8CC of the Code.

30-378. Parking when meter indicates violation; maximum period; days effective; parking within spaces.

(a) No person shall park any vehicle or permit any vehicle to remain parked in any parking metered space when the parking meter for the space occupied by such vehicle shows a violation.

(b) No person shall park any vehicle or permit any vehicle to remain parked in any parking metered space for a continuous period of time greater than the maximum provided for on the meter.

(c) When parking meters are erected giving notice thereof, no person shall stop, stand or park a vehicle in any metered parking zone for a period of time longer than designated by said parking meters upon the deposit of a coin of United States currency of the designated denomination on any day except Sundays and full legal holidays unless otherwise posted, upon any of the streets so marked by designation of the Traffic Director.

(d) Every vehicle shall be parked wholly within the metered parking space for which the meter shows parking privilege has been granted, and with the front end of such vehicle immediately opposite the parking meter for such space.

30-379. Meter to be visible.

Every vehicle parked in a parking metered space shall be parked with the front end or front part of such vehicle immediately opposite the parking meter for such space, and in such manner that the meter shall be visible from the street side of the vehicle.

30-381. Use of slugs, etc.; damaging meters.

It is unlawful to deposit in any parking meter anything other than a lawful coin of the United States, or any coin that is bent, cut, torn, battered or otherwise misshapen. It is unlawful for any unauthorized person to remove, deface, tamper with, open, break, destroy or damage any parking meter. It is unlawful for any person wilfully to manipulate any parking meter in such a manner that the indicator will not operate and continue to show the correct amount of unexpired time before a violation.

30-382. Use of unexpired time; maximum parking time.

The driver of a vehicle entering a parking space at a time when the meter for such space shows unexpired time may permit such vehicle to remain parked in such space for the amount of unexpired time shown on such

meter, or may by depositing the proper coin remain parked in such space for the maximum amount of time allowed by the deposit of said coin as indicated on said meter.

30-384. Impounding vehicles.

(a) Police officers or such other employees as may be designated by the County Manager are authorized to remove a vehicle to the nearest garage or other place of safety, or to a garage designated or maintained by the County or by a municipality under the circumstances hereinafter enumerated.

(1) When any vehicle is left unattended upon any bridge, causeway, or viaduct, or where such vehicle constituted an obstruction to traffic.

(2) When a vehicle upon a street is so disabled as to constitute an obstruction to traffic, or the person or persons in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody and removal.

(3) When a vehicle is found upon the streets or the public right-of-way and is not in proper condition to be driven.

(4) When any vehicle is left unattended upon a street and is so parked illegally as to constitute a definite hazard or obstruction to the normal movement of traffic.

(5) Where such vehicle has been parked or stored on the public right-of-way for a period exceeding forty-eight (48) hours, in other than designated parking areas, and is within thirty (30) feet of the pavement edge.

(6) When the driver of such vehicle is taken into custody by a law enforcement officer and such vehicle would thereby be left unattended upon a street; provided, however, that the officer shall, prior to impounding a vehicle, afford the owner or the driver at his or her option, a reasonable opportunity in light of the circumstances in which to provide for the removal of the vehicle within a reasonable length of time. In lieu of impounding the vehicle in cases where neither the driver nor the owner elects to provide for the removal of the vehicle or in cases where neither the driver nor the owner can provide for the removal of the vehicle within a reasonable length of time, the owner or the driver may elect in writing to allow the vehicle to remain in place, if lawful. Neither the individual officer nor the officer's employer shall be held liable for any damage whatsoever to a vehicle when the owner of said vehicle or the driver has elected to allow the vehicle not to be removed.

Prior to impounding such vehicle pursuant to this subsection, the police officer shall reasonably attempt to inform the owner or the driver of said vehicle of the various alternatives to impounding, and, the officer, upon request, shall provide the owner or the driver with the requisite form upon which he or she may elect to allow the vehicle to remain in place.

For purposes of this subsection, the driver of the vehicle shall be conclusively presumed to be the authorized agent of the owner.

(7) When removal is necessary in the interest of public safety because the vehicle is parked on the sidewalk or a bicycle path, or because of fire, flood, storm, or other emergency reason.

(8) When a vehicle is left unattended in violation of Section 30-447 of this Code or Sections 316.1955(5)(a) or 316.1956(3), Florida Statutes.

(9) When any vehicle is subject to impoundment pursuant to Section 30-389.4 of this Code in the manner prescribed therein.

(10) When a vehicle is left unattended in an area in which Miami-Dade County has posted a sign indicating that parking is prohibited and stating "TOW-AWAY ZONE."

(11) When a vehicle is used by an individual for temporary living quarters on the public right-of-way or other public property not designated and authorized as a campsite. Prior to impounding such vehicle pursuant to this subsection, the police officer shall reasonably attempt to afford the driver or owner of such vehicle the opportunity to remove such vehicle from the public property so as to avoid impoundment of the vehicle. This subsection shall not apply to vehicles occupied or possessed by persons awaiting entrance to sporting events as spectators.

(12) When a vehicle is used by a person engaging in the commission of a violation of subsections (1) or (2) of Section 21-30.01 of the Miami-Dade County Code relating to graffiti.

(13) When a vehicle is determined to have been stolen.

(14) When a vehicle is displayed on a private street, vacant lot, parking lot or private property for the prinicipal purpose of displaying such vehicle or other personal property thereon for sale or rental in violation of Section 30-388.31.1.

(15) When a vehicle is parked upon any street or within the right-of-way for the principal purpose of displaying such vehicle for sale.

(16) When a vehicle is parked upon any street or public right-of-way in a residential

zone in violation of Section 30-388.31 of this Code.

(17) When a vehicle is left unattended in violation of Section 30-450 of this Code.

(b) Any violator taken into custody pursuant to this section may at the discretion of the County Judges be released without posting bond, if the violator agrees to the impounding in a facility authorized by this chapter of the vehicle owned and driven by the violator or to surrender of his or her driver's license to insure the violator's appearance in the County Court to answer the charges against same, and pay such fine as may be assessed against the violator.

(c) No vehicle impounded in a facility as herein provided shall be released therefrom until the charges for towing such vehicle into the facility and storage charges have been paid. Charges for towing and removal shall be fixed by and posted for public inspection in the office of the Miami-Dade Police and in the facilities affected.

(d) Whenever an officer removes a vehicle from a street as authorized in this section, and the officer knows or is able to ascertain the name and address of the owner thereof, such officer shall within twenty-four (24) hours give or cause to be given notice in writing to such owner of the fact of such removal, and the reasons therefor, and of the place to which such vehicle has been removed. In the event such vehicle is stored in an authorized facility, a copy of such notice shall be given to the proprietor of such facility.

(e) Whenever an officer removes a vehicle from a street under this section, and does not know and is not able to ascertain the name of the owner, or for any other reason is unable to give the notice to the owner as hereinbefore provided, and in the event the vehicle is not returned to the owner within a period of three (3) days, then and in that event the officer shall immediately send or cause to be sent written report of such removal by mail to the Motor Vehicle Commissioner of the Miami-Dade Police Department and shall file a copy of such notice with the proprietor of any facility in which the vehicle may be stored. Such notice shall include a complete description of the vehicle, the date, time, and name of the garage or place where the vehicle is stored.

30-388. Creation of emergency vehicle zones.

(a) On application of the owner or lessor of real property and payment of the fee established in accordance with subsection (e) of this section, the County Manager or authorized designee(s) shall inspect the grounds of any shopping center, shopping mall, parking lot or parking garage and determine whether there are areas within such shopping center, shopping mall, parking lot or parking garage which should be kept free of parked motor vehicles in order to facilitate access to buildings by authorized emergency vehicles as defined in Section 316.003, Florida Statutes. When making this determination, the Manager or authorized designees shall consider the following factors:

(1) The number of people who frequent the property;

(2) The accessibility of the property by authorized emergency vehicles;

(3) The frequency of calls for emergency services at the property;

(4) The need for accessibility to buildings by tenants, vendors and persons making deliveries to the property; and

(5) Official acts of County and municipal zoning and planning boards and agencies which relate to the property.

(b) The County Manager, or authorized designee(s), upon determining that there are areas within a shopping, center, shopping mall, parking lot or parking garage, which should be kept free of parked vehicles in order to facilitate access to building by authorized emergency vehicles, shall discuss the matter with the owner or lessee of the property, and if there is no objection, order that the owner or lessee of the property erect emergency vehicle zone signs in accordance with subsection (d) of this section.

(c) The owner or lessee of a shopping center, shopping mall, parking lot or parking garage who has made application to the County Manager or authorized designee(s) pursuant to subsection (a) of this section may withdraw the application at any time by notifying the County Manager or authorized designee in writing of the withdrawal of the application.

(d) Areas in which parking is to be prohibited pursuant to this section shall be conspicuously posted with signs advising motorists that parking is prohibited. The County Manager or authorized representative may designate the form of the sign to be used; provided, however, that nothing herein shall prohibit the County Manager or designee from authorizing the continued use of nonconforming signs which were in place when the property was inspected pursuant to subsection (b) of this section.

(e) All signs erected or allowed by subsection (d) of this section shall be installed and maintained by the property owner or lessee of the property.

(f) The County Manager may, by administrative order, establish a fee for inspection of property and establishment of emergency vehicle zones pursuant to this section.

30-388.3. Parking prohibited at all times at certain places.

No person shall park a vehicle at any time on any of the following parts of streets, sidewalks or sidewalk areas, where signs are erected giving notice thereof:

(1) In front of a theater entrance.

(2) In front of the entrance or exit of a hotel.

(3) In front of the entrance of any public building.

30-388.4. Parking prohibited at all times on certain streets.

When signs are erected giving notice thereof, no person shall park a vehicle at any time upon any of the streets so marked by designation of the Traffic Director.

30-388.5. Parking prohibited during certain hours within municipalities.

With the written approval of the Traffic Engineering Branch of the Public Works Department of Miami-Dade County, municipalities may erect traffic signs prohibiting parking on any streets or locations within such municipality during certain hours. When such signs are erected giving notice of the prohibition against parking, no person shall stop, stand or park a vehicle within the area or place during the hours specified by such municipal signs.

30-388.6. Parking time limited on certain streets within municipalities.

With the written approval of the Traffic Engineering Branch of the Public Works Department of Miami-Dade County, municipalities may erect traffic signs limiting the time for parking vehicles on certain streets or locations within such municipality. When such signs are erected giving notice of the limitation of time for parking, no person shall stop, stand or park a vehicle for longer than the time specified by such municipal traffic signs.

30-388.9. Unattended vehicles; stopping engine, setting brakes, parking on hill.

(a) No person driving or in charge of any motor vehicle, except a licensed delivery truck or other delivery vehicle, shall permit it to stand unattended without first stopping the engine, locking the ignition, and removing the key. No person driving or in charge of a licensed delivery truck or other delivery vehicle shall permit it to stand unattended for a period of time longer than five (5) minutes.

(b) Notwithstanding the provisions of subsection (a), no vehicle shall be permitted to stand unattended upon any perceptible grade, without stopping the engine and effectively setting the brake thereon, and turning the front wheels to the curb or side of the street.

30-388.10. Obstruction of traffic by parking.

(a) No person shall park any vehicle upon a street, in such a manner or under such conditions as to leave available less than ten (10) feet of the width of the roadway for free movement of vehicular traffic.

(b) Where streets are not completely paved or curbs provided, the parking of a car shall be in such a manner as not to obstruct the free movement of traffic.

30-388.11. Stopping, standing or parking outside of municipalities.

