

# ORIGINAL SCORESHEET MANUAL

## FELONY DEGREES/YEARS

3rd Degree Felony/*punishable by max 5 years*  
2nd Degree Felony/*punishable by max of 15 years*  
1st Degree Felony/*punishable by max of 30 years*  
PBL/*punishable by max of life*  
Life/*punishable by life*

## OFFENSE LEVELS/POINTS

Level 1/4 points  
Level 2/10 points  
Level 3/16 points  
Level 4/22 points  
Level 5/28 points  
Level 6/36 points  
Level 7/56 points  
Level 8/74 points  
Level 9/92 points  
Level 10/116 points

## MULTIPLIERS

ANY DRUG TRAFFICKING OFFENSE UNDER 893.135, SCORING LEVEL 7 or LEVEL 8 ARE MULTIPLIED AT THE DISCRETION OF THE COURT

GRAND THEFT 3RD DEGREE INVOLVING MOTOR VEHICLE, AND PRIOR RECORD CONTAINS THREE OR MORE GTA'S, THEN MULTIPLY BY 1.5

OFFENDER IS CONVICTED OF THE PRIMARY OFFENSE OF DOMESTIC VIOLENCE, DEFINED IN 741.28, IN THE PRESENCE OF FAMILY/HOUSEHOLD MEMBER UNDER 16, THE MULTIPLY POINTS BY 1.5

OFFENDER IS CONVICTED OF PRIMARY OFFENSE THAT WAS FOR THE BENEFIT, PROMOTION OR FUTURE OF A CRIMINAL GANG, DEFINED IN 874.03, THEN THE COURT MAY APPLY 1.5 MULTIPLIER, NOT TO EXCEED STATUTORY MAXIMUM FOR THE PRIMARY OFFENSE

IF PRIMARY OFFENSE IS A VIOLATION OF THE LEO PROTECTION ACT UNDER 775.0823(2), (3), (4) = X2.5, IF PRIMARY IS 775.0823 (5), (6), (7), (8) OR (9) = X2.0, ETC....

## CPC SUBCOMMITTEE RECOMMENDATIONS

### FELONY DEGREES/YEARS

5th Degree Felony/*punishable by max of 3 years*  
4th Degree Felony/*punishable by max of 6 years*  
3rd Degree Felony/*punishable by max of 14 years*  
2nd Degree Felony/*punishable by max of 20 years*  
1st Degree Felony/*punishable by max of 30 years*

### OFFENSE LEVELS/POINTS

Level 1/4 points  
Level 2/8 points  
Level 3/12 points  
Level 4/16 points  
Level 5/22 points  
Level 6/28 points  
Level 7/36 points  
Level 8/46 points  
Level 9/52 points  
Level 10/60 points  
Level 11/68 points  
Level 12/76 points  
Level 13/84 points  
Level 14/92 points  
Level 15/108 points  
Level 16/122 points

### MULTIPLIERS

THE CPC TASK FORCE SCORESHEET SUBCOMMITTEE RECOMMENDS REVISING SCORESHEET TO INCLUDE SECTION WHERE ONLY THE COURT CALCULATES/ADJUSTS THIS PROVISION, AT LEVELS 12, 13 & 14

GRAND THEFT AUTO, WITH THREE OR MORE PRIOR CONVICTIONS WILL HAVE AN ENHANCED STATUTORY SUBSECTION ACCOUNTING FOR INCREASE

DOMESTIC VIOLENCE PRIMARY OFFENSE, IN THE PRESENCE OF A FAMILY/HOUSEHOLD MEMBER CHILD UNDER 16, WILL HAVE AN ENHANCED SUBSECTION ACCOUNTING FOR INCREASE

THE CPC TASK FORCE SCORESHEET SUBCOMMITTEE RECOMMENDS REVISING SCORESHEET TO INCLUDE SECTION WHERE ONLY THE COURT CALCULATES/ADJUSTS THIS PROVISION

THE CPC TASK FORCE SCORESHEET SUBCOMMITTEE RECOMMENDS REVISING SCORESHEET TO LIST APPLICABLE STATUTES UNDER WHICH THESE ENHANCEMENTS WOULD APPLY, NOT JUST MULTIPLIER

**Discussion Topic** – Should a Legal Status Violation in Part V be added for:

- i. Individuals who violated a restraining order or other injunction issued by a federal or state court in committing any offense of conviction?
- ii. Individuals who acted under color of law in committing any offense of conviction?
- iii. Undocumented or otherwise unauthorized migrants illegally present in the United States who committed an offense of conviction?
- iv. Individuals who leave a child for whom they have legal custody unattended for the purpose of committing any offense of conviction?
- v. Individuals who committed any offense of conviction after having received clemency, pardon, early release, probation, parole, a sentence reduction, or a downward departure from any federal or state court or government official?

DRAFT

**PROPOSED RESOLUTIONS FROM  
CASELAW ISSUES FOR CONSIDERATION**

**1. RESOLUTION #13 (caselaw issue #2) – Downward departures based on minor victim’s consent to criminal offense**

Background: Fla. Stat. § 921.0026(2)(f) specifies that a court may downwardly depart from the lowest permissible sentence for an offense if “[t]he victim was an initiator, willing participant aggressor, or provoker of the incident.” In *State v. Rife*, 789 So. 2d 288 (Fla. 2001), the Florida Supreme Court held that this mitigator applies even when the victim is a minor and the defendant is convicted of a crime such as statutory rape. It explained, “The plain language of the downward departure statute in question . . . does not limit its applicability to crimes in which the victims are adults.” *Id.* at 293. The Court also emphasized, however, “There is no question that the Legislature has the authority to preclude a trial judge from imposing a downward departure sentence based on willing participation or consent of the minor victim.” *Id.* at 292.

Based on the Florida Supreme Court’s invitation to the legislature to consider and address this issue for itself, the Task Force can adopt **one** of the following five different potential approaches:

a. **Resolution 13a** – *Make no recommendation*

b. **Resolution 13b** – *Protect all minors* – Resolved that Fla. Stat. § 921.0026(2)(f) be amended to read, “Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to: . . . [t]he victim was 18 years of age or older at the time of the offense, and was an initiator, willing participant, aggressor, or provoker of the incident.”<sup>1</sup>

This alternative would completely preclude criminal defendants from seeking downward departures based on the mitigating factor of the victim’s consent to, or participation in, an offense whenever the victim is a minor.

c. **Resolution 13c** – *Prohibit defendants from using the mitigator when they have violated a statute that specifically protects minors* – Resolved that Fla. Stat. § 921.0026(2)(f) be amended to read, “Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to: . . . [t]he victim was an initiator, willing participant, aggressor, or provoker of the incident, except when the victim is a minor and one or more of the statutes of which the defendant was convicted required as an element that the victim be a minor, under a certain age, or within a certain age range.”

