

Committee Substitute for  
Committee Substitute for Senate Bill No. 640

An act relating to criminal offenses involving health care practitioners; creating s. 456.075, F.S.; authorizing a representative of the Department of Health to appear in a criminal proceeding against a health care professional to furnish information, make recommendations, or provide other assistance; providing that the court may order the representative to appear in a criminal proceeding that relates to the qualifications, functions, or duties of a health care professional; amending s. 893.13, F.S.; increasing the penalty imposed for withholding information from a practitioner concerning a controlled substance; prohibiting a practitioner from knowingly assisting a person in obtaining a controlled substance through fraud or scheme, knowingly prescribing a controlled substance for a fictitious person, or prescribing a controlled substance for purposes of monetary benefit; providing for a permissive inference that a prescribing practitioner knowingly assisted a person to obtain a controlled substance through fraud; providing penalties; amending s. 921.0022, F.S., relating to the offense severity ranking chart of the Criminal Punishment Code; conforming provisions to changes made by the act; amending s. 921.187, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 456.075, Florida Statutes, is created to read:

456.075 In any criminal proceeding against a person licensed by the department to practice a health care profession in this state, a representative of the department may voluntarily appear and furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote justice or protect the public. The court may order a representative of the department to appear in any criminal proceeding if the crime charged is substantially related to the qualifications, functions, or duties of a health care professional licensed by the department.

Section 2. Subsection (7) of section 893.13, Florida Statutes, is amended, and present subsections (8), (9), and (10) of that section are amended and redesignated as subsections (9), (10), and (11), respectively, and a new subsection (8) is added to that section, to read:

893.13 Prohibited acts; penalties.—

(7)(a) It is unlawful for any person:

1. To distribute or dispense a controlled substance in violation of this chapter.

2. To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter.

3. To refuse an entry into any premises for any inspection or to refuse to allow any inspection authorized by this chapter.

4. To distribute a controlled substance named or described in s. 893.03(1) or (2) except pursuant to an order form as required by s. 893.06.

5. To 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. To use to his or her own personal advantage, or to reveal, any information obtained in enforcement of this chapter except in a prosecution or administrative hearing for a violation of this chapter.

~~7. To 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 has received a controlled substance or a prescription for a controlled substance of like therapeutic use from another practitioner within the last 30 days.~~

7.8. To 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. To 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. To acquire or obtain, or attempt to acquire or obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

10. To affix any false or forged label to a package or receptacle containing a controlled substance.

11. To 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.

(b) Any person who violates the provisions of subparagraphs ~~(a)1.-7.~~ (a)1.-8. commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; except that, upon a second or subsequent violation, the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who violates the provisions of subparagraphs ~~(a)8.-11.~~ ~~(a)9.-11.~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(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 s. 775.082, s. 775.083, or s. 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 s. 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 s. 893.15, the violation is reclassified as a felony of the second degree and ranked in level 4 of the Criminal Punishment Code.

(9)(8) The provisions of subsections (1)-(8) (1)-(7) 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)~~(9) Notwithstanding any provision of the sentencing guidelines or the Criminal Punishment Code to the contrary, on or after October 1, 1993, any defendant who:

- (a) Violates subparagraph (1)(a)1., subparagraph (1)(c)2., subparagraph (1)(d)2., subparagraph (2)(a)1., or paragraph (5)(a); and
- (b) Has not previously been convicted, regardless of whether adjudication was withheld, of any felony, other than a violation of subparagraph (1)(a)1., subparagraph (1)(c)2., subparagraph (1)(d)2., subparagraph (2)(a)1., or paragraph (5)(a),

may be required by the court to successfully complete a term of probation pursuant to the terms and conditions set forth in s. 948.034(1), in lieu of serving a term of imprisonment.