(1) Upon any street or highway outside of a municipality, no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main traveled part of the highway or street when it is practical to stop, park, or so leave such vehicle off such part of said highway or street; but in every event an unobstructed width of the highway or street opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred (200) feet in each direction upon such highway or street.

(2) This section shall not apply to the driver or owner of any vehicle which is disabled, while on the paved or main traveled portion of a highway or street in such a manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position, or to passenger-carrying buses temporarily parked while loading or discharging passengers, where road conditions render such parking off the paved portion of the highway or street hazardous or impractical.

(3) (a) Whenever any officer finds a vehicle standing upon a highway or street in violation of any of the foregoing provisions of this section such officer is hereby authorized to move such vehicle, or require the driver or other persons in charge of the vehicle to move the same, to a position off the paved or main traveled part of such highway.

(b) Whenever any officer finds a vehicle unattended upon any bridge or causeway

or in any tunnel, or on any public highway or street, where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.

30-388.12. Obstruction of public streets, highways, etc.

It is unlawful for any person or persons to wilfully obstruct the free, convenient and normal use of any public street, highway or road, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon, or by endangering the safe movement of vehicles or pedestrians traveling thereon.

30-388.13. Alleys, parking in; obstructing.

(a) No person shall stop, stand or park a vehicle within an alley in a business district except for the expeditious loading or unloading of materials, and in no event for a period of more than twenty (20) minutes, and no person shall stop, stand or park a vehicle in any other alley in such a manner as to obstruct the free movement of vehicular traffic.

(b) No person shall stop, stand or park a vehicle within an alley in such position as to block the driveway or entrance to any abutting property.

30-388.14. All night parking.

No person, except physicians or other persons on emergency calls, shall park a vehicle on any street marked to prohibit all night parking and giving notice thereof, for a period of time longer than thirty (30) minutes between the hours of 2:00 a.m. and 5:00 a.m. of any day.

30-388.15. Parking prohibited for certain purposes.

(a) No person shall park a vehicle upon any road, street or public right-of-way, including the sidewalk and swale, located within unincorporated Miami-Dade County, except outside the urban development boundary, for the purpose of:

(1) Displaying such vehicle for sale.

(2) Greasing, or repairing such vehicle, except repairs necessary in an emergency.

(3) Displaying advertising.

(4) Selling merchandise from such vehicle except in a duly established market place, or when so authorized or licensed under the ordinances of this County.

(5) Storage, or as junkage or dead storage for more than twenty-four (24) hours.

(b) All violations of this section shall be punishable by a fine of one hundred dollars ($100.00) for the first vehicle on a first offense and five hundred dollars ($500.00) per vehicle for each additional vehicle and any repeat violation of this section. Any vehicle in violation of this section shall be towed if not removed immediately by the owner. Any vehicle that the Director of the Miami-Dade Police Department or his/her designee deems to pose a serious threat to the public health, safety, or welfare and is in violation of this section shall be towed if not removed within twenty-four (24) hours by the owner. (Vehicle owners will be responsible for all fines, towing fees, storage fees, and any administrative and enforcement fees that result from the enforcement of this section.) The County may lien the vehicle and any real property owned by the violator in Miami-Dade County until all fines, enforcement costs, and administrative costs are paid by the violator.

30-388.16. Schools, parking adjacent to.

When signs are erected giving notice thereof, no person shall park upon either or both sides of any street adjacent to any school.

30-388.17. Narrow streets, parking on.

When official signs are erected prohibiting parking upon narrow streets, no person shall park a vehicle upon any such street in violation of any such sign.

30-388.18. One-way streets, parking on left side.

When official signs are erected giving notice thereof, no person shall stand or park a vehicle upon the left-hand side of any one-way street in violation of any such sign.

30-388.19. One-way roadways, parking on left side.

In the event a street includes two (2) or more separate roadways and traffic is restricted to one (1) direction upon any such roadway, no person shall stand or park a vehicle upon the left-hand side of such one-way roadway unless signs are erected to permit such standing or parking.

30-388.20. Hazardous or congested places, parking near.

(a) When official no-parking signs are erected at hazardous or congested places, no person shall stop, stand, or park any vehicle other than an authorized emergency vehicle in any such designated place.

(b) When signs are erected or allowed pursuant to Section 30-388, no person shall stop, stand or park a vehicle other than an

authorized emergency vehicle in any such designated place.

30-388.21. Penalty for violation of Sections 30-388.9 to 30-388.10.

All violations of Sections 30-388.9 to and including 30-388.10 [sic] shall be punishable by a fine not to exceed two hundred fifty dollars ($250.00) or imprisonment not to exceed thirty (30) days in the County Jail, or both, in the discretion of the County Judge.

30-388.22. Curb loading zones; designating.

The Traffic Director is hereby authorized to determine the location of passenger and freight curb loading zones and restricted parking zones and locations for the appropriate signs indicating the same and stating the hours during which the provisions of this division are applicable.

30-388.23. Passenger curb loading zones; time limit.

No person shall stop, stand or park a vehicle for any purpose or period of time except for the expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone during hours when the regulations applicable to such passenger curb loading zone are effective, and then only for a period not to exceed five (5) minutes.

30-388.24. Freight curb loading zones; time limit; passenger use.

(a) No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pickup and loading of materials in any place marked as a freight curb loading zone during the hours when the provisions applicable to such zones are in effect. The stop for loading and unloading materials shall not exceed twenty (20) minutes except in specially marked "parcel truck" loading zones where the stop shall not exceed one (1) hour.

(b) The driver of a vehicle may stop temporarily at a place marked as a freight curb loading zone for the purpose of and while actually engaged in loading or unloading passengers, when such stopping does not interfere with any motor vehicle used for the transportation of materials which is waiting to enter or about to enter such zone.

30-388.25. Restricted parking zones, use.

(a) No person shall stop, stand or park a vehicle for any purpose or length of time in any restricted parking zone other than for the purpose to which parking in such zone is restricted, except that a driver of a passenger vehicle may stop temporarily in such zone for the purpose of and while actually engaged in loading or unloading of passengers when such stopping does not interfere with any vehicle which is waiting to enter or about to enter the zone for the purpose of parking in accordance with the purpose to which parking is restricted.

(b) When official signs are erected designating a parking space, area or lot for restricted parking for authorized vehicles only, no person shall park an unauthorized vehicle in violation of such sign. By the word "authorized", it is meant that the vehicle bears an official decal provided by the Public Works Director or that the vehicle is one (1) of a class of vehicles given said authorization by the Public Works Director to park in the space, area, or lot so designated.

30-388.26. Taxicab and bus operators; parking in other than stands and stops.

The operator of a bus or taxicab shall not stop, stand or park upon any street in any business district at any place other than at a bus stop or taxicab stand, respectively, except that this provision shall not prevent the operator of any such vehicle from temporarily stopping in accordance with other stopping, standing, or parking regulations at any place for the purpose of and while engaged in the expeditious unloading or loading of passengers.

30-388.27. Taxicab stands and bus stops; use by other than taxicabs and buses.

No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand, when such stop or stand has been officially designated and marked, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in the expeditious loading or unloading of passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone.

30-388.28. Authority of bus operators to stop on roadway at designated bus stops.

Any operator of a bus as defined in Section 30-202(3) operating over a regular route providing scheduled local transit service, may stop his vehicle on the travelled or paved portion of the roadway for the expeditious loading and unloading of passengers at

any regularly designated bus stop unless a paved pullout bay or parking area has been provided and is unoccupied by other vehicles at the time such passengers are discharged. This section shall not prohibit the operator of such bus from pulling off the roadway berm or to the unpaved portion at specified designated layover stops.

30-388.29. Angle parking, obedience to signs.

Upon the streets which have been signed or marked by the Traffic Director for angle parking, no person shall stop, stand or park a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings.

30-388.30. Loading at angle to curb, permit required.

No person shall stop, stand or park any vehicle at right angles to the curb for the purpose of loading or unloading of merchandise without a permit issued by the Sheriff or his authorized representative, or a permit issued by the Chief of Police in the municipality where the stopping, standing or parking is taking place.

30-388.31. Trucks; parking prohibited in residential zones.

In areas zoned residential districts, it shall be unlawful for a truck of one-ton capacity or over to be parked for more than one (1) hour, unless engaged in the loading or unloading of materials.

30-388.31.1. Parking prohibited for display for sale.

(a) No person shall park a vehicle upon a public or private street, public right-of-way, parking lot, vacant lot, or private property for the principal purpose of displaying such vehicle or other personal property thereon for sale or rental in violation of the zoning provisions of Chapter 33 of this Code or the applicable licensing provisions of Florida Law, unless said property is properly zoned for that type of business at that location and the vendor is duly licensed to transact such business at that location.

(b) Police officers, Code Enforcement Officers, or such other persons designated by the County Manager, shall be authorized to have the vehicle towed to a garage designated or maintained by the County or a County contracted towing company.

(c) All violations of this section shall be punishable by a fine of one hundred dollars ($100.00) for the first vehicle on a first offense and five hundred dollars ($500.00) per vehicle for each additional vehicle and any repeat violation of this section. Any vehicle in violation of this section shall be towed if not removed immediately by the owner. (Vehicle owners will be responsible for all fines, towing fees, storage fees, and any administrative and enforcement fees that result from the enforcement of this section.) The County may lien the vehicle and any real property owned by the violator in Miami-Dade County until all fines, enforcement costs, and administrative costs are paid by the violator.

30-388.32. Penalty for violation of article.

(a) Violations of this article shall be punishable by the fine indicated below:

Schedule of Parking Fines and Costs

Section No.	Initial Fine	Fine After 30 Days	Costs After 30 Days	Offense Charged
30-367	$33.00	$43.00	$14.00	Parking without valid license plate
30-378	18.00	31.00	14.00	Parking after violation shows on meter
30-378	18.00	31.00	14.00	Parking continuously in excess of maximum time permitted on meter
30-378	18.00	31.00	14.00	Parking for a period longer than designated on meter giving notice thereof
30-378	18.00	31.00	14.00	Parking improperly by not parking wholly within meter parking space
30-379	23.00	28.00	14.00	Parking improperly by not having front of vehicle next to meter or by making meter not visible from street
30-388.3	28.00	33.00	14.00	Prohibited at all times in certain places

30-388.4	28.00	33.00	14.00	Prohibited at all times on certain streets
30-388.5	28.00	33.00	14.00	Prohibited during certain hours on certain streets
30-388.6	23.00	28.00	14.00	Parking longer than time designated on signs on certain streets
30-388.7	23.00	28.00	14.00	Parking in other than parallel position on two-way roadway
30-388.7	23.00	28.00	14.00	Parking vehicle more than 12 inches from curb or edge of roadway
30-388.7	23.00	28.00	14.00	Parking vehicle in direction opposite to authorized traffic movement
30-388.8	23.00	28.00	14.00	Moving other person's parked vehicle without authority
30-388.9	28.00	33.00	14.00	Leaving vehicle, except delivery vehicle, for 5 minutes unattended without stopping engine and removing ignition key
30-388.9	28.00	33.00	14.00	Leaving unattended vehicle improperly on grade
30-388.10	28.00	33.00	14.00	Parking so as to obstruct traffic on street
30-388.11	28.00	33.00	14.00	Hazardous parking on street or highway outside municipality
30-388.12	33.00	43.00	14.00	Wilfully obstructing street by impeding traffic or endangering movement of vehicles or pedestrians
30-388.13	28.00	33.00	14.00	Unlawful parking or obstructing traffic in alley
30-388.14	28.00	33.00	14.00	Parking more than half-hour during night hours prohibited by sign
30-388.16	28.00	33.00	14.00	Parking adjacent to school when prohibited by sign
30-388.17	28.00	33.00	14.00	Parking on narrow street when prohibited by sign
30-388.18	28.00	33.00	14.00	Parking on lefthand side of one-way street when prohibited by sign
30-388.19	28.00	33.00	14.00	Parking on lefthand side of one-way roadway of street with 2 or more roadways
30-388.20	28.00	33.00	14.00	Parking near hazardous or congested places
30-388.23	23.00	28.00	14.00	Parking in passenger curb loading zone
30-388.23	23.00	28.00	14.00	Using passenger curb loading zone for more than 5 minutes to load or unload passengers
30-388.24	23.00	28.00	14.00	Parking in freight curb loading zone
30-388.24	23.00	28.00	14.00	Using freight curb loading zone for more than 30 minutes
30-388.25	23.00	28.00	14.00	Parking in restricted parking zone
30-388.26	23.00	28.00	14.00	Bus or taxicab parked in business district other than at bus stop or taxicab stand, respectively
30-388.27	23.00	28.00	14.00	Parking in bus stop or taxicab stand
30-388.29	23.00	28.00	14.00	Improper angle parking
30-388.30	23.00	28.00	14.00	Loading or unloading at angle to curb without required permit
30-388.31	23.00	28.00	14.00	Parking truck of 1 ton or more in residential area for more than 1 hour

(b) Reduced fine schedule for persons pleading guilty by mail: Upon a finding that it will further the interests of justice and promote judicial economy, the Chief Judge may, by administrative order, reduce the fines prescribed in subsection (a) of this section.