This alternative would preclude criminal defendants’ from seeking downward departures based on the victim’s involvement in, or consent to, the offense only where the defendant is convicted of a crime specifically enacted to protect minors. The statutory rape law at issue in *Rife*, for example, was adopted because the legislature determined that minors lack capacity to consent to

---

<sup>1</sup> Throughout these proposed resolutions, the underlined text is the recommended new language to be added to the existing statute.

sexual contact with adults. Based on that determination, it is likely improper for a court to rely on a minor's consent as a basis for granting a downward departure for a defendant convicted of such offenses. Such downward departures may be especially problematic in cases such as *Rife*, where the defendant was the victim's legal guardian.

**d. Resolution 13d – Codify the Florida Supreme Court's ruling in *Rife*** – Resolved that Fla. Stat. § 921.0026(2)(f) be amended to read, “Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to: . . . [t]he victim was an initiator, willing participant, aggressor, or provoker of the incident. The court may apply this mitigating circumstance regardless of whether the victim was a minor or adult at the time of the offense, but may take into account the victim's age in exercising this discretion.”

This alternative would codify the Florida Supreme Court's holding in *Rife* and allow courts to grant downward departures to defendants who have violated laws protecting minors based on those minors' purported consent or involvement in the defendant's conduct.

**e. Resolution 13e – Bring the issue to the legislature's attention** – Resolved that the Legislature should consider whether it wishes to allow a defendant to receive a downward departure under Fla. Stat. § 921.0026(f) based on the victim's consent or involvement in an offense when the victim is a minor, particularly where the crime arose from the minor's incapacity to consent to the defendant's conduct.

This alternative would simply alert the Legislature to the issue raised in *Rife* without recommending a specific course of action.

## 2. **RESOLUTION #14** (caselaw issue #3) – Restitution as a basis for downward departure

**Background:** Fla. Stat. § 921.0026(2)(e) specifies that a court may downwardly depart from the lowest permissible sentence for an offense if “[t]he need for payment of restitution to the victim outweighs the need for a prison sentence.” District Courts of Appeals have overturned circuit courts’ rulings concerning this mitigator on several occasions on the grounds they did not make adequate findings or engage in appropriate analysis in deciding whether departure based on mitigation concerns is appropriate. See, e.g., *State v. Rogers*, 250 So. 3d 821 (Fla. 5th DCA 2018); *State v. Lackey*, 248 So. 3d 1222 (Fla. 2d DCA 2018); *State v. Montgomery*, 155 So. 3d 1182 (Fla. 2d DCA 2014); *State v. Ford*, 27 So. 3d 725 (Fla. 3d DCA 2010). In other cases, courts have applied this mitigator without making findings as to the amount of restitution a defendant would be able to provide, see *State v. Wheeler*, 180 So. 3d 1117 (Fla. 5th DCA 2015), and have refused to apply the mitigator, denying an opportunity for timely restitution, where the victim was deemed too wealthy, *Bailey v. State*, 199 So. 3d 304 (Fla. 3d DCA 2016); *Wheeler*, 180 So. 3d 1117; *Demoss v. State*, 843 So. 2d 309 (Fla. 1st DCA 2003), or the stolen materials had substantial sentimental value, *Lackey*, 248 So. 3d at 1225-26.

This proposed resolution would provide circuit courts more specific guidance in applying the restitution mitigator.

**Resolution 14** – Resolved that Fla. Stat. § 921.0026(2)(e) be amended to read, “Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to: . . . (i) the record contains some reasonable evidence of the extent of the victim’s loss; (ii) the victim requests quicker restitution rather than longer imprisonment, regardless of the extent of the victim’s wealth; (iii) the defendant has a substantial likelihood of providing materially greater and quicker restitution if a downward departure is granted; and (iv) public safety concerns do not require longer incarceration.” ~~the need for restitution to the victim outweighs the need for a prison sentence.~~”

These amendments synthesize current caselaw into an easily comprehensible and applicable standard for trial courts to apply, while modifying some of the most troubling aspects or omissions of the current standard. It ensures that the standard to establish the victim’s loss are not unreasonably stringent, the victim’s preferences are taken into account, and wealthier victims are not discriminated against. Moreover, these amendments ensure that downward departures are granted where a reasonable probability exists that they will actually result in quicker restitution for the victim, without jeopardizing public safety. By guiding trial courts’ exercises of discretion, these amendments also substantially reduce the likelihood that their attempts to invoke this mitigator will continue to be overturned on appeal.

### 3. RESOLUTION #15 (caselaw issue #4) – Applying the unsophisticated offense departure for accidental crimes

Background: Fla. Stat. § 921.0026(2)(j) specifies that a court may downwardly depart from the lowest permissible sentence for an offense if “[t]he offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.” In *State v. Van Bebber*, 848 So. 2d 1046 (Fla. 2003), the Florida Supreme Court held that a defendant convicted of DUI manslaughter could take advantage of this downward departure, even though that offense is not a specific intent crime. The state had argued that, since DUI manslaughter arises from accidental, negligent, or reckless conduct, it is not the type of offense that could be committed in either a “sophisticated” or “unsophisticated” manner. The Florida Supreme Court held that § 921.0026(2)(j) was currently drafted in a manner that nevertheless allowed such defendants to receive a downward departure. It explained, “Because the statute states that the mitigator in section 921.0026(2)(j) applies to any felony offense, except any capital felony, committed on or after October 1, 1998, we hold that the mitigator in section 921.0026(2)(j) is available to support a downward departure from a felony DUI conviction.” *Van Bebber*, 848 So. 2d at 1050. It affirmed the lower court’s decision to grant the departure in that case because “the defendant would continue to suffer a great deal of remorse and shame.” *Id.* It did not point to any other aspects of the offense that made it “unsophisticated.”

Based on the Florida Supreme Court’s invitation to the legislature to consider and address this issue for itself, the Task Force can adopt **one** of the following five different potential approaches:

a. **Resolution 15a** – *Make no recommendation*

b. **Resolution 15b** – *Prohibit the use of the “unsophisticated offense” mitigator for DUI manslaughter* – Resolved that Fla. Stat. § 921.0026(2)(j) be amended to read, “Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to: . . . [t]he offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse, except where the offense is DUI manslaughter.”

This alternative would narrowly overturn the Florida Supreme Court’s ruling in *VanBebber*, providing that a defendant convicted of DUI manslaughter cannot receive a downward departure based on the purportedly “unsophisticated” manner in which the offense was committed. DUI manslaughter is not an intentional crime; it is not an offense that a defendant plans out. Consequently it does not seem to be the type of crime that can actually be committed in either a “sophisticated” or “unsophisticated” manner.

c. **Resolution 15c** – *Prohibit the use of the “unsophisticated offense” mitigator for all crimes that lack a specific intent mens rea element* – Resolved that Fla. Stat. § 921.0026(2)(j) be amended to read, “Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to: . . . [t]he offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse, for offenses in which specific intent is an element.”

