

## CHAPTER 97-90

### Senate Bill No. 164

An act relating to criminal justice; amending s. 775.15, F.S.; providing that a person may be prosecuted at any time for the offense of committing perjury in an official proceeding that relates to the prosecution of a capital felony; providing that prosecution is commenced upon filing of the charging document when the defendant has previously been arrested or served with summons on the charge; providing that, when the defendant charged by information or indictment with a crime in this state has not been so arrested or served, the failure to execute process or extradite the defendant in another state does not constitute unreasonable delay; providing for inapplicability of a limitation upon prosecution of a defendant who has been timely charged but not arrested due to absence from the state or not extradited, under specified circumstances; reenacting s. 119.011(3) and 517.302(4), F.S., relating to the definition of "criminal intelligence information" for purposes of public records, and criminal prosecution for offenses under chapter 517, the Florida Securities and Investor Protection Act, to incorporate said amendment in references; amending s. 837.02, F.S.; providing that it is a second-degree felony to make a false statement under oath in an official proceeding that relates to the prosecution of a capital felony; providing that the defendant's belief that a statement was immaterial is not a defense; amending s. 837.021, F.S.; providing that it is a second-degree felony to make contradictory statements under oath in an official proceeding that relates to the prosecution of a capital felony; providing that the materiality of a statement is a question of law; providing that it is unnecessary to prove which contradictory statement is untrue; providing that the defendant's belief in the truth of each statement is a defense; amending s. 837.05, F.S.; providing that it is a third-degree felony to knowingly give false information to a law enforcement officer concerning the alleged commission of a capital felony; amending s. 921.0012, F.S.; providing for the ranking under the sentencing guidelines of the offenses of giving false or perjured statements; providing an effective date.

WHEREAS, Florida courts have remanded and, in some cases, reversed the judgment in a capital case because a witness allegedly gave perjured testimony at trial, and

WHEREAS, the Legislature finds that the state is often unable to prosecute a witness who commits perjury in a capital case because evidence of the alleged perjury is only revealed after the 3-year statute of limitations for the prosecution of perjury has elapsed, thereby allowing the witness to commit perjury with legal impunity, and

WHEREAS, Supreme Court Justice Ben Overton, writing separately in *Roberts v. State*, (21 Fla. L. Weekly s245, June 14, 1996), a case in which the issue of recanted testimony was raised, strongly suggested that the Legislature review the perjury statute and increase from 3 years to 25 years

the statute of limitations for prosecuting the offense of perjury in a capital case, and

WHEREAS, the Legislature has reviewed the perjury statute and agrees with Justice Overton that the statute of limitations should be increased for prosecuting a person who commits perjury in a capital case, however, the Legislature finds no reason to limit the time for prosecution to 25 years, and

WHEREAS, it is the intent of the Legislature that there not be a statute of limitations for prosecuting a person who makes a false or perjured statement in a capital case, and

WHEREAS, it is also the intent of the Legislature to severely penalize any person who makes a false or perjured statement in a capital case, NOW, THEREFORE,

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

Section 1. Subsections (1), (5), and (6) of section 775.15, Florida Statutes, 1996 Supplement, are amended to read:

775.15 Time limitations.—

(1)(a) 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.

(b) A prosecution for perjury in an official proceeding that relates to the prosecution of a capital felony may be commenced at any time.

(5)(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.

(6) 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, ~~but in no case shall~~ 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.

Section 2. For the purpose of incorporating the amendment to section 775.15, Florida Statutes, 1996 Supplement, in references thereto, the sections or subdivisions of Florida Statutes set forth below are reenacted to read:

119.011 Definitions.—For the purpose of this chapter:

(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 s. 119.07(3)(f).
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 s. 119.07(3)(f), 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 s. 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 s. 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 s. 775.15 or other statute of limitation.