(c) Except as set forth in subsection (a), above, Section 30-447, and Section 30-292, all violations of ordinances and statutes regulating, prohibiting or otherwise controlling the parking of motor vehicles shall be punished by a fine not to exceed thirty dollars ($30.00), plus the surcharge provided in subsection (g) and, after thirty (30) days, the imposition of late penalties in the amount of twenty-three dollars ($23.00) to be distributed in accordance with this chapter, unless otherwise provided by ordinance, statute, or administrative order of the Chief Judge.

(d) In addition to the fines and costs referred to in subsection (a), upon a finding of guilty after trial, the Court shall assess court costs against the guilty party.

(e) The Chief Judge may, by administrative, order, designate and specially set aside five dollars ($5.00) for each assessment of costs referred to in subsection (a) for the establishment of a Parking System Trust Fund and a Court Facility Trust Fund. Three dollars ($3.00) shall be placed in the Parking System Trust Fund and the remaining two dollars ($2.00) shall be placed in the Court Facility Trust Fund. The Chief Judge and the Clerk of the Court may authorize expenditure to these funds for maintenance and enhancement of the Parking Violations Bureau and court facilities.

(f) The Clerk of the Courts may designate and specially set aside four dollars ($4.00) for each assessment of costs referred to in subsection (a) for the establishment of the Clerk's Service Enhancement Trust Fund which shall be used for the maintenance and enhancement of the functions of the Clerk.

(g) A surcharge of four dollars ($4.00) is imposed on parking fines and monies collected shall be placed in the School Crossing Guard Trust Fund as authorized by Section 316.660(4)(c), Florida Statutes.

30-389. Unlawful to wilfully abandon motor vehicles on the streets of the County; notice; presumptions.

(a) It is unlawful for any person to wilfully abandon a motor vehicle upon the public streets and highways including shoulders of the road, within this County.

(b) In any prosecution under this section, proof that the defendant named in the complaint was at the time of such abandonment the registered owner of such vehicle, shall constitute in evidence a presumption that the registered owner of such vehicle was the person who abandoned such vehicle where and at the time when such violation occurred.

(c) The provisions of Sections 30-389.1, 30-389.2 and 30-389.3 shall apply to violations of this section.

30-389.1. Uniform notice on illegally parked vehicle.

(a) The Chief Judge may, by administrative order, prescribe a uniform parking ticket to be used by all municipal and County law enforcement agencies within the County; prescribe the method of distributing the uniform parking tickets; and promulgate rules an regulations to ensure that completed uniform parking tickets are not wrongfully withheld from the Court or destroyed.

(b) Whenever any motor vehicle is found parked, stopped or standing in violation of any of the restrictions imposed by ordinance of this County, the traffic enforcement officer or parking enforcement specialist finding such vehicle shall issue the uniform parking ticket. If the vehicle is unattended, the traffic enforcement officer or parking enforcement specialist shall attach such ticket to the vehicle in a conspicuous place, except that the uniform traffic citation prepared by the Department of Highway Safety and Motor Vehicles pursuant to Section 316.650, Florida Statutes shall not be issued by being attached to an unattended vehicle. The owner of said motor vehicle must answer to the charge placed against him within thirty (30) days as provided in Section 30-389.2 of the Code of Miami-Dade County.

30-389.1A. Owner of car presumed to be violator.

In the prosecution charging a violation of any ordinance or provision of this Code governing the stopping, standing, parking or operating a vehicle, proof that the particular vehicle described in the complaint was parked or operated in violation of any such ordinance or regulation, together with proof that the defendant named in the complaint was at the time of such parking or operating the registered owner of such vehicle, shall constitute in evidence a presumption that the registered owner of such vehicle was the person who stopped, parked or operated such vehicle at the point where, and for the time during which, such violation occurred.

The foregoing stated presumption shall apply only where the procedure as prescribed

in Sections 30-389.1 and 30-389.2 has been followed.

30-389.2. Failure to comply with summons attached to illegally parked vehicle.

All violators with past due unpaid parking complaints shall be noticed to appear at the Clerk's Parking Violations Bureau for the purpose of administrative disposition to ascertain whether the alleged violator desires to waive a Court hearing and pay the prescribed fine. All persons requesting a court hearing will execute a written request at the Parking Violations Bureau and the Clerk will schedule a hearing date before the Court. Any person requesting dismissal of a parking complaint without a court hearing may execute a notarized petition for dismissal, which the Clerk shall submit to the Court for review.

30-389.4. Parking enforcement procedures.

(a) When it appears to the Clerk of Court that five (5) or more summonses or citations (or one (1) or more summons or citation involving a violation of Section 30-447) have been issued to the same motor vehicle owner without regard to whether the summonses or citations bear a date prior to or subsequent to the effective date of this section, and said motor vehicle owner has failed to respond or to appear in Court as required by Section 30-389.3 and Section 30-385, the Clerk shall send to the motor vehicle owner notification that an order authorizing either impoundment or immobilization will be issued because of the five (5) outstanding summonses or citations (or one (1) or more summons or citation involving a violation of Section 30-447) issued to the same motor vehicle owner. This notification shall be sent by certified mail to the address which appears on the records of the Department of Motor Vehicles. If, after contacting the Department of Motor Vehicles, the Parking Violations Bureau is unable to determine the motor vehicle owner's address, it shall not be necessary for the Clerk to mail notice before the motor vehicle may be immobilized in accordance with subsection (f) of this section. If the motor vehicle owner fails to account for his parking violations pursuant to this Code within ten (10) days of the sending of the letter of notification, or if the Clerk is advised that the address of the registered owner of the motor vehicle is unknown, the Clerk shall notify the Chief Judge or his designee.

(b) The Chief Judge or his designee, upon receipt of notice from the Clerk of Court, pursuant to subsection (a), may issue an order to all law enforcement officers and parking enforcement specialists in the Eleventh Judicial Circuit for the State of Florida, commanding such law enforcement officers and parking enforcement specialists to impound or immobilize any motor vehicle registered to the person to whom the notice was directed. The order to impound or immobilize shall specify the registration or tag number(s) of said vehicle(s), the make(s) or trade name(s) of the vehicle(s), and if known, to the Court, the serial number(s) of the vehicle(s). Any vehicle having a tag that has been reported by the registered owner of the tag, in a sworn affidavit, as stolen or unauthorized for use prior to the issuance of a parking citation shall be immobilized, without notice, in accordance with this subsection and in the manner prescribed in subsection (f).

(c) At intervals to be determined by the Chief Judge, the Clerk of Court shall publish and transmit to all police and parking enforcement departments within Miami-Dade County a list of motor vehicles which have been ordered impounded or immobilized pursuant to the preceding subsection.

(d) Any law enforcement officer or parking enforcement specialist who comes into contact with an unoccupied parked motor vehicle which he reasonably believes to be a vehicle for which there is outstanding an impoundment or immobilization order, shall impound the vehicle in the manner prescribed in subsection (e), or immobilize the vehicle in the manner prescribed in subsection (f).

(e) Impoundment of vehicles pursuant to subsection (b) shall be accomplished by means of removal of the vehicle to the nearest facility or other place of safety, or to a facility designated or maintained by the County or by a municipality.

(f) Immobilization of vehicles pursuant to subsection (b) shall be accomplished by means of a Denver boot or other nondestructive device which prevents the vehicle from moving under its own power or by the removal of the license tag. The police officer or parking enforcement specialist who causes the motor vehicle to be immobilized shall attach a notice to the motor vehicle, on the form prescribed by the County Court, advising the owner of the motor vehicle of the information necessary to enable the owner to have the immobilization device removed or license tag returned. The notice shall be signed by the police officer or parking enforcement special-

ist and indicate his/her badge number. For a period of forty-eight (48) hours from the removal of the license tag, the owner of the vehicle shall not be liable for failure to comply with Section 30-367 of the Code of Miami-Dade County.

(g) A prompt and adequate post impoundment or post-immobilization hearing will be provided to the owner of an immobilized motor vehicle, enabling him/her to contest the impoundment or immobilization as being unjustified. In the course of this hearing, the burden will be on the County to prove the parking violations and the legality of the impoundment or immobilization in the usual way.

(h) During the course of this hearing, the owner of the vehicle can obtain the release of the vehicle or the license tag by posting bond as required by the County Court.

(i) A motor vehicle which has been impounded or immobilized shall be released by the police or parking enforcement agency involved when the owner or operator has complied with the terms of the impoundment or immobilization order and presented proof of such compliance to the agency which impounded or immobilized the vehicle.

ARTICLE II
PARKING SPACES FOR DISABLED PERSONS

30-447. Penalty for misuse of specially marked parking spaces.

It is unlawful for any person to stop, stand, or park a vehicle within any parking space designated with an above-grade sign bearing the international symbol of accessibility or the caption "PARKING BY DISABLED PERMIT ONLY," or with both such symbol and caption, unless such vehicle displays a parking permit issued pursuant to Section 316.1958, Florida Statutes, or Section 320.0848, Florida Statutes, and such vehicle is transporting a person eligible for the parking permit. However, any person who is chauffeuring a person eligible for a disabled parking permit shall be allowed, without need for an identification parking permit, momentary parking in any such parking space for the purpose of loading or unloading a disabled person. No penalty shall be imposed upon the driver for such momentary parking. Whenever a law enforcement officer or a parking enforcement specialist finds a vehicle in violation of this section, that officer shall:

(1) Have the vehicle in violation removed to any lawful parking space or facility or require the operator or other person in charge of the vehicle immediately to remove the unauthorized vehicle from the parking space. Whenever any vehicle is removed by a law enforcement officer, parking enforcement specialist, or agency to a storage lot, garage, or other safe parking space, the cost of such removal and parking shall be a lien against the vehicle.

(2) Charge the motor vehicle owner in violation with a noncriminal traffic infraction.

(a) Whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of this section, it shall be prima facie evidence that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division of Motor Vehicles.

(b) Violators of this article shall be punished by a mandatory fine of one hundred fifty dollars ($150.00). A motor vehicle owner who is guilty of repeat violations of this article may be punished by a fine not to exceed two hundred fifty dollars ($250.00).