This alternative would limit the “unsophisticated manner” mitigator to intentional crimes. “Sophistication” connotes a defendant’s voluntary choice to perform a crime in a careful, planned, or particularly competent or effective manner, rather than rushed, hurriedly, and opportunistically. It appears to be a category error to attempt to consider whether an unintentional crime—typically, an accident—was performed sophisticatedly. There is little basis for granting leniency based on the unsophisticated nature of an offense when the defendant did not intentionally choose the manner in which he would commit it.

The previous proposal, Resolution 15b, would eliminate the “unsophisticated mitigator” specifically for DUI manslaughter. Eliminating the mitigator just for a single offense, while allowing it to remain in place for other, quite similar offenses (such as operating an aircraft under the influence) would be arbitrary and raise troubling inequities. Moreover, the same concern that makes the “unsophisticated manner” mitigator inappropriate for DUI manslaughter—the crime’s unintentional, essentially accidental nature—applies equally to certain other offenses in the criminal code. Thus, for both consistency and to fully implement the legislative intent underlying this mitigator, it should be limited to offenses involving specific intent as a *mens rea* element.

**d. Resolution 15d – Codify the Florida Supreme Court’s Ruling in *VanBebber*** – Resolved that Fla. Stat. § 921.0026(2)(j) be amended to read, “Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to: . . . [t]he offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse, regardless of the *mens rea* or mental state required for the offense.”

This alternative would codify the Florida Supreme Court’s holding in *VanBebber* and allow courts to grant downward departures based on an offense’s lack of sophistication to defendants who have committed crimes based on negligence, recklessness, or strict liability.

**e. Resolution 15e – Bring the issue to the legislature’s attention** – Resolved that the Legislature should consider whether a defendant should be able to invoke the “unsophisticated offense” mitigator either specifically in DUI manslaughter cases or more broadly when they have been convicted of offenses that lack a specific intent *mens rea* element.

This alternative would simply alert the Legislature to the issue raised in *VanBebber* without recommending a specific course of action.

4. **RESOLUTION #16 (caselaw issue #10) – Clarifying the definition of conviction**

Background: Fla. Stat. § 921.0021(2) defines “conviction” as “a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld.” In *Montgomery v. State*, 897 So. 2d 1282, 1286 (Fla. 2005), the Florida Supreme Court held that the definition of conviction includes no contest pleas, even when adjudication is withheld. It declared, “[A] no contest plea followed by a withhold of adjudication is a conviction for purposes of sentencing.” *Id.* The Court explained, “[A] no contest plea, where adjudication was withheld, is included as a conviction because the statute does not distinguish between guilty pleas and nolo contendere pleas.” *Id.* The Criminal Punishment Code should be clarified to dispel potential confusion about the effects of no contest pleas and withheld adjudications by codifying *Montgomery*’s holding as follows:

**Resolution 16** – Resolved that Fla. Stat. § 921.0021(2) should be amended to read, “‘Conviction’ means a determination of guilt that is the result of a plea, including a plea of no contest or nolo contendere, or a trial, regardless of whether adjudication is withheld.” (note: only the underlined language is new).

DRAFT

## Offenses to Consider Recategorizing

### Color Coding:

**Yellow highlights** are recommendations made to conform our offense level recommendations to other resolutions we've adopted concerning the elimination of various enhancements.

**Green highlights** are recommended reductions in offense level severity

**Blue highlights** are recommendations to ensure that our recommendations do not *decrease* the number of points assigned to a particular offense due to its risks or consequences. A major underlying theme of these recommendations is to avoid reducing the points associated with serious sexual offenses, violent offenses, or crimes involving robbery or theft.

### Offense Level 1 (4 points)

1. #2 – Fla. Stat. 212.15 – *Failure to remit sales taxes (\$1,000 - \$20,000)* – increase to level 2 due to amount range
2. #5 – Fla. Stat. 320.26(1)(a) – *Counterfeit or manufacture license plates* – increase to level 3 due to potential for serious criminal activity
3. #7-8 – *Supplying false IDs*– consider increasing to level 2 since providing false IDs is more serious than merely possessing one (which is a companion level 1 offense)
4. #12 – *Erasing or altering deeds/plats* – consider increasing to level 5 – We've recommended that altering a title to a motor home, in contrast, be designated as a level 4 offense (#2), and the value of real property typically exceeds a motor home by multiple times. Moreover, property records are presumptively accurate & the basis for multimillion dollar deals.
5. #16 – *Interfere with railroad signal* – increase to level 2

### Offense Level 2 (8 points)

1. #9 – Fla. Stat. 812.014(2)(c)1 – *Grand theft, third degree \$750-\$5,000* – increase to level 3 due to potential \$5,000 value *and* under the existing chart presently in force it's currently a level 2 offense (10 points)
2. #10 – Fla. Stat. 812.014(2)(d) – *Grand theft, third degree \$100-750, unenclosed curtilage of dwelling* – increase to level 3 because the offense typically involves personal property taken from the area of a person's home, *and* under the existing chart presently in force it's currently a level 2 offense (10 points) for which we shouldn't be reducing the sentence
3. #14 – Fla. Stat. 817.481(3)(A) – *purchasing over \$300 with counterfeit credit card* – increase to level 3 because it's a more serious offense than #16 (generally purchasing goods with a false card), under the existing chart presently in force it's currently a level 2 offense (10 points) for which we shouldn't be reducing the sentence, and there's no maximum limit on the amount of the falsely purchased goods
4. #17 – Fla. Stat. 817.61 – *fraudulent use of credit cards over \$100 within six months* – increase to level 3 because it's a more serious offense than #16 (generally purchasing goods with a false card), under the existing chart presently in force it's currently a level 2 offense (10 points) for which we shouldn't be reducing the sentence, and there's no maximum limit on the amount of the falsely purchased goods