517.302 Criminal penalties; alternative fine; Anti-Fraud Trust Fund; time limitation for criminal prosecution.—

(4) Criminal prosecution for offenses under this chapter is subject to the time limitations of s. 775.15.

Section 3. Section 837.02, Florida Statutes, is amended to read:

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 shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 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 s. 775.082, s. 775.083, or s. 775.084.

~~(3)(2)~~ Knowledge of the materiality of the statement is not an element of ~~the this~~ crime of perjury under subsection (1) or subsection (2), and the defendant’s mistaken belief that ~~the his~~ statement was not material is not a defense.

Section 4. Section 837.021, Florida Statutes, is amended to read:

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 when in fact two or more of the statements contradict each other,~~

~~commits is guilty~~ of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 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 s. 775.082, s. 775.083, or s. 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)(2) The question of whether a statement was material is a question of law to be determined by the court.

~~(c)(3) In any prosecution for perjury by contradictory statements under this section,~~ It is not necessary to prove which, if any, of the contradictory statements is not true.

~~(d)(4) In any prosecution under this section for perjury by contradictory statements,~~ It shall be a defense that the accused believed each statement to be true at the time the statement was ~~he~~ made it.

(4)(5) 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 s. 914.04; but such person may be prosecuted under s. 837.02 for any false statement made in that most recent proceeding, and the contradictory statements may be received against him upon any criminal investigation or proceeding for such perjury.

Section 5. Section 837.05, Florida Statutes, is amended to read:

837.05 False reports to law enforcement authorities.—

(1) Except as provided in subsection (2), whoever knowingly gives false information to any law enforcement officer concerning the alleged commission of any crime, commits is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Whoever 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 s. 775.082, s. 775.083, or s. 775.084.

Section 6. Paragraphs (g) and (h) of subsection (3) of section 921.0012, Florida Statutes, 1996 Supplement, are amended to read:

921.0012 Sentencing guidelines offense levels; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(g) LEVEL 7
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
409.920(2)	3rd	Medicaid provider fraud.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071(1)	3rd	Killing of human being by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072(1)	3rd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04	2nd	Handle, fondle, or assault child under 16 years in lewd, lascivious, or indecent manner.

Florida Statute	Felony Degree	Description
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
812.014(2)(a)	1st	Property stolen, valued at \$100,000 or more; property stolen while causing other property damage; 1st degree grand theft.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(4)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
<u>837.05(2)</u>	<u>3rd</u>	<u>Giving false information about alleged capital felony to a law enforcement officer.</u>
872.06	2nd	Abuse of a dead human body.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs) within 1,000 feet of a school.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 50 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.

Florida Statute	Felony Degree	Description
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
		(h) LEVEL 8
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
777.03(2)(a)	1st	Accessory after the fact, capital felony.
782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawfully discharging bomb.
782.071(2)	2nd	Committing vehicular homicide and failing to render aid or give information.
782.072(2)	2nd	Committing vessel homicide and failing to render aid or give information.
790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
810.02(2)(a)	1st,PBL	Burglary with assault or battery.
810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
812.13(2)(b)	1st	Robbery with a weapon.
812.135(2)	1st	Home-invasion robbery.
825.102(2)	2nd	Aggravated abuse of an elderly person or disabled adult.



Florida Statute	Felony Degree	Description
825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
827.03(2)	2nd	Aggravated child abuse.
<u>837.02(2)</u>	<u>2nd</u>	<u>Perjury in official proceedings relating to prosecution of capital felony.</u>
<u>837.021(2)</u>	<u>2nd</u>	<u>Making contradictory statements in official proceedings relating to prosecution of capital felony.</u>
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
860.16	1st	Aircraft piracy.
893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
893.135(1)(d)2.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
893.135(1)(e)2.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
893.135(1)(f)2.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.

Section 7. This act shall take effect July 1, 1997.

Became a law without the Governor's approval May 24, 1997.

Filed in Office Secretary of State May 23, 1997.