(c) All fines collected in excess of twenty-five dollars ($25.00) for each violation shall be deposited in a separate account to be used in the following manner:

(i) One-third to be used to defray expenses for the administration of this article.

(ii) Two-thirds to be used to provide funds to improve accessibility and equal opportunity to qualified physically disabled persons and to provide funds to conduct public awareness programs concerning physically disabled persons.

The two-thirds shall be distributed in the following manner:

Thirty (30) percent to be retained by the County for county-wide purposes in accordance with state law, and seventy (70) percent to be allocated to the governmental entity having jurisdiction over the violation.

(iii) To be eligible to receive funds each participating city would be required to submit an affidavit sworn by the chief administrative official which would assure that these funds would be used in accordance with state law. Monies not distributed to a city because of the failure of such city to submit an affidavit shall be placed in a fund for disbursement to other cities which have submitted affidavits in proportion to the percentage of citations issued by the complying city.

All fines collected in excess of twenty-five dollars ($25.00) for each violation of Section 30-292(1)(a)12., shall be eligible for inclusion in the fund described in Section 30-447(2)(c).

ARTICLE IIA
PARKING SPACES FOR PERSONS TRANSPORTING YOUNG CHILDREN AND STROLLERS

30-449. Parking spaces for persons transporting young children and strollers.

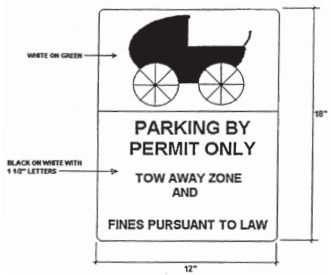
Parking spaces specifically designed for persons transporting young children under the age of three (3) and strollers, shall be required for all uses other than single-family, duplex, townhouse or multifamily; provided, however, industrial zoned properties shall not be required to comply with this section. Such baby stroller parking spaces shall be provided as follows:

(a) *Quality of specially designated parking spaces:*

Total Parking Spaces in Lot	Required Number of Spaces
Up to 100	0
101 to 500	2
501 to 1,000	3
Over 1,000	One (1) additional space for each 500 parking spaces over 1,000

(b) *Location of parking spaces.* Such spaces shall be located as closely as possible to parking spaces designated for the physically handicapped and/or disabled persons; provided however, parking spaces designated for the physically handicapped and/or disabled persons shall take precedence. Where no parking spaces designated for the physically handicapped and/or disabled persons have been provided, parking spaces for persons transporting young children and strollers shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance.

(c) *Signage and markings.* All parking spaces reserved for persons transporting young children and strollers shall be prominently outlined with green paint and posted with an approved permanent above-ground sign which shall conform to the figure entitled "Baby Stroller Parking Sign" hereby incorporated in this section. The bottom of the sign must be at least five (5) feet above grade when attached to a building, or seven (7) feet above grade for a detached sign.



(d) *Parking permit required.* Such parking spaces shall only be utilized by parking permit holders as specified in Section 30-450 of this Code and only when the permit holder is transporting a young child and a stroller; provided, however, physically handicapped and/or disabled persons displaying a valid handicapped parking permit shall be permitted to utilize parking spaces designated for persons transporting young children and strollers.

30-450. Penalty for misuse of specially marked parking spaces.

It is unlawful for any person to stop, stand, or park a vehicle within any parking space designated for persons transporting young children and strollers, unless such vehicle displays a parking permit decal issued pursuant to administrative order, and such vehicle is transporting a child aged two (2) years or less; provided, however, physically handicapped and/or disabled persons displaying a valid handicapped parking permit shall be permitted to utilize parking spaces designated for persons transporting young children and strollers. Whenever a law enforcement officer or a parking enforcement specialist finds a vehicle in violation of this section, that officer or enforcement specialist shall:

(1) Have the vehicle in violation removed to any lawful parking space or facility or require the operator or other person in charge of the vehicle immediately to remove the unauthorized vehicle from the parking space. Whenever any vehicle is removed by a law enforcement officer, parking enforcement specialist, or agency to a storage lot, garage, or other safe parking space, the cost of such removal and parking shall be a lien against the vehicle, or

(2) Charge the motor vehicle owner in violation with a noncriminal traffic infraction.

(a) Whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a specially designated parking space in violation of this section, it shall be prima facie evidence that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division of Motor Vehicles.

(b) Violators of this article shall be punished by the maximum fine for a non-moving violation pursuant to Chapter 318, Florida Statutes.

ARTICLE III
TOWING OF MOTOR VEHICLES

30-461. Definitions.

For the purposes of this article, the following definitions shall apply:

(1) *Commission* shall mean the Board of County Commissioners of Miami-Dade County, Florida.

(1.5) *Consent Tower* shall mean a person who tows a motor vehicle with the consent of the vehicle owner.

(2) *County Manager* shall mean the chief executive officer and head of the administrative branch of County government as provided in Article 3 of the Home Rule Charter of Miami-Dade County.

(3) *CSD* shall mean the Miami-Dade County Consumer Services Department.

(4) *Decal* shall mean an identifying sticker issued by the Director and appropriate for display in the lower left corner of the front window of a towing vehicle or equipment or car carrier used by a person licensed under this article.

(5) *Director* shall mean the CSD Director or the Director's designee.

(6) *Express instruction* shall mean a clear, definite and explicit request:

(a) Made in writing by a police officer to immobilize, recover, tow, remove or store a specific and individual vehicle which is disabled or abandoned or parked without authorization, or whose operator is unable or unwilling to remove the vehicle;

(b) Made in writing by a property owner or duly authorized agent of the property owner to immobilize, recover, tow, remove or store a specific and individual vehicle parked without permission of the property owner; however, such property owner or agent shall not be the person requested to immobilize, recover, tow, remove or store the vehicle or an employee or agent thereof; or

(c) Made by telephone, in person or in writing by a vehicle owner or the authorized driver to recover, tow, remove or store a specific and individual vehicle which is in the lawful control of the vehicle owner or authorized driver requesting the towing service. The foregoing notwithstanding, where the property owner is a government entity, the property owner or an employee or agent thereof, may be the same person requested to recover, tow, remove or store the vehicle.

Every request made in writing or in person must indicate the date and time of the instruction and must be signed by the police officer, the property owner or agent, or the vehicle owner or authorized driver in the presence of the person providing the requested service. Every request made by telephone must also be documented with the date and time of the call.

(6.5) *Immobilization, immobilize or immobilizing,* also known as boot or booting, shall mean the act of placing, on a parked vehicle, a mechanical device that is designed to be attached to the wheel or tire so as to prohibit its usual manner of movement.

(7) *Industry* shall mean the business of recovering, towing or removing vehicles and providing such vehicle storage services as may be associated therewith.

(8) *License* shall mean the certificate or document which allows a person to engage in Miami-Dade County in the activity of recovering, towing, removing and storing of vehicles for compensation. As used in this article, "license" shall not mean a municipal occupational license or a County occupational license.

(8.5) *Nonconsent Tower* shall mean persons who perform "Police Directed Tows" or "Private Property Impounds" as defined herein.

(9) *Operate* shall mean to provide for compensation the services of recovering, towing or removing vehicles and any vehicle storage services associated therewith.

(10) *Operator* shall mean any person who provides for compensation the services of recovering, towing, or removing vehicles and any vehicle storage services associated therewith.

(11) *Person* shall mean any natural person, firm, partnership, association, corporation or other entity of any kind whatsoever.

(12) *Personnel authorized by the CSD* shall mean enforcement personnel autho-

rized by the Director and presenting valid identification.

(12.5) *Police Directed Tow* shall mean the removal and storage of wrecked or disabled vehicles at the direction of police/law enforcement from an accident scene or the removal and storage of vehicles in the event the owner or operator is incapacitated, unavailable, or otherwise does not consent to the removal of the vehicle, excepting, however, all incidents of Private Property Impounds as herein defined.

(12.6) *Private Property Impound* shall mean towing or removal of a vehicle, without the consent of the vehicle's owner or operator, as such is authorized by Section 715.07, Florida Statutes, as may be amended, when that vehicle is parked on private real property.

(13) *Property owner* shall mean that person who exercises dominion and control over real property, including but not limited to the legal titleholder, lessee, designated representative of a condominium association or any person authorized to exercise a share dominion and control over real property; however, "property owner" shall not mean or include a person providing towing services within the purview of this article. The foregoing notwithstanding, all government entities providing their own towing services may be property owners for purposes of this article.

(14) *Recover* shall mean to take possession of a vehicle and its contents and to exercise control, supervision and responsibility over it.

(15) *Regulation* shall mean a rule set forth in this article, the violation of which is sufficient grounds for fines; suspension or revocation of a towing license; civil damages, court costs and attorneys fees; and specified criminal penalties.

(16) *Remove* shall mean to change the location of a vehicle by towing it.

(17) *Revoke* shall mean to annul and make void the license of a person engaged in the business of providing towing services.

(18) *Store* shall mean to place and leave a towed vehicle at a location where the person providing the towing service exercises control, supervision and responsibility over the vehicle. The storage facility must be securely fenced or locked for the protection of vehicles and property.

(19) *Tow* shall mean to haul, draw or pull along a vehicle by means of another vehicle equipped with booms, car carriers, winches or similar equipment.

(20) *Trade name* shall mean any name under which a person, corporation, partnership, association, firm or any other entity operates its business.

(21) *Vehicle* shall mean an automobile, truck, bus, trailer, semitrailer, truck tractor semitrailer combination, recreational unit primarily designed as temporary living quarters which either has its own motive power or is mounted on or drawn by another vehicle, or any other mobile item using wheels and being operated on the roads of Miami-Dade County, which is used to transport persons or property and is propelled by power other than muscular power; provided, however, that the term does not include bicycles, mopeds, traction engines, road rollers or vehicles which run only upon a track.

(22) *Wrecker class* shall mean the type of towing vehicle, equipment or apparatus used to recover, tow or remove vehicles. The wrecker classes shall be distinguished as follows:

Part I

Tow Truck Class Specifications

Class A Tow Truck or Car Carrier—Minimum Ratings:		
1.	Gross vehicle weight ratings	10,000 LBS.
2.	Boom capacity	8,000 LBS.
3.	Winching capacity	8,000 LBS.
4.	Cable size and length	⅜″ X100′
5.	Wheel lift retracted rating	3,500 LBS.
6.	Wheel lift extended ratings	2,000 LBS.
7.	Tow sling safe lift rating	3,500 LBS.
8.	Safety chains (2 EACH)	⅜″ high test
9.	Cab to axle dimension	56″

Class B Tow Truck—Minimum Ratings:		
1.	Gross vehicle weight ratings	18,000 LBS.
2.	Boom capacity	24,000 LBS.
3.	Winching capacity	24,000 LBS.
4.	Cable size and length	½″ X200′
5.	Under-reach retracted rating	10,500 LBS.
6.	Under-reach extended ratings	8,500 LBS.
7.	Tow sling safe lift rating	8,500 LBS.
8.	Safety chains (2 EACH)	5/16″ ALLOY
9.	Cab to axle dimension	84″
Class C Tow Truck—Minimum Ratings:		
1.	Gross vehicle weight ratings	30,000 LBS.
2.	Boom capacity	50,000 LBS.
3.	Winching capacity	50,000 LBS.
4.	Cable size and length	⅝″ X200′
5.	Under-reach retracted rating	25,000 LBS.
6.	Under-reach extended ratings	12,000 LBS.
7.	Tow sling safe lift rating	12,000 LBS.
8.	Safety chains (2 EACH)	½″ ALLOY
9.	Cab to axle dimension	144″
Class D Tow Truck—Minimum Ratings:		
1.	Gross vehicle weight ratings	52,000 LBS.
2.	Boom capacity	70,000 LBS.
3.	Winching capacity	70,000 LBS.
4.	Cable size and length	¾″ X200′
5.	Under-reach retracted rating	45,000 LBS.
6.	Under-reach extended ratings	15,000 LBS.
7.	Tow sling safe lift rating	12,000 LBS.
8.	Safety chains (2 EACH)	½″ ALLOY
9.	Cab to axle dimension	180″

30-462. Towing license required.