### **Offense Level 3 (12 points)**

1. **#1 – Fla. Stat. 316.066(3)(b)-(d) – Unlawfully obtaining confidential crash reports** – consider decreasing to level 2
2. **#4 – Fla. Stat. 379.2431(1)e(4) – Taking, distributing etc. turtles, eggs, or nests – increase to level 4** because we are recommending that possessing turtle eggs—#3 on this chart—be designated a level 3 offense; an offense that can involve live turtles seems more serious; and adjusting upward to level 4 would cause the point value to remain the same as under current law, under the existing chart presently in force this is currently a level 3 offense that scores 16 points.
3. **#5 – Fla. Stat. 379.2431(1)e(6) – Possessing turtle species or hatchling – increase to level 4** for the same reasons: possession of live turtles should be more serious than possessing only eggs, and under the existing chart presently in force it's currently a level 3 offense that scores 16 points
4. **#9 – Fla Stat. 806.10(1) – Maliciously injuring or destroying firefighting equipment – increase to level 4** – under the existing chart presently in force it's currently a level 3 offense that scores 16 points, and we should not reduce the protection afforded firefighters; moreover, destroying firefighting equipment can create tremendous public safety risks independent of the harm to the equipment itself.
5. **#13 – Fla. Stat. 812.0145(2)(c)2 – Grand theft (\$5,000 - \$10,000) – increase to level 4** because under the existing chart presently in force it's currently a level 3 offense that scores 16 points, and we should not reduce the penalties for offenses involving such high valued goods; this adjustment is also consistent with the recommendation to increase the offense levels of other grand theft offenses
6. **#14 – Fla. Stat. 812.0145(2)(c)2 – Grand theft (\$5,000 - \$10,000) – increase to level 4** because this offense involves the aggravating factor of a particularly vulnerable victim (senior citizens), and the amount involved is potentially substantial. Under the existing chart presently in force it's currently a level 3 offense that scores 16 points, and we should not reduce the penalties for offenses involving such high valued goods against vulnerable populations. This adjustment is also consistent with the recommendation to increase the offense levels of other grand theft offenses.
7. **#15 – Fla. Stat. 812.015(8)(b) – Retail theft with intent to sell – increase to level 4** – Under the existing chart presently in force it's currently a level 3 offense that scores 16 points, and we should not reduce the penalties since this offense involves theft for profit motives
8. **#27 – Fla. Stat. 893.13(7)(a) – Withhold information from practitioner regarding previous receipt of controlled substance** – decrease to level 1 – this offense interferes with the doctor-patient relationship, can ensnare people who are reasonably unaware their conduct is criminal, and unnecessarily contributes to the criminalization of addiction
9. **#30 – Fla. Stat. 985.721 – Escape from a juvenile facility – increase to level 5** – Under the existing chart presently in force, this is currently a level 3 offense scoring 16 points. With the elimination of the Escape enhancement, instead of being reduced to a ranking that would result in fewer than 16 points, it must be increased to a ranking that would result in at least 20 points (*i.e.*, level 5, with 22 points).

### **Offense Level 4 (16 points)**

1. #1 – Fla. Stat. 316.1935(2) – *Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated* – **increase to level 5** – Under the existing chart presently in force, this is currently a level 3 offense scoring 16 points. With the elimination of the Fleeing enhancement, it must be increased to a ranking that would result in at least 20 points (i.e. level 5, with 22 points).

2. #9 – Fla. Stat. 517.07(1) – *Failure to register securities* – **increase to level 5** – Under the existing chart presently in force, this is currently a level 4 offense scoring 22 points. Given the potential for fraud associated with unregistered securities, there does not appear to be any reason to decrease the severity of this offense by reducing the sentence

3. #11 – Fla. Stat. 784.085 – *Battery of child by throwing semen, feces, or urine* – **increase to level 5** – Under the existing chart presently in force, this is currently a level 4 offense scoring 22 points. Given the disgusting nature of the offense and the fact that it targets children, there is no reason to decrease its severity by reducing the sentence.

4. #12 – Fla. Stat. 787.03(1) – *Wrongfully taking child from custodian* – **increase to level 5** – Under the existing chart presently in force, this is currently a level 4 offense scoring 22 points. Since this offense targets children, is related to kidnapping, can cause great trauma and fear, and carries a risk of violence, there does not appear to be any reason to decrease its severity by reducing the sentence

5. #13 – Fla. Stat. 790.115(1) – *Exhibit of a firearm within 1,000 feet of a school* – **increase to level 5** – Under the existing chart presently in force, this is currently a level 4 offense scoring 22 points. Given the obviously danger involved in this offense and the potential relationship to school shootings, there does not appear to be any reason to decrease the severity of this offense by reducing the sentence.

In addition, rather than the revision presently recommended in the chart, the offense should be limited to acts committed between the hours of 6:00 A.M. – 11:00 P.M. *or* while some school function is in progress (we want to protect students walking to and from school, regardless of whether the school even has commenced yet or ended).

6. #14 – Fla. Stat. 790.115(2)(b) – *Possession of destructive device on school property* – **increase to level 5** – Under the existing chart presently in force, this is currently a level 4 offense scoring 22 points. Given the obviously danger involved in this offense and the potential relationship to school shootings, there does not appear to be any reason to decrease the severity of this offense by reducing the sentence.

7. #17 – Fla. Stat. 810.02(4)(a) – *Burglary of an unoccupied structure* – **increase to level 5** – Under the existing chart presently in force, this is currently a level 4 offense scoring 22 points. The whole reason this offense differs from criminal trespass is that the unlawful entry is with the specific intent of committing another crime. There is no reason to treat this offense as less serious.

8. #21 – Fla. Stat. § 812.014(2)(c)3 – *Grand theft (\$10,000 - \$20,000)* – increase to level 5 because under the existing chart presently in force it’s currently a level 4 offense that scores 22 points, and we should not reduce the penalties for offenses involving even more highly valued goods; this adjustment is also consistent with the recommendation to increase the offense levels of other grand theft offenses

9. #27 – Fla. Stat. 817.625(2)(a) – *Fraudulent use of scanning device or reencoder* – increase to level 5 because under the existing chart presently in force it’s currently a level 4 offense that scores 22 points, and this offense involves sophisticated defendants and technology, and creates a serious risk of identity theft or potentially even financial harm that can impose substantial burdens on victims.

10. #36 – Fla. Stat. 837.02(1) – *Perjury* – increase to level 5 because under the existing chart presently in force it’s currently a level 4 offense that scores 22 points, and there’s reason to decrease the severity of the offense by reducing its sentence.

11. #40 – Fla. Stat. 843.15(1)(a) – *Failure to appear while on bail for felony* – increase to level 6 (22 points) because under the existing chart presently in force it’s currently a level 4 offense that scores 16 points, and we need to increase that number of points to compensate for removing the “failure to appear” enhancement on the scoresheet.

12. #44 – Fla. Stat. 934.215 – *Use of Two-Way Communications Device to Facilitate Commission of a Crime* – decrease to level 2 – This does not seem to be a meaningful aggravating factor for an offense.