~~(11)~~(40) Notwithstanding any provision of the sentencing guidelines or the Criminal Punishment Code to the contrary, on or after January 1, 1994, any defendant who:

- (a) Violates subparagraph (1)(a)2., subparagraph (2)(a)2., paragraph (5)(b), or paragraph (6)(a); and
- (b) Has not previously been convicted, regardless of whether adjudication was withheld, of any felony, other than a violation of subparagraph (1)(a)2., subparagraph (2)(a)2., paragraph (5)(b), or paragraph (6)(a),

may be required by the court to successfully complete a term of probation pursuant to the terms and conditions set forth in s. 948.034(2), in lieu of serving a term of imprisonment.

Section 3. Paragraphs (a) and (c) of subsection (3) of section 921.0022, Florida Statutes, as amended by section 2 of chapter 2001-358, Laws of Florida, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
(a) LEVEL 1		
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
322.212(1)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver's license; possession of simulated identification.
322.212(4)	3rd	Supply or aid in supplying unauthorized driver's license or identification card.
322.212(5)(a)	3rd	False application for driver's license or identification card.
370.13(3)(a)	3rd	Molest any stone crab trap, line, or buoy which is property of licenseholder.
370.135(1)	3rd	Molest any blue crab trap, line, or buoy which is property of licenseholder.
372.663(1)	3rd	Poach any alligator or crocodilia.
414.39(2)	3rd	Unauthorized use, possession, forgery, or alteration of food stamps, Medicaid ID, value greater than \$200.
414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
443.071(1)	3rd	False statement or representation to obtain or increase unemployment compensation benefits.
509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.

Florida Statute	Felony Degree	Description
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
562.27(1)	3rd	Possess still or still apparatus.
713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(4)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
832.05 (2)(b)&(4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
838.015(3)	3rd	Bribery.
838.016(1)	3rd	Public servant receiving unlawful compensation.
838.15(2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a law enforcement officer.
847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
849.01	3rd	Keeping gambling house.
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.

Florida Statute	Felony Degree	Description
849.23	3rd	Gambling-related machines; "common offender" as to property rights.
849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
<del>893.13(7)(a)10.</del>	<del>3rd</del>	<del>Affix false or forged label to package of controlled substance.</del>
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
		(c) LEVEL 3
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in marked patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/ misleading information.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
796.05(1)	3rd	Live on earnings of a prostitute.

Florida Statute	Felony Degree	Description
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
817.233	3rd	Burning to defraud insurer.
817.234(8)&(9)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 200 feet of university or public park.



Florida Statute	Felony Degree	Description
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 200 feet of public housing facility.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
<u>893.13(7)(a)8.</u>	<u>3rd</u>	<u>Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.</u>
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	<u>Affix false or forged label to package of controlled substance.</u>
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
<u>893.13(8)(a)1.</u>	<u>3rd</u>	<u>Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.</u>
<u>893.13(8)(a)2.</u>	<u>3rd</u>	<u>Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.</u>
<u>893.13(8)(a)3.</u>	<u>3rd</u>	<u>Knowingly write a prescription for a controlled substance for a fictitious person.</u>
<u>893.13(8)(a)4.</u>	<u>3rd</u>	<u>Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.</u>
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.3141	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

Section 4. Paragraph (b) of subsection (1) of section 921.187, Florida Statutes, is amended to read:

921.187 Disposition and sentencing; alternatives; restitution.—

(1) The alternatives provided in this section for the disposition of criminal cases shall be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation.

(b)1. Notwithstanding any provision of former s. 921.001 or s. 921.002 to the contrary, on or after October 1, 1993, the court may require any defendant who violates s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), and meets the criteria described in s. 893.13(10) ~~s. 893.13(9)~~, to successfully complete a term of probation pursuant to the terms and conditions set forth in s. 948.034(1), in lieu of serving a term of imprisonment.

2. Notwithstanding any provision of former s. 921.001 or s. 921.002 to the contrary, on or after October 1, 1993, the court may require any defendant who violates s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), and meets the criteria described in s. 893.13(11) ~~s. 893.13(10)~~, to successfully complete a term of probation pursuant to the terms and conditions set forth in s. 948.034(2), in lieu of serving a term of imprisonment.

Section 5. This act shall take effect July 1, 2002.

Approved by the Governor April 23, 2002.

Filed in Office Secretary of State April 23, 2002.