(a) It shall be unlawful for any person to recover, tow or remove a vehicle or provide storage in connection therewith or to cause or permit any other person for compensation to recover, tow or remove a vehicle or provide storage in connection therewith, or to advertise or offer to recover, tow or remove a vehicle or provide storage in connection therewith, without first obtaining and maintaining a current and valid license pursuant to the provisions of this article; provided, however, that a property owner without a license may cause or permit the removal of a vehicle from his or her property in accordance with the provisions of this article. The provisions of this ordinance do not apply to persons who use a towing vehicle to transport their vehicles purely for personal, family, household or recreational use.

(b) Nothing in this article shall be construed to prohibit the discharge or storage of a vehicle lawfully recovered, towed or removed in another County and lawfully transported into Miami-Dade County; nor shall anything in this article be construed to prohibit a vehicle owner or his authorized agent from requesting the services of a towing business not regularly doing towing business in Miami-Dade County, to remove the owner's vehicle to a location outside Miami-Dade County.

(c) Nothing in this article shall be construed to prevent a natural person from working in an employment relationship for another person holding a valid license under

this article; however, any person who is an independent contractor and not an employee of a licensed person is also subject to all the requirements and provisions of this article.

30-465. Insurance requirements.

(a) It shall be unlawful for any person for compensation or as part of a regularly conducted business activity to recover, tow, or remove a vehicle or to provide vehicle storage services in connection therewith until that person has filed with the Director and maintains in effect, for each towing vehicle operated by that person, an insurance policy or policies or certificates of insurance which shall indemnify or insure such person for its liability at a minimum:

(1) For vehicles with a gross vehicle weight of less than eighteen thousand (18,000) pounds: automobile liability insurance covering each vehicle in an amount not less than fifty thousand dollars ($50,000.00) per person, one hundred thousand dollars ($100,000.00) per occurrence for bodily injury, and twenty-five thousand dollars ($25,000.00) per occurrence for property damage or one hundred thousand dollars ($100,000.00) combined single limit.

(2) For vehicles with a gross vehicle weight of eighteen thousand (18,000) pounds or more, but less than thirty thousand (30,000) pounds: automobile liability insurance covering each vehicle in an amount not less than one hundred thousand dollars ($100,000.00) per person, three hundred thousand dollars ($300,000.00) per occurrence for bodily injury, and one hundred thousand dollars ($100,000.00) per occurrence for property damage or three hundred thousand dollars ($300,000.00) combined single limit.

(3) For vehicles with a gross vehicle weight of thirty thousand (30,000) pounds or more: automobile liability insurance coverage covering each vehicle in an amount not less than three hundred thousand dollars ($300,000.00) per person, five hundred thousand dollars ($500,000.00) per occurrence for bodily injury, and one hundred thousand dollars ($100,000.00) per occurrence for property damage or five hundred thousand dollars ($500,000.00) combined single limit.

(b) All insurance policies required shall be issued by insurance companies authorized and qualified to do business in the State of Florida. No policy shall be accepted which is of less than six (6) months' duration. Each policy shall contain a provision that the CSD must be notified in writing by mail by the insurance agent/company of any policy changes at least forty-five (45) days prior to the endorsement taking effect or at least ten (10) days prior to cancellation thereof for nonpayment of premium, as applicable.

(c) Failure to provide current certificates of insurance or policies or failure to maintain the required coverage for each vehicle shall result in automatic suspension of the towing license, which shall remain in effect until proof of compliance with this section is submitted to the Director and approved.

(d) The insurance requirements of this article shall not apply to governmental entities which are self-insured.

30-467. Decals; vehicle standards.

(a) It shall be unlawful to recover, tow or remove a vehicle or to store it in connection therewith unless the towing vehicle or equipment or car carrier used to provide such service displays in the lower left corner of the front window a current decal issued by the CSD.

(b) The Director is authorized to issue current licensee decals for each separate towing vehicle or equipment or car carrier, upon application by the licensee and completion of the following:

(1) Inspection of vehicle records by personnel authorized by the CSD to determine ownership, or first-party lease held by the licensee, of the towing vehicle or equipment or car carrier.

(2) Inspection by personnel authorized by CSD to assure that the non-governmentally owned towing vehicle or equipment or car carrier clearly displays on the front of the tow truck or car carrier body, the towing license number in letters at least three (3) inches high; and on the driver and passenger sides of the vehicle and/or doors, the licensee's name in letters at least three (3) inches high; and in letters at least one (1) inch high, the licensee's principal address and telephone number.

(3) Inspection by personnel authorized by CSD to ascertain that the towing vehicle has the equipment required by rules to be promulgated by CSD and that such equipment is operable. If an inspection of the towing vehicle does not reveal that it meets the minimum ratings for the vehicle's class specifications, as contained in Section 30-461(22), the licensee must furnish the CSD a sworn statement that the towing vehicle meets the applicable minimum ratings.

(4) An application form completed by the licensee and approved by the Director which correctly indicates the year, make, model and vehicle identification number of the towing vehicle or equipment or car carrier.

(5) Payment of a CSD decal fee set at an amount reasonably related to the costs of providing the services under this section. Such costs shall be set by administrative order of the County Manager approved by the Commission, and deposited and used in the same manner as other fees and charges under this article.

(c) Decals shall be issued in numerical order, and each decal issued shall display its assigned number. Decals shall be issued with the initial license and shall be renewable annually in the same manner as original application is made.

(d) The decal for each towing vehicle or equipment or car carrier shall be affixed by personnel authorized by the CSD, shall remain the property of the County, and shall at all times by displayed and available for inspection by any police officer or by personnel authorized by the CSD to perform enforcement duties.

30-468. Manifest or trip records.

(a) It shall be unlawful for any person to recover, tow or remove a vehicle or provide storage in connection therewith unless the person providing such service shall maintain in his or her possession a manifest or trip sheet which shall include but not be limited to the following information:

(1) Name of the licensee and of the natural person physically providing the service.

(2) Decal number of the towing vehicle or equipment or car carrier used to provide the service.

(3) Date and time that the service was requested.

(4) Name, address and telephone number of the person requesting the service.

(5) Date and time that the service was initiated.

(6) Location at which the service originated.

(7) Destination to which the vehicle being provided the service is taken.

(8) Description of the vehicle being provided the service, including make, model, year, color, vehicle identification number and State license plate number, if any.

(9) Description of services provided.

(10) Cost(s) for the service(s) provided.

(11) Any and all "load and offload" charges, including the name, badge number, and agency of the officer on the scene who approved these additional charges.

(12) Date and time that the vehicle was delivered to the storage facility.

(b) Each manifest or trip record shall be immediately available for inspection by police officers or by personnel authorized by the CSD to perform enforcement duties, at any time during the period of recovery, towing or removal of a vehicle.

(c) Each licensee shall maintain for no less than three (3) years the original of each manifest or trip record. No person providing the service shall destroy, mutilate, alter or deface any manifest or trip record prior to the expiration of three (3) years without written approval of the CSD. All manifests and trip records shall be available for inspection by personnel authorized by the CSD or any police agency during regular business hours.

30-469. Towing safety standards.

It shall be unlawful for any person to recover, tow or remove a vehicle by use of a towing vehicle, equipment or car carrier in a manner which violates the standards for use of such towing vehicle, equipment or car carrier as set by the manufacturer thereof. It shall be unlawful to tow without the use of safety chains.

It shall be unlawful to operate a tow truck if the vehicle has failed to pass the critical items of any vehicle inspection performed by personnel authorized by the CSD, or if the owner thereof has failed to correct other inspection deficiencies within the time period specified by the CSD, or is operating without the proper insurance coverage. When a vehicle has failed to pass inspection, inspection deficiencies have not been corrected or when the vehicle is operating without the proper insurance coverage, personnel authorized by the CSD may affix to the upper left corner of the vehicle windshield a notice stating the date of the inspection or action and the reasons for the inspection rejection or action. It shall be unlawful for the licensee or any other person other than personnel authorized by the CSD to remove this notice from the windshield of the vehicle.

30-471. Anti-discrimination.

No licensee shall refuse or neglect to provide vehicle recovery, towing or removal services or storage services in connection therewith to any orderly person requesting such service and able and willing to pay for such services, on account of that person's race, sex, religion, national origin, age, marital status or handicap.

30-473. Nonconsent towing without prior consent of vehicle owner or duly authorized driver of vehicle.

In addition to the other requirements of this article, no nonconsent tower shall recov-

er, tow or remove a vehicle or provide storage in connection therewith without the prior express instruction of the vehicle owner or authorized driver, except in accordance with the following:

(a) Only persons duly licensed under this article shall recover, tow or remove a vehicle or provide storage in connection therewith without the prior express instruction of the vehicle owner or authorized driver.

(b) Persons duly licensed under this article may recover, tow or remove a vehicle without the prior express instruction of the vehicle owner or authorized driver upon the express instruction of a police officer and in accordance with the terms of any contracts or agreements between the licensee and the governmental entity in whose jurisdiction the police officer serves. Such contracts or agreements may provide terms and requirements in excess of the requirements provided by this article.

(c) Persons duly licensed under this article may recover, tow or remove a vehicle without the prior express instruction of the vehicle owner or authorized driver, upon the express instruction of a property owner, or his authorized agent, on whose property the vehicle is disabled, abandoned or parked without authorization or whose operator is unwilling or unable to remove the vehicle, provided that the requirements of Sections 30-474, 30-475 and 30-476 are satisfied.

(d) Persons who provide services pursuant to this section shall not pay or rebate money, or solicit or offer the rebate of money, or other valuable consideration, to obtain the privilege of rendering such services.

(e) Persons who provide services pursuant to this section shall not do so when there is a living natural person occupying the vehicle.

(f) Persons who provide services pursuant to this section shall transport the vehicle directly to the storage site of the person providing the service, or to such other location as a police officer authorizing the tow may expressly direct, and shall not keep the vehicle in any temporary holding area.

(g) Persons who provide services pursuant to this section shall maintain a place of business. The place of business shall have a sign that clearly and conspicuously identifies the business to the public; and office space that has at least one (1) person on duty from 8:00 a.m. until 6:00 p.m., Monday through Friday, to answer telephone calls and to be open to serve the public. However, the office may be closed to observe all holidays observed by Miami-Dade County government. The place of business shall maintain a telephone communication system to answer telephone calls from the public twenty-four (24) hours a day.

(h) Persons who provide services pursuant to this section shall file and keep on record with the CSD a complete copy of all current rates charged for the recovery, towing or removal of vehicles and storage provided in connection therewith. Such persons shall also display prominently at each vehicle storage site a schedule of all charges and rates for removal of vehicles at the request of property owners. That rate schedule shall be posted prominently in the area designated for the vehicle owner or his agent to transact business. Such area shall provide shelter, safety and lighting adequate for the vehicle owner or his or her authorized representative to read the posted rate schedule. Further, notice shall be posted advising the vehicle owner or his or her authorized representative of the right to request and review a complete schedule of charges and rates for towing services provided at police request for the jurisdiction in which the police order to tow was made.