DRAFT

### **Offense Level 5 (22 points)**

1. #1 – Fla. Stat. 119.102(2)(b) – *Unlawful use of confidential information from police reports* – decrease to level 4 – Under the existing chart presently in force it's currently a level 3 offense that scores 16 points, and there doesn't seem to be a reason to increase it to 22 points.
2. #11 – Fla. Stat. 624.401(4)(b)1 – *Transacting insurance w/o certificate of authority + premium is less than \$20,000* – decrease to level 4 – This seems to be a lesser-included offense of #10, transacting insurance without a certificate of authority, because the amount involved is limited, so it should be categorized at a lower offense level.
3. #14 – Fla. Stat. 784.082(3) – *Battery by detained person on visitor or other detainee* – increase to level 6 because under the existing chart presently in force it's presently a level 4 offense that scores 22 points, and we need to increase that number of points to compensate for refraining from applying the "incarcerated" enhancement on the scoresheet.
4. #15 – Fla. Stat. 790.01(2) – *Carrying a concealed firearm* – increase to level 6 because under the existing chart presently in force it's presently a level 5 offense that scores 28 points, and we shouldn't decrease potential sentence for offenses with such a risk of violence.
5. #17 – Fla. Stat. 806.111 – *Possession or manufacture of fire bomb with intent to damage structure* – increase to level 6 because under the existing chart presently in force it's presently a level 5 offense that scores 28 points, and there is no reason to be decreasing the potential sentence for offenses so closely related to bombings and potentially even terrorism.
6. #19 – Fla. Stat. 812.131(2)(b) – *Robbery by sudden snatching* – increase to level 6 because under the existing chart presently in force it's presently a level 5 offense that scores 28 points, and there's no reason to be decreasing its point value. This is a common offense, particularly in our tourist areas, involves taking property from the victim's person which creates a risk of violence, and can be traumatic for the victim and a major burden to replace a driver's license, credit cards, cash, and sentimental items carried in a purse.
7. #20 – Fla. Stat. 812.16(2) – *Owning or operating a chop shop* – increase to level 7 because under the existing chart presently in force it's currently a level 5 offense that scores 28 points, and there's no reason to be decreasing the point range. Chop shops are an integral component of car-theft rings and are often engaged in tens of thousands of dollars, if not more, of illicit business. Car theft is a scourge in many areas of the state and we should be doing more to deter and prevent it. This is not an impulsive, spur-of-the-moment crime committed by unsophisticated defendants.
8. #25 – Fla. Stat. 817.505(4)(a) – *Patient brokering* – decrease to level 2 – this offense does not seem to pose any actual risk to patients; it's primarily a prophylactic law aimed at eliminating physicians' conflicts of interests. This is not the sort of thing for which we should be sending doctors to jail for lengthy periods of time.
9. #27 – Fla. Stat. 817.569(2) – *Use of Public Records Information to Commit Offense* – decrease to level 2 – Under the existing chart presently in force, this is currently a level 1 offense that scores 4 points. There does not seem to be adequate justification for increasing it all the way up to level 5, scoring 22 points. This can cover an incredibly wide range of offenses and does not categorically seem to pose the same risks as other level 5 crimes.

10. #28 – Fla. Stat. § 825.1025(4) – *Lewd or lascivious exhibition in the presence of an elderly person or disabled adult* – increase to level 6 – Under the existing chart presently in force, this is currently a level 5 offense that scores 28 points. Given its sexual nature and vulnerable victims, there is no reason to be decreasing the number of points associated with it.

\*\*\*\* 11. #30 – Fla. Stat. 827.071(5) – *Possession or using child pornography* – increase to level 6 – Under the existing chart presently in force, this is currently a level 5 offense that scores 28 points. Given its sexual nature and vulnerable victims, there is no reason to be decreasing the number of points associated with it. There is no possible way we can be coming down easier on child pornography in any way.

12. #33 – Fla. Stat. 843.01 – *Resist officer with violence to person* – increase to level 8 – Under the existing chart presently in force, this is currently a level 5 offense that scores 28 points. Under the law enforcement enhancement, that would be increased to 42 points. This must be characterized as a level 8 offense scoring 46 points to be consistent with our other resolutions.

13. #34 – Fla. Stat. 843.0855(4) – *Intimidation of a public officer or employee* – increase to level 7 – Under the existing chart presently in force, this is currently a level 7 offense that scores 56 points. Reducing it down to a level 5 on the new chart scoring only 22 points is a dramatic drop that might generate opposition from the main task force or legislature. A more reasonable and less controversial adjustment would be to the new level 7, scoring 36 points.

14. #38 – Fla. Stat. 893.13(4)(c) – *Using a minor to deliver controlled substances* – increase to 7 – This offense is often gang-related, involves the use of minors to circumvent drug laws, and not only leads impressionable minors into criminal activity, but exposes them to the risk of violence in the illegal drug trade. This is a serious offense that creates multiple types of harm and its offense level should be increased.

15. #39 – Fla. Stat. 893.13(8)(a)3 – *Writing a prescription for a fictitious person* – decrease to level 3 – Under the existing chart presently in force, this is currently a level 3 offense that scores 16 points. There is no basis for increasing the offense level; to the contrary, given downward adjustments to other drug-related offenses in our proposal, the offense level for this should likely be decreased.

16. #40 – Fla. Stat. 893.13(8)(a)4 – *Writing a prescription solely for monetary benefit* – decrease to level 3 – Same reasoning as above. Under the existing chart presently in force, this is currently a level 3 offense that scores 16 points. There is no basis for increasing the offense level; to the contrary, given downward adjustments to other drug-related offenses in our proposal, the offense level for this should likely be decreased.

17. #41 – Fla. Stat. 893.1351(1) – *Owning or leasing drug den or lab for trafficking or manufacturing controlled substances* – increase to level 7 – Under the existing chart presently in force, this is currently a level 5 offense that scores 28 points. This is a law that will not target simple street-level dealers or young people who made a mistake, but rather drug manufacturers and people destroying a neighborhood by systematically conducting a drug trade. This is a serious offense and should not have its points decreased; to the contrary, it should be increased.