(i) Persons who provide services pursuant to this section shall advise any vehicle owner or authorized representative who calls by telephone prior to arriving at the storage site of the following:

(1) Each and every document or other thing which must be produced to retrieve the vehicle;

(2) The exact charges as of the times of the telephone call, and the rate at which charges accumulate after the call;

(3) The acceptable methods of payment; and

(4) The hours and days the storage site is open for regular business.

(j) Persons who provide services pursuant to this section shall permit every vehicle owner or his or her authorized representative to inspect the towed vehicle immediately upon his or her arrival at the storage site and before payment of any charges. The vehicle owner or his or her authorized representative shall be permitted to remove from the vehicle any and all personal possessions inside but not affixed to the vehicle, including but not limited to radios and telephones, and the operator of the storage site shall assist any vehicle owner or authorized representative in doing so. No release or waiver of any kind which would release the authorized representative at the time of retrieval may be required as a condition of release of the vehicle.

(k) Persons who provide services pursuant to this section shall accept payment for charges from the vehicle owner or authorized representative in any of at least two (2) of the following listed categories:

(1) Cash, money order or valid traveler's check;

(2) Valid bank credit card; or

(3) Valid personal check showing on its face the name and address of the vehicle owner or authorized representative.

A vehicle owner or authorized representative shall not be required to furnish more than one (1) form of picture identification when payment is made by valid bank credit card or personal check, and said presentation shall constitute sufficient identity verification.

(l) Persons who provide services pursuant to this section shall display on the same sign as the rate schedule required by subsection (h) of this section the following statement:

To The Vehicle Owner

If you believe that you have been overcharged for the services rendered, you do not have to pay your bill to get your car. Instead, you have the right to post a bond in the Circuit Court, payable to (name of person providing service), in the amount of the final bill for services rendered, and file a complaint within five (5) days of the time you have knowledge of the location of the vehicle, and the Court will decide later who is right. If you show us a valid Clerk's certificate showing that you have posted a bond, we must release your vehicle to you immediately. This remedy is in addition to other legal remedies you may have. F.S. §§ 713.76, 713.78.

If you have a complaint about the way services were provided, you may call the Miami-Dade County Consumer Services Department.

(m) Persons who provide services pursuant to this section shall not use physical force or violence or threats of physical force or violence in dealing with the individuals responsible for administering this article or individuals who have had or are about to have their vehicles recovered, towed or removed or stored in connection therewith.

(n) Nothing in this section shall prevent the County or any jurisdiction in it from providing additional or more restrictive requirements in contracts or arrangements under which police officers direct and authorize the recovery, towing or removal of vehicles or storage provided in connection therewith.

30-474. Requirements for providing nonconsent tow services at request of property owners.

Nonconsent towers duly licensed under this article may recover, tow or remove a vehicle or provide storage in connection therewith upon the instruction of a property owner, or his authorized agent, on whose property the vehicle is abandoned or parked without authorization, provided that the following requirements are satisfied:

(a) Notice shall be prominently posted on the property from which the vehicle is proposed to be removed and shall fulfill the following requirements:

(1) Notice, in the form of a sign structure, shall be prominently placed at each driveway access or curb cut allowing vehicle access to the property, within five (5) feet from the public right-of-way line. If there are no curbs or access barriers, signs shall be posted not less than one (1) sign each twenty-five (25) feet of lot frontage. The sign structure shall be permanently installed with the bottom of the sign not less than four (4) feet above ground level and the top of the sign not more than ten (10) feet above ground level, and shall be continuously maintained on the property for not fewer than twenty-four (24) hours before the towing or removal of vehicles.

(2) The notice shall clearly display:

a. In not less than two (2) inches high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense; and

b. In not less than four (4) inches high, light-reflective letters on a contrasting background the words "tow-away zone"; and

c. In not less than two (2) inches high, light-reflective letters on a contrasting background, the days of the week and hours of the day during which vehicles will be towed away at the owner's expense where the property owner selectively causes the towing of vehicles, depending on the day of the week and hour of the day the vehicle is parked; and

d. In not less than two (2) inches high, light-reflective letters on a contrasting background, the name and telephone number of the person performing the towing service, if there exists a written contract between the property owner and that person for the towing of vehicles; and

e. In not less than one (1) inch high, light-reflective letters on a contrasting background, the address of the storage site.

(3) The posting of notice requirements of this section shall not be required where:

a. The property on which a vehicle is parked is property appurtenant to and obviously a part of a single-family type residence; or

b. Notice is personally given to the owner or operator of the vehicle that the property on which the vehicle is or will be parked is reserved or otherwise not available for unauthorized vehicles and is subject to being removed at the owner's expense; or

c. The property on which a vehicle is parked is owned by a governmental entity and the towing is performed by a towing vehicle owned by the governmental entity in compliance with laws authorizing removal of the vehicle.

(b) The property owner or his authorized agent shall provide express instruction to recover, tow or remove the vehicle and shall date and sign such instruction in the presence of the natural person recovering, towing or removing the vehicle. Neither the property owner nor his authorized agent shall be an officer, employee or agent of the person requested to recover, tow or remove the vehicle. No such instruction shall be considered to have been given by the mere posting of the notice as required by the preceding parts of this section. No such instruction shall be considered to have been given by virtue of the mere terms of any contract or agreement between a person providing towing services and a property owner. No such instruction shall be considered to have been given where the instruction occurs in advance of the actual unauthorized parking of the vehicle. No such instruction shall be considered to have been given where the instruction is general in nature and unrelated to specific, individual and identifiable vehicles which are already parked without authorization.

(c) The person recovering, towing or removing a vehicle at the request of a property owner or his authorized agent shall, within thirty (30) minutes of the completion of the vehicle recovery, tow or removal, notify the Miami-Dade Police Department of the nature of the service rendered, the storage site of the vehicle, the time the service was rendered, and the make, model, color, vehicle identification number and license plate number of the vehicle.

(d) Persons who provide services pursuant to this section shall not recover, tow or remove a vehicle or provide storage in connection therewith if the vehicle owner or other person legally authorized to control the vehicle arrives at the scene prior to recovery, towing or removal, except where:

(1) The registered owner or other legally authorized person in control of the vehicle refuses or is unable to remove the vehicle; or

(2) A complete mechanical connection exists between the vehicle and the towing or removal apparatus and the registered owner or other person in control of the vehicle refuses to pay a reasonable service fee of not more than half of the posted rate for such towing services as required by this article.

(e) Except as otherwise provided for in Section 715.07 Florida Statutes, as amended from time to time, persons who provide services pursuant to this section shall not store or impound a towed vehicle at a distance which exceeds a ten-mile radius of the location from which the vehicle was recovered, towed or removed unless no towing business providing services under this section is located within a ten-mile radius, in which case a towed or removed vehicle must be stored at a site within twenty (20) miles of the point of removal.

(f) Persons who provide services pursuant to this section shall maintain one (1) or more storage sites, each of which shall be open for the purpose of retrieval of vehicles by owners or owners' authorized agents on any day that the person providing the service is open for towing purposes, from at least 8:00 a.m. to 6:00 p.m., Monday through Friday, and, when closed, shall have posted prominently on the exterior of the place of business a notice indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request to open a site to retrieve a vehicle, the operator of the site shall return to the site within one (1) hour. Persons who provide services pursuant to this section shall release the vehicle to the owner or authorized agent within one-half (½) hour after request is made in person.

30-475. Requirements for licensees and property owners pertaining to nonconsent tows from private property.

(a) Each nonconsent tower must enter into a written contract with every owner of private property that authorizes the licensee to tow vehicles from its property. The licensee must keep on file each contract that is in effect with each property owner, or that was terminated within the previous twelve (12) months. The CSD, law enforcement officers, and the owner of the vehicle towed by the licensee may inspect and copy any such contract during business hours.

(b) A property owner or his or her authorized representative may cause a vehicle parked without authorization upon the property owner's property to be recovered, towed or removed from such property by a person licensed pursuant to this article, and shall not incur liability for the costs of recovery, towing or removal or storage associated therewith, under the following circumstances:

(1) When the property is appurtenant to and obviously a part of a single family residence property; or

(2) When notice is personally given to the vehicle owner or other authorized person in control of the vehicle that the are in which that vehicle is parked is reserved or otherwise unavailable for unauthorized vehicles and subject to being removed as the expense of the vehicle owner or authorized person in control of the vehicle; or

(3) When the vehicle has been parked without authorization on the property for more than forty-eight (48) hours; or

(4) In the case of any other unauthorized parking when notice is prominently posted on the property as provided in Section 30-474(a) of this article; or

(5) When the vehicle has been parked on the property for the principal purpose of displaying such vehicle for sale.

(c) When any property owner or his or her authorized representative causes a vehicle to be recovered, towed, removed from his or her property and stored, he shall immediately upon request and without demanding compensation inform the vehicle owner or other authorized person in control of the vehicle of the name and address of the person that has recovered, towed or removed the vehicle.

(d) No property owner or authorized representative shall request the recovery, tow, removal or storage of a vehicle pursuant to this section until he or she has first ascertained from the person providing the service the current towing license number of that person.

(e) Nothing in this section shall permit any property owner or authorized representative to request the recovery, tow or the removal of law enforcement, fire fighting, rescue squad, ambulance or other emergency vehicles marked as such.

(f) Any person who improperly causes a vehicle to be recovered, towed, removed or stored shall be liable to the vehicle owner or his authorized representative for the costs of the services provided, any damages resulting from the recovery, towing, removal or storage and attorney's fees.

30-476. Maximum immobilization, nonconsent towing and storage rates for providing immobilization or tow services at the request of property owners or police agencies.

(a) The Commission shall by resolution, establish maximum rates for providing immobilization, recovery, nonconsent towing, removal and storage services at the request of a police agency, or a property owner or authorized representative, without the prior consent of the vehicle owner or other authorized person in control of the vehicle. The rates established shall be uniform throughout Miami-Dade County, both in incorporated and unincorporated areas, except where municipalities pursuant to Sections 125.0103 and 166.043, Florida Statutes, have established differing maximum rates for their jurisdictions. From time to time, the maximum rates established by the Commission may be altered, revised, increased or decreased.

(b) Persons who provide nonconsent towing services shall not charge in excess of the maximum allowable rates established by the Commission. No person providing services pursuant to this section shall charge any type of fee other than the fees for which the Commission has established specific rates.

(c) In addition to the maximum rates that may be charged by persons providing services pursuant to this section, the County shall charge an administrative fee of $15 for each vehicle that is recovered, towed, removed, or stored at the request of the Miami-Dade County Police Department. Any administrative fee charged and collected on behalf of the County by a person providing services at the County's request is hereby ratified and confirmed. All administrative fees, as described above, imposed before the effective date of this ordinance are ratified, validated, and confirmed in all respects, from the date any such fee was charged, billed, or collected.

30-477. Enforcement procedure; remedies; attorney's fees; costs; and penalties.

(a)-(d) [Intentionally omitted.]

(e) This article shall be enforced by personnel authorized by the CSD, the police forces of the various municipalities in Miami-Dade County and by the Miami-Dade Police Department. When specifically authorized by the Director, this article may be enforced by other Miami-Dade County personnel.

(f) The CSD is authorized to enforce the provisions of this article by administrative fines in accordance with the provisions of Chapter 8CC or the Code of Miami-Dade

County, for each violation. Each day of a continuing violation shall be deemed a separate violation.