### **Offense Level 6 (28 points)**

1. **#1 – Fla. Stat. 316.193(2)(b) – Felony DUI, 3rd conviction – Decrease to Level 5** – Under the existing chart presently in force, this is a level 3 offense scoring 16 points. It seems excessive to add 12 more points. This should be adjusted to Level 5, scoring 22 points.
2. **#3 – Fla. Stat. 316.1935(3)(a) – Aggravated Fleeing – Increase to Level 7** – Under the existing chart presently in force, this is a level 5 offense scoring 28 points. With the 4-point fleeing enhancement, this would be increased to a total of 32 points. This should be adjusted to Level 7, scoring 36 points.
3. **#5 – Fla. Stat. 332.34(6) – Careless Operation of Motor Vehicle on Suspended License Resulting in Death or Significant Bodily Injury – Increase to Level 11** – Under the existing chart presently in force, this is a Level 5 offense scoring 28 points. With the 40-point Severe Injury enhancement (as an alternative to the even larger 120-point Death enhancement), that increase to a total of 68 points. This should be adjusted to Level 11, scoring 68 points, to be consistent with our other resolutions.
4. **#8 – Fla. Stat. 400.9935(4)(a)-(b) – Operating clinic without a license – Decrease to Level 5** – Under the existing chart presently in force, this is a level 3 offense scoring 16 points. It seems excessive to add 12 more points. This should be adjusted to Level 4, scoring 16 points.
5. **#11 – Fla. Stat. 517.302 – Securities and Investor Protection Act – Decrease to Level 4** – Under the existing chart presently in force, this is a level 1 offense scoring 4 points. It seems excessive to add 24 more points. This should be adjusted to Level 4, scoring 16 points, allowing for prison time if circumstances warrant without increasing the point value by six times.
6. **#13 – Fla. Stat. 784.021(1)(a) – Aggravated assault; deadly weapon w/o intent to kill – Increase to Level 7** – Under the existing chart presently in force, this is currently a Level 6 offense scoring 36 points. There does not seem to be any reason to make the offense less severe by reducing the points associated with it. This should be characterized as a Level 7 offense scoring 36 points.
7. **#14 – Fla. Stat. 784.021(1)(b) – Aggravated assault; intent to commit felony – Increase to Level 7** – Under the existing chart presently in force, this is currently a Level 6 offense scoring 36 points. There does not seem to be any reason to make the offense less severe by reducing the points associated with it. This should be characterized as a Level 7 offense scoring 36 points.
8. **#15 – Fla. Stat. 784.048(3) – Aggravated Stalking; Credible Threat – Increase to Level 7** – Under the existing chart presently in force, this is currently a Level 6 offense scoring 36 points. There does not seem to be any reason to make the offense less severe by reducing the points associated with it. This should be characterized as a Level 7 offense scoring 36 points.
9. **#16 – Fla. Stat. 784.075 – Battery of Detention/Commitment Facility Staff – Increase to Level 7** – Under the existing chart presently in force, this is currently a Level 4 offense scoring 22 points. With the 1.5-times law enforcement multiplier, that is increased to a total of 33 points. This should be characterized as a Level 7 offense scoring 36 points to be consistent with our resolutions.

10. #17 – Fla. Stat. 784.07(2)(b) – *Battery of Law Enforcement Officer* – Increase to Level 7 – Under the existing chart presently in force, this is currently a Level 4 offense scoring 22 points. With the 1.5-times law enforcement multiplier, that is increased to a total of 33 points. This should be characterized as a Level 7 offense scoring 36 points to be consistent with our resolutions.

11. #18 – Fla. Stat. 784.074(1)(c) – *Battery of Sexual Predator Facility Staff* – Increase to Level 7 – Under the existing chart presently in force, this is currently a Level 4 offense scoring 22 points. With the 1.5-times law enforcement multiplier, that is increased to a total of 33 points. This should be characterized as a Level 7 offense scoring 36 points to be consistent with our resolutions.

12. #19 – Fla. Stat. 784.078 – *Battery of Facility Employee with Urine or Feces* – Increase to Level 7 – Under the existing chart presently in force, this is currently a Level 4 offense scoring 22 points. With the 1.5-times law enforcement multiplier, that is increased to a total of 33 points. This should be characterized as a Level 7 offense scoring 36 points to be consistent with our resolutions.

13. #23 – Fla. Stat. 787.02 – *False Imprisonment* – Increase to Level 7 – Under the existing chart presently in force, this is currently a Level 6 offense scoring 36 points. There does not seem to be any reason to make the offense less severe by reducing the points associated with it. This should be characterized as a Level 7 offense scoring 36 points.

14. #28 – Fla. Stat. 825.102(1) – *Elder Abuse* – Increase to Level 7 – Under the existing chart presently in force, this is currently a Level 6 offense scoring 36 points. There does not seem to be any reason to make the offense less severe by reducing the points associated with it. Victims in elder abuse cases are often helpless. Moreover, outright child abuse often may be more blameworthy than child neglect, which often can be a more passive crime yet is also characterized in the new chart at this same offense level 6. Child abuse should be characterized as a Level 7 offense scoring 36 points.

15. #31 – Fla. Stat. 827.03(2)(c) – *Child Abuse* – Increase to Level 7 – Under the existing chart presently in force, this is currently a Level 6 offense scoring 36 points. There does not seem to be any reason to make the offense less severe by reducing the points associated with it. Child abuse can be a terrifying crime with lifelong consequences for the victims that affects their future. Moreover, outright child abuse often may be more blameworthy than child neglect, which often can be a more passive crime yet is also characterized in the new chart at this same offense level 6. Child abuse should be characterized as a Level 7 offense scoring 36 points.

16. #33 – Fla. Stat. 828.122(3) – *Fighting and Baiting Animals* – Decrease to Level 5 – Under the existing chart presently in force, this is currently a Level 1 offense scoring 4 points. The accompanying crime, Injuring or Killing a Police Horse or Canine (40#), is also being characterized as a Level 6 offense. It seems like there might be a possibility that fighting animals might be characterized at a lesser level than permanently injuring or killing an animal, particularly a police horse or dog. This should be characterized as a Level 5 offense scoring 22 points.

17. **#36 – Fla. Stat. 838.15(2) – Commercial Bribe Receiving – Decrease to level 4** – Under the existing chart presently in force, this is currently a Level 1 offense scoring 4 points. There does not appear to be a basis for increasing it by 24 points. It should be characterized as a Level 4 offense scoring 16 points.

18. **#38 – Fla. Stat. 843.025 – Deprive law enforcement, corrections, or probation officer of protection or communication equipment – Increase to Level 7** – Under the existing chart presently in force, this is currently a Level 4 offense scoring 22 points. With the Law Enforcement Protection 1.5-times multiplier, that is increased to a total of 33 points. This must be characterized as a Level 7 offense, scoring 36 points.

19. **#41 – Fla. Stat. 847.011(1)(a) – Selling or distributing obscene or lewd material; second conviction – Decrease to Level 4** – Under the existing chart presently in force, this is currently a Level 4 offense scoring 22 points. There does not appear to be any reason to increase this offense to 28 points. Rather, it might be possible to reduce the offense level to 4, scoring 16 points.

20. **#42 – Fla. Stat. 874.05(1)(a) – Encouraging or recruiting someone to join a gang – Increase to Level 7** – Under the existing chart presently in force, this is currently a level 4 offense scoring 22 points. With the 1.5-times Gang Activity multiplier, this is increased to a total of 33 points. This must be characterized as a Level 7 offense, scoring 36 points, to be consistent with our other resolutions.

21. **#48 – Fla. Stat. 918.12 – Jury Tampering – Increase to Level 7** – Under the existing chart presently in force, this is currently a level 6 offense scoring 36 points. Neither the severity of the offense nor the points assigned to it should be reduced. It is a serious crime that undermines the integrity of the judicial system. It should be characterized as Level 7 to avoid reducing its points.

22. **#49 – Fla. Stat. 944.35(3)(a)2 – Malicious Battery / Inhuman Treatment on Inmate Resulting in Great Bodily Harm – Increase to Level 12** – Under the existing chart presently in force, this is currently a level 6 offense scoring 36 points. With the 40-point Severe Injury Enhancement, this is increased to a total of 76 points. This must be characterized as a Level 12 offense, scoring 76 points, to be consistent with our other resolutions.

23. **#51 – Fla. Stat. 944.46 – Harboring, concealing, aiding escaped prisoners – Increase to Level 8** – Under the existing chart presently in force, this is currently a level 6 offense scoring 36 points. With the 4-point Escape Enhancement, this is increased to a total of 40 points. This must be characterized as a Level 8 offense, scoring 46 points, to be consistent with our other resolutions.

### **Offense Level 7 (36 points)**

1. #1 – Fla. Stat. 440.10(1)(g) – *Failure to obtain workers compensation coverage* – Decrease to level 6 - Under the existing chart presently in force, this is currently a level 5 offense that scores 28 points. This does not seem to be something that should be made more serious. It should be reduced to level 6, scoring 28 points.

2. #2 – Fla. Stat. 440.105(5) – *Unlawful solicitation for the purpose of making workers' compensation claims* – Decrease to level 4 - Under the existing chart presently in force, this is currently a level 5 offense that scores 28 points. This does not seem to be something that should be made more serious. Moreover, it seems less serious than the accompanying offenses of failure to obtain workers' compensation coverage. It should be reduced to level 4, scoring 16 points.

3. #3 – Fla. Stat. 440.381(2) – *False statements to avoid workers' compensation coverage* – Decrease to level 6 - Under the existing chart presently in force, this is currently a level 5 offense that scores 28 points. This does not seem to be something that should be made more serious. It should be reduced to level 6, scoring 28 points.

\*\*4. #21 – 23 (three offenses) – Fla. Stat. 499.0051(2)-(4) – *Unauthorized transactions involving prescription drugs* – Decrease to third-degree felonies – Under the existing chart presently in force, these are currently level 6 offenses, scoring 28 points, and ranked as second-degree (with a maximum of 15 years in prison). Under our new chart, these should be reduced to third-degree offenses (with a maximum of 14 years in prison). There's no reason to increase the maximum sentence by five years for these offenses, and all the other offenses in our proposed new Offense Level 7 are only third-degree felonies. One of our resolutions specifies that all offenses within each offense level should be classified as felonies of the same degree.

5. #25 – Fla. Stat. 560.125(5)(a) – *Unauthorized money services business, \$300-20,000 worth of transactions* – Increase to level 8 – Under the existing chart presently in force, this is currently a level 7 offense, scoring 56 points. Reducing this to 36 points seems like too large of a drop. Moreover, this seems more serious than the accompanying offense (#24) of failing to report a currency transaction involving \$300-20,000. This should be increased one level to Level 8, scoring 46 points.

6. #30 – Fla. Stat. 784.074(1)(b) – *Aggravated Assault on Sexually Violent Predators Facility Staff* – Increase to Level 14 – Under the existing chart presently in force, this is currently a Level 6 offense, scoring 36 points. It is subject to a 1.5 times multiplier for a Law Enforcement Victim, as well as a 40-point enhancement for Severe Injury. Thus, it would currently receive a total of 94 points. It should be reassigned to Level 14 under the new chart, scoring 92 points.

7. #31 – Fla. Stat. 784.074(2)(b) – *Aggravating Assault on Person 65 or Over* – Increase to Level 12 – Under the existing chart presently in force, this is currently a Level 6 offense, scoring 36 points. It is subject to a 40-point enhancement for Severe Injury. Thus, it would currently receive a total of 76 points. It should be reassigned to Level 12 under the new chart, scoring 92 points.

8. #32 – Fla. Stat. 784.081(2) – *Aggravating Assault on Specified Official or Employee* – Increase to Level 12 – Under the existing chart presently in force, this is currently a Level 6 offense, scoring 36 points. It is subject to a 40-point enhancement for Severe Injury. Thus, it would currently receive a total of 76 points. It should be reassigned to Level 12 under the new chart, scoring 92 points.

9. #33 – Fla. Stat. 784.074(1)(b) – *Aggravated Assault on Sexually Violent Predators Facility Staff* – Increase to Level 14 – Under the existing chart presently in force, this is currently a Level 6 offense, scoring 36 points. It is subject to a 4-point enhancement for Incarceration, as well as a 40-point enhancement for Severe Injury. Thus, it would currently receive a total of 80 points. It should be reassigned to Level 13 under the new chart, scoring 84 points.

10. #34 – Fla. Stat. 784.083(2) – *Aggravating Assault on Code Inspector* – Increase to Level 12 – Under the existing chart presently in force, this is currently a Level 6 offense, scoring 36 points. It is subject to a 40-point enhancement for Severe Injury. Thus, it would currently receive a total of 76 points. It should be reassigned to Level 12 under the new chart, scoring 92 points.

11. #40 – Fla. Stat. 810.02(3)(b) – *Burglary of Unoccupied Dwelling Unarmed, No Assault/Battery* – Increase to Level 8 – Under the existing chart presently in force, this is currently a level 7 offense, scoring 56 points. Reducing this to 36 points seems like too large of a drop. Moreover, this offense is limited to breaking into inhabited *homes* while their owners are away. And a trespass constitutes “burglary” only when the defendant intends to commit some other crime in their victim’s home. Such an invasion is serious and warrants jail time. This should be increased to level 10, scoring 60 points, to avoid reducing its severity.

12. #41 – Fla. Stat. 812.0145(2)(b) – *Theft from Person 65 Years or Older, \$10,000-50,000* – Increase to Level 8 – Under the existing chart presently in force, this is currently a level 5 offense, scoring 28 points. Stealing this much money from a vulnerable population is a crime that warrants some jail time. It should be increased to level 8, scoring 46 points.

13. #46 – Fla. Stat. 837.05(2) – *Gives false information about alleged capital felony to law enforcement officer* – Increase to Level 8 – Under the existing chart presently in force, this is currently a level 7 offense, scoring 56 points. There is no reason to reduce the severity of this offense. False information about a capital felony is among the most serious lies a person can tell the government. It should be increased to Level 10 to avoid reducing the number of points assigned to it.

14. #50 – Fla. Stat. 944.4 – *Escape* – Increase to Level 8 – Under the existing chart presently in force, this is currently a level 6 offense, scoring 36 points. With the 4-point Escape enhancement, this is raised to a total of 40 points. This offense should be increased to Level 8 to be consistent with our resolutions and compensate for eliminating the Enhancement.