(g) *Criminal penalties:* If any person fails or refuses to obey or comply with or violates any of the provisions of this article, such person, upon conviction of such offense, shall be punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment not to exceed sixty (60) days in the County Jail, or both in the discretion of the Court. Each day of continued violation shall be considered as a separate offense.

30-478. Scope of article.

The provisions of this article shall be the exclusive regulations applicable to the immobilization, recovery, towing and removal of vehicles in Miami-Dade County and all storage provided therewith; except that Section 30-473, "Nonconsent Towing Without the Prior Consent of the Vehicle Owner or Duly Authorized Driver of Vehicle," Section 30-474 "Requirements for Providing Nonconsent Tow Services at Request of Property Owners," Section 30-475 "Requirements for Property Owners Requesting Nonconsent Tows From Property," and Section 30-479 "Requirements for immobilizing vehicles without prior consent of vehicle owner or duly authorized driver of vehicle," shall not apply in any municipality that has adopted and maintains in effect ordinances or regulations governing the same matters. Except as provided by this section, the regulations established by this article shall be applicable throughout Miami-Dade County both in the incorporated and unincorporated areas without regard to municipal boundaries, and shall not be subject to modification by any municipality. The provisions of this article shall not apply to the immobilization of a motor vehicle by a governmental agency, or person acting at the direction of a governmental agency, when such immobilization is authorized by a court order. Except as provided by this section, all municipal ordinances or resolutions contrary to this article are hereby superseded and rescinded.

CHAPTER 30B
TRANSIT AGENCY RULES AND REGULATIONS

30B-3. Applicability and penalties.

(1) *Applicability.* This chapter applies to all who utilize the transit system.

(2) *Penalties.*

(a) Any person violating subsections (2), (5), (6), (7), (9), (10), (11) and (22) of Section 30B-4 of the Code of Metropolitan Dade County shall, upon being warned by a Police Officer of Metropolitan Dade County, cease the prohibited activity. If the person continues the prohibited activity after such warning, the police officer may direct the individual to leave the train or to leave the premises of the station. Any individual who does not leave as directed, shall be charged with trespassing and subject to a fine not to exceed five hundred dollars ($500.00), or by imprisonment not to exceed sixty (60) days in the County Jail, or both. In lieu of any fine or penalty, the court may order any person convicted of violating any provision of this chapter to participate in transit public service for a minimum of ten (10) hours. Such service may include graffiti removal, cleaning of transit vehicles, and maintenance of transit right-of-way.

(b) For violations of subsections (1), (3), (4), (8), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), and (23) of Section 30B-4 of the Code of Metropolitan Dade County and for any other provision of this chapter for which another penalty is not specifically provided shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment not to exceed sixty (60) days in the County Jail, or both. In lieu of any fine or penalty, the court may order any person convicted of violating any provision of this chapter to participate in transit public service for a minimum of ten (10) hours. Such service may include graffiti removal, cleaning of transit vehicles, and maintenance of transit right-of-way.

(c) The County may institute a civil action in a court of competent jurisdiction to recover compensatory damages, including reasonable costs and expenses, for any damage caused to the transit system.

(d) For violations other than those specified in subsection (a) above, the County may institute a civil action in a court of competent jurisdiction to impose and recover a civil penalty for each violation in an amount of not more than five hundred dollars ($500.00) per offense.

(e) The judicial remedies in this section shall be independent and cumulative for the violations to which they are applicable hereunder.

30B-4. Personal activities.

(1) *Impeding or hindering operators of mass transit vehicles.* On any mass transit vehicle operated solely within the boundar-

ies of Dade County, it shall be unlawful for any person to impede or hinder the operator of said mass transit vehicle in the performance of his or her duties. No person shall, on any mass transit vehicle operated solely within the boundaries of Dade County, interfere with or disturb the operator of said mass transit vehicle by drinking alcoholic beverages, playing a radio or other instrument, unless said radio or other instrument is connected to an earphone; carry any animals or flammable liquids; display any weapons or firearms; use abusive, insulting or obscene language or gestures with the intent to distract the operator; Board through a rear exit; or refuse to pay the established fare.

(2) *Trespassing.* It shall be unlawful to trespass on the transit system or to enter any restricted area.

(3) *Preservation of property.* It shall be unlawful and a violation of this section for any person to deface, destroy, disfigure, injure, blemish, or vandalize any part of the transit system. Prohibited activities shall include, but not be limited to:

(a) The unauthorized marking of any part of the transit system with spray paint and other marking substances;

(b) The marking of any part of the transit system with graffiti;

(c) The cutting or mutilating of seats on mass transit vehicles; and

(d) The injuring or destruction of any tree, plant or other vegetation located within the transit system.

(4) *Obstruction of guideways or tracks.* It shall be unlawful to place or cause to be placed any obstruction on Metrorail or Metromover guideways or tracks.

(5) *Smoking or spitting.* It shall be unlawful for passengers to smoke or spit within any mass transit vehicle or any paid area of a Metrorail or Metromover station.

(6) *Drinking or eating.* It shall be unlawful to eat or drink, or carry an open container of food or beverage, on any mass transit vehicle or station platform.

(7) *Sanitation.* It shall be unlawful to dispose of garbage, papers, refuse or other forms of trash within the transit system except in receptacles provided for such purpose. No person shall dump or dispose of any material [except as authorized herein]. No person shall use a comfort station or rest room, toilet or lavatory facility other than in a clean and sanitary manner. No person shall deposit, blow or spread any bodily discharge on any part of the transit system. No person shall place any foreign object in any plumbing fixture.

(8) *Abandonment.* It shall be unlawful to abandon any vehicle or personal property on any part of the transit system.

(9) *Radio playing.* It shall be unlawful while on any mass transit vehicle or facility to play any radio, cassette player, or other electronic audio or video playback device or musical instrument unless the sound produced by said device or instrument is played solely through earphones. Said devices and instruments may be played along the linear park underneath the Metrorail guideway provided same is not annoying or a nuisance.

(10) *Insulting or obscene language.* It shall be unlawful to use any insulting or obscene language on any part of the transit system.

(11) *Animals.* With the exception of seeing-eye dogs, it shall be unlawful to bring, carry, or transport any animal on a mass transit vehicle or the paid area of any transit system unless said animal is properly boxed or caged for transport. Animals may be permitted to use the linear park underneath the Metrorail guideway provided that they do no damage and cause no nuisance or inconvenience.

(12) *False reports or threats.* It shall be unlawful to make a false report of conduct on, the operation of, or a threat concerning any portion of the transit system.

(13) *Forgery and counterfeit.* It shall be unlawful to make, possess, use, offer for sale, sell, barter, exchange, pass, or deliver any forged, counterfeit or falsely altered pass, permit, farecard, transfer, identification card, certificate or other authorization purporting to be issued by or on behalf of the Transit Agency.

(14) *Explosives and fireworks.* It shall be unlawful to carry, transport or ignite any explosive, fireworks, acid, or flammable liquid anywhere on the transit system.

(15) *Refusal to pay fare.* It shall be unlawful to refuse to pay the established fare, evade payment of fare, or enter through rear doors or emergency exits of any mass transit vehicle, guideway or facility.

(16) *Transfers.* It shall be unlawful to alter, abuse or give to another person any transfer or other fare medium, unless expressly authorized by the terms of said transfer or other fare medium.

(17) *Train attendant cab.* It shall be unlawful for any unauthorized person to enter the train attendant cab of any Metrorail vehicle.

(18) *Safety lines.* It shall be unlawful for any individual to cross a safety line on a Metrorail or Metromover station platform.

(19) *Equipment.* It shall be unlawful for any unauthorized individual to operate any transit system equipment located within the transit system except:

(a) Where such equipment is designed for use by the public; or

(b) When necessary in an emergency situation.

(20) *Mass transit vehicle doors.* It shall be unlawful to interfere with the operation of mass transit vehicle doors.

(21) *Passage between Metrorail cars.* It shall be unlawful to pass from one (1) Metrorail car to another through the end door of the car, except in an emergency situation.

(22) *Bicycles.* It shall be unlawful to bring or operate a bicycle on any mass transit vehicle or within the paid area of any Metrorail or Metromover station, except as allowed by MDTA rule and procedures. Bicycles may only be parked in designated areas on the transit system. Bicycles shall not be locked or chained to transit facilities except as allowed by MDTA rules and procedures.

(23) *Mopeds or motorized vehicles.* No moped or other motorized vehicle shall be operated within the linear park underneath the Metrorail system and guideway.

CHAPTER 33
ZONING

ARTICLE I
IN GENERAL

33-8. Certificate of use.

(a) No structure, other than a single-family residence or duplex, shall be used or any existing use enlarged, or any new use made of any land, body of water, or structure, without first obtaining a certificate of use (C.U.) therefor from the Department. Said certificate of use shall be required for each individual business and each multi-family building located within unincorporated Miami-Dade County.

(b)-(c) [Intentionally omitted.]

33-19.1. Display of vehicles for sale.

(a) No vehicle or boat shall be displayed for sale in a residential district unless affixed to the vehicle is a valid state license plate issued for the vehicle, except that a vehicle affixed with a lost tag may be displayed for a period not to exceed ten (10) days. A vehicle with a lost tag shall have the vehicle registration affixed to the rear window so as to be easily readable by law enforcement and code enforcement officials. As used in this section, the term "vehicle" shall include an automobile, motorcycle, truck, or recreational vehicle, a utility trailer, or a trailer for transporting off-highway vehicles or boats.

(b) In residential districts no more than one (1) vehicle may be displayed for sale at any one (1) time on any one (1) premise and no more than two (2) vehicles may be displayed for sale at any one (1) premise for any one (1) calendar year, and the display shall only be permitted at the current address of the registered owner of the vehicle offered for sale on the subject premises.

(c) No more than one sign shall be placed on the vehicle offered for sale. Such sign shall not exceed 8 inches by 12 inches.

(d) All violations of this section shall be punishable by a fine of one hundred dollars ($100.00) for the first vehicle on a first offense and five hundred dollars ($500.00) per vehicle for each additional vehicle and any repeat violation of this section. The County may lien the vehicle and any real property owned by the violator in Miami-Dade County until all fines, enforcement costs, and administrative costs are paid by the violator. Any vehicle in violation of this section shall be towed if not removed immediately by the owner. (Vehicle owners will be responsible for all fines, towing fees, storage fees, and any administrative and enforcement fees that result from the enforcement of this section.)

ARTICLE X
ALCOHOLIC BEVERAGES

33-151. Hours and days of sale.

No alcoholic beverages shall be sold or served within the unincorporated areas of Miami-Dade County except at such hours and on such days and by such vendors as set forth below:

(a) *Establishments for package sales only.* Vendors holding a license from the State beverage department for the sale of alcoholic beverages for consumption off the premises only, shall make no sale of alcoholic beverages on Sundays, and shall make no sale of alcoholic beverages during weekdays except between the hours of 8:00 a.m. and 10:00 p.m.; provided, however, that vendors operating stores primarily for the sale of products other than alcoholic beverages (excepting such stores as are nonconforming under the zoning regulations) may make sales of beer in sealed containers for consumption off the

premises during such hours as their stores legally remain open for the sale of other goods; provided further, however, that nothing in the foregoing proviso shall be deemed to modify any of the provisions of the zoning regulations as heretofore or hereafter adopted. Vendors in bait and tackle installations and camp grounds holding a State license from the beverage department for the sale of beer in sealed containers, for consumption off the premises, shall make no sale of beverages except between the hours of 5:00 a.m. and 7:00 p.m.

(b) *Marinas, piers and fishing camps.* Vendors in marinas, piers and fishing camps holding a license from the State beverage department for the sale of alcoholic beverages shall make no sale of such alcoholic beverages on week days except between the hours of 8:00 a.m. and 1:00 a.m. of the following day, and between the hours of 5:00 p.m. on Sunday and 1:00 a.m. of the following Monday; provided, however, that such vendors may make sales of beer only for consumption on the premises between the hours of 10:00 a.m. on Sunday and 1:00 a.m. of the following Monday, and for consumption off the premises between the hours of 6:00 a.m. on any day and 1:00 a.m. of the following day.

(c) *Private clubs.* Vendors holding a license from the State beverage department for the sale of alcoholic beverages for consumption on the premises in private clubs shall make no sale of such alcoholic beverages except between the hours of 8:00 a.m. and 1:00 a.m. of the following day, and shall make no sale of beer on Sundays except between the hours of 10:00 a.m. and 1:00 a.m. on the following Monday; and shall make no sale of any other alcoholic beverages on Sundays, except between the hours of 5:00 p.m. and 1:00 a.m. on the following Monday.

(d) *Charter boats.* Vendors holding a license from the State beverage department for the sale of beer for consumption on charter boats shall make no sale of beer on weekdays except between the hours of 8:00 a.m. and 1:00 a.m. of the following day, and shall make no sale of beer on Sundays except between the hours of 10:00 a.m. and 1:00 a.m. on the following Monday. No such sales shall be made by any charter boat until after having put out to sea.

(e) *Hotels and motels.* Vendors holding a license from the State beverage department for the sale of alcoholic beverages for consumption on the premises in hotels and motels which are restricted by the zoning regulations to making such sales to guests only, shall make no sales of such alcoholic beverages except between the hours of 8:00 a.m. and 1:00 a.m. on the following day on weekdays, and shall make no sale of beer on Sundays, except between the hours of 10:00 a.m. and 1:00 a.m. on the following Monday; and shall make no sale of any other alcoholic beverages on Sundays except between the hours of 5:00 p.m. and 1:00 a.m. on the following Monday. In hotels and motels where package sales are restricted to guests only under the zoning regulations, no such sales shall be made except between the hours of 8:00 a.m. and 10:00 p.m. on weekdays, and between the hours of 5:00 p.m. on Sunday and 1:00 a.m. on the following Monday. In hotels and motels located in a proper business zone and conforming to the zoning regulations permitting unrestricted sales of alcoholic beverages, no sales shall be made except during the times permitted under Subsection (h) hereof.

"Premises", as used in this section, shall be confined to the bar and/or cocktail lounge located in the particular hotel or motel.

(f) *Cabarets.* For the purpose of this section, the term "cabaret" shall mean a place of business other than a "night club" located in a hotel or a motel having fifty (50) or more guest rooms, where liquor, beer or wine is sold, given away or consumed on the premises and where music or other entertainment is permitted or provided for the guests of said hotel or motel only, which place of business is duly licensed as a "cabaret", shall make no sales of such alcoholic beverages except between the hours of 8:00 a.m. and 3:00 a.m. on the following day on weekdays and shall make no sale of said alcoholic beverages on Sundays except between the hours of 5:00 p.m. and 3:00 a.m. on the following Monday.

(g) *Restaurants.* Vendors holding a license from the State beverage department for the sale of alcoholic beverages for consumption on the premises in restaurants, which are restricted by the zoning regulations to making such sales with the service of food only, shall make no sales of such alcoholic beverages on weekdays except between the hours of 8:00 a.m. and 1:00 a.m. on the following day, and shall make no sales of beer on Sundays except between the hours of 10:00 a.m. and 1:00 a.m. on the following Monday; and shall make no sales of other alcoholic beverages on Sundays except between the hours of 1:00 p.m. and 1:00 a.m. on the following Monday. Sales of alcoholic beverages for consumption off the premises shall not be permitted. Vendors in restaurants located in a proper business zone and conforming to the

zoning regulations permitting unrestricted sales only during the times permitted under Subsection (h) hereof.

(h) *Bars and cocktail lounges.* Vendors having a license from the State beverage department for the sale of alcoholic beverages for consumption on the premises in those bars and cocktail lounges that are not restricted by the zoning regulations to guests only, or to service with food, or the like, shall make no sales of such alcoholic beverages on weekdays except between the hours of 8:00 a.m. and 1:00 a.m. of the following day; and shall make no sales of beer on Sundays except between the hours of 10:00 a.m. and 1:00 a.m. of the following Monday; and shall make no sales of any other alcoholic beverages on Sunday except between the hours of 5:00 p.m. and 1:00 a.m. of the following Monday; sales of beer for consumption off the premises shall not be made on weekdays except between the hours of 8:00 a.m. and 1:00 a.m. of the following day; and shall not be made on Sundays except between the hours of 10:00 a.m. and 1:00 a.m. of the following Monday. Sale of other alcoholic beverages for consumption off the premises shall not be made on weekdays except between the hours of 8:00 a.m. and 10:00 p.m.; and shall not be made on Sundays.

(i) *Night clubs.* For the purpose of this section, the term "night club" is defined as any place of business located within any building or establishment under one (1) roof and on one (1) floor, wherein entertainment or music or both are regularly supplied, and providing meals and refreshments prepared on the premises, and having a seating capacity of not less than forty (40) people at tables; having an aggregate floor space of not less than two thousand two hundred (2,200) square feet; and providing a dance floor containing not less than three hundred eight (308) square feet, such floor space provided for dancing to be free from chairs, tables or other obstructions at all times. Upon written application to the Board of County Commissioners and upon paying of the Board of County Commissioners the sum of five hundred dollars ($500.00), any person holding a license under the State beverage department for sale of alcoholic beverages on the premises, and which place of business so conducted by such vendor classified as a night club, as above defined, shall be issued a special permit to operate as a night club. Such special permit shall be paid for on or before the first of October and shall expire the first of the succeeding October; provided that any person beginning business after the first of October may obtain a special permit upon the payment of the annual fee of five hundred dollars ($500.00), and such permit shall expire on the first of the succeeding October; provided further that any person beginning such business on or after the first of April of any year may procure a special permit expiring the first of October of the same year on the payment of one-half (½) the fee herein required for the annual special permit. Such special permit shall be posted at a conspicuous place in the place where such night club operates.

Any night club, as above defined, which holds a night club license from this Board and which holds a license from the State beverage department for the sale of alcoholic beverages on the premises, shall be permitted to remain open, and sell alcoholic beverages for consumption on the premises from 8:00 a.m. to 4:50 a.m. of the following day during week days, and on Sundays to remain open and sell beer for consumption on the premises from 10:00 a.m. to 4:50 a.m. of the following Monday; and to remain open and sell other alcoholic beverages on Sunday for the consumption on the premises from 5:00 p.m. to 4:50 a.m. of the following Monday; and except that where the alcoholic beverages are served with meals at tables, the same may be served from 1:00 p.m. on Sunday to 4:50 a.m. on the following Monday. It is specifically provided, however, that each and every night club that may operate in the unincorporated areas of Miami-Dade County in accordance with this section shall close its doors and have all its patrons off its premises by not later than 5:00 a.m. of each day.

(j) *Miami International Airport and County-owned airports.* Vendors authorized by the Board of County Commissioners to sell alcoholic beverages upon the property and premises of the Miami International Airport or County-owned airports, and holding appropriate licenses from the State of Florida, Department of Business Regulation, Division of Beverage for the sale of alcoholic beverages for consumption on the premises, shall make no sale of such alcoholic beverages except between the hours of 8:00 a.m. and 4:50 a.m. the following day. Authorized vendors holding appropriate licenses from the State of Florida, Department of Business Regulation, Division of Beverage for the sale of alcoholic beverages for consumption off the premises only shall make no sale of alcoholic beverages except between the hours of 8:00 a.m. and 10:00 p.m.

(k) *Motels and hotels in North Miami Beach service area.* Anything in this section to the contrary notwithstanding, hotels and motels located in that portion of the "North Miami Beach service area" bounded on the north by the County line, on the west by the Intracoastal Waterway, on the east by the Atlantic Ocean, and on the south by Bakers Haulover Park, shall be entitled to make sales of alcoholic beverages and package sales to guests on Sunday commencing at 1:00 p.m., and continuing until 1:00 a.m. on the following Monday.

(l) *Additional interpretations.* Wherever in this section it is provided that weekday sales of alcoholic beverages are permitted between any certain hour and a stated time on the following day, the term "following day" shall be deemed to include Sunday.

(m) *Package sales on Christmas Eve and New Year's Eve and on Sundays during the month of December.* All vendors in the unincorporated areas of Miami-Dade County holding valid, current licenses from the State beverage department for the sale of alcoholic beverages for consumption off the premises (establishments for package sales only) may make sales and keep their places of business open until 12:00 midnight on Christmas Eve (December 24th) and New Year's Eve (December 31st), and between the hours of 8:00 a.m. and 10:00 p.m. on Sundays during the month of December, the provisions of Subsection (a) of this section to the contrary notwithstanding.

(n) *Excursion, sightseeing or tour boats.* Vendors holding a license from the State beverage department for the sale of beer, wine and liquor for consumption on excursion, sightseeing or tour boats shall make no sale of such beer, wine and liquor on week days except between the hours of 8:00 a.m. and 1:00 a.m. of the following day, and shall make no sale of such beer, wine and liquor on Sundays except between the hours of 10:00 a.m. and 1:00 a.m. on the following Monday. No such sales shall be made by any excursion, sightseeing or tour boats while moored at docks or wharves. The term "charter boats" as it is commonly used and as it is used in Subsection 33-151(d) is expressly excluded from the operation of this subsection.

(o) *Golf course clubhouse and ancillary refreshments stands.* Vendors holding a license from the State beverage department for the sale of alcoholic beverages for consumption on the premises in lounges in golf course clubhouses shall make no sales of such alcoholic beverages on weekdays except between the hours of 8:00 a.m. and 1:00 a.m. on the following day, and shall make no sales of beer on Sundays in such lounges except between the hours of 8:00 a.m. and 1:00 a.m. on the following Monday and shall make no other sales of alcoholic beverages on Sundays except between the hours of 1:00 p.m. and 1:00 a.m. on the following Monday. Sale of beer from ancillary golf course refreshment stands shall be made only between the hours of 8:00 a.m. and 1:00 a.m. the following day, including Sundays.

(p) *Not-for-profit theaters with live performances.* Vendors holding a license from the State beverage department for the sale of alcoholic beverages for consumption on the premises in State-chartered not-for-profit theaters with live performances shall make no sale of alcoholic beverages except between the hours of 8:00 a.m. and 1:00 a.m. on the following day, and shall make no sales of beer on Sundays except between the hours of 10:00 a.m. and 1:00 a.m. on the following Monday, and shall make no sale of any other alcoholic beverages on Sundays, except between the hours of 6:00 p.m. and 1:00 a.m. on the following Monday.

(q) Any adult entertainment club, which has a Certificate of Use and which holds a license from the State beverage department for the sale of alcoholic beverages on the premises, shall be permitted to remain open, and sell alcoholic beverages for consumption on the premises from 8:00 a.m. to 4:50 a.m. of the following day during week days, and on Sundays to remain open and sell beer for consumption on the premises from 10:00 a.m. to 4:50 a.m. of the following Monday; and to remain open and sell other alcoholic beverages on Sunday for the consumption on the premises from 5:00 p.m. to 4:50 a.m. of the following Monday. It is specifically provided, however, that each and every adult entertainment club that may operate in the unincorporated areas of Miami-Dade County in accordance with this section shall close its doors and have all its patrons off its premises by not later than 5:00 a.m. of each day.

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