### **Offense Level 8 (46 points)**

1. #1 – Fla. Stat. 560.123(8)(b) – *Failure to Report Currency or Payment Instruments \$20,000-100,000* – **Increase to level 10** - Under the existing chart presently in force, this is currently a level 8 offense that scores 74 points. Even if that is somewhat too harsh, it seems inappropriate to radically decrease the severity by nearly 30 points. This should be reassigned to level 10 in the new chart, scoring 60 points.
2. #2 – Fla. Stat. 560.125(5)(b) – *Unauthorized money transmission business \$20,000-100,000* – **Increase to level 10** - Under the existing chart presently in force, this is currently a level 8 offense that scores 74 points. Even if that is somewhat too harsh, it seems inappropriate to radically decrease the severity by nearly 30 points. This should be reassigned to level 10 in the new chart, scoring 60 points.
3. #3 – Fla. Stat. 655.50(10)(b)2 – *Financial institution failure to report transactions, \$20,000-100,000* – **Increase to level 10** - Under the existing chart presently in force, this is currently a level 8 offense that scores 74 points. Even if that is somewhat too harsh, it seems inappropriate to radically decrease the severity by nearly 30 points. This should be reassigned to level 10 in the new chart, scoring 60 points.
4. #4 – Fla. Stat. 775.0875(1) – *Taking a Firearm from a Law Enforcement Officer* – **Increase to Level 9** – Under the existing chart presently in force, this is currently a Level 6 offense that scores 36 points. With the 1.5-times enhancement for Law Enforcement Victim, this would be increased to a total of 54 points. This should be reassigned to Level 9, or 52 points.
5. #5 – Fla. Stat. 784.048(4) – *Aggravated Stalking; Violation of Injunction* – **Increase to Level 9** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. There is no reason to substantially decrease the number of points to assign to this serious offense. This should be reassigned to Level 9, scoring 52 points.
6. #6 – Fla. Stat. 784.048(7) – *Aggravated Stalking; Violation of Court Order* – **Increase to Level 9** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. There is no reason to substantially decrease the number of points to assign to this serious offense. This should be reassigned to Level 9, scoring 52 points.
7. #8 – Fla. Stat. 800.04(5)(d) – *Lewd molestation; victim 12-15, offender under 18* – **Increase to Level 12** – Under the existing chart presently in force, this is currently a Level 6 offense that scores 36 points. With the 40-point sexual penetration times enhancement, this would be a total of 76 points. This should be reassigned to Level 12, or 76 points.
8. #9 – Fla. Stat. 812.014(2)(c)6 – *Grand Theft Auto, 3d degree, Third Offense* – **Increase to Level 10** – Under the existing chart presently in force, this is currently a Level 6 offense that scores 36 points. With the 1.5x point multiplier that applies in these circumstances, this would be a total of 54 points. This should be reassigned to Level 10, scoring 60 points, to avoid reducing the points for this offense; reflect both the gravity of the offense and the repeated convictions, and act consistently with the resolutions.

9. #13 - Fla. Stat. 817.505(4)(b) – *Patient Brokering 10 or more patients* – decrease to Level 6 – Under the existing chart presently in force, this is currently a Level 6 offense that scores 36 points. There is no reason to be increasing the severity of the offense. To the contrary, since it does not directly hurt anyone and is a purely prophylactic measure, its severity should be reduced. This should be reassigned to Level 6.

10. #14 – 17 – Fla. Stat. 817.535(2)-(5) – *Filing False Liens (various circumstances)* – Increase to level 10 - Under the existing chart presently in force, these four offenses are all currently Level 7 offenses that score 56 points. There is no reason to substantially decrease the number of points to assign to these serious offenses. These should each be reassigned to Level 10, scoring 60 points.

11. #21 – Fla. Stat. 817.611(2)(c) – *Traffic in or possess 50+ counterfeit cards* – Increase to Level 10 – Under the existing chart presently in force, this is a Level 8 offense that scores 74 points. This offense should not be reduced down to 46 points (especially since we’re recommending that 15-49 cards be a level 10 offense; see level 10, #19). Moreover, this is an aggravated form of trafficking in 5-14 cards, which the proposed chart also characterizes as a Level 8 offense. This offense, which involves trafficking in 50 or more cards, should be reassigned to Level 10, with 60 points.

12. #24 – Fla. Stat. 837.02(2) – *Perjury in Official Proceedings Relating to Capital Felony Prosecution* – Increase to Level 12 – Under the existing chart presently in force, this is a Level 8 offense that scores 74 points. The severity of this offense should not be diminished. Thus, this offense should be increased to Level 12, scoring 76 points.

13. #25 – Fla. Stat. 837.021(2) – *Making Contradictory Statements in Capital Felony Prosecution* – Increase to Level 11 – Under the existing chart presently in force, this is a Level 8 offense that scores 74 points. The severity of this offense should not be diminished. Thus, this offense should be increased to Level 12, scoring 76 points.

14. #28 – Fla. Stat. 847.0135(5)(b) – *Lewd or Lascivious Exhibition Using Computer; Offender Over 18* – decrease to Level 5 or 6 – Under the existing chart presently in force, this is a Level 5 offense that scores 28 points. This offense does not involve child pornography, and the recipient does not need to be a minor or even an unwilling recipient. The severity should not be made harsher, and potentially even should be reduced. This offense should be characterized as a Level 5 offense, scoring 22 points, or a Level 6 offense, scoring 28 points.

### **Offense Level 9 (52 points)**

1. **#2 – Fla. Stat. 316.193(3)(c)2 – DUI Resulting in Serious Bodily Injury – Increase to Level 14** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. With the 40-point severe injury enhancement, this would be a total of 96 points. This should be reassigned to Level 14, or 92 points.
2. **#3 – Fla. Stat. 316.193(2)(b) – Felony DUI; Fourth Conviction – Decrease to Level 8** – Under the existing chart presently in force, this is currently a Level 3 offense that scores 16 points. Increasing it by 36 points is too extreme. Reducing it to Level 8 with 46 points guarantees jail without imposing a draconian sentence.
3. **#4 – Fla. Stat. 327.35(3)(c)2 – BUI Resulting in Serious Bodily Injury – Increase to Level 14** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. With the 40-point severe injury enhancement, this would be a total of 96 points. This should be reassigned to Level 14, or 92 points.
4. **#5 – Fla. Stat. 400.9935(4)(c) – Operating a clinic without a license – Decrease to level 7** – Under the existing chart presently in force, this is currently a Level 6 offense scoring 36 points. There is no reason for increasing the severity of this offense by 16 points and triggering a mandatory prison sentence. The current point level should be maintained by reassigning this crime to offense level 7, scoring 36 points.
5. **#6 – Fla. Stat. 409.920(2)(b)1.a – Medicaid provider fraud – Decrease to level 7** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. This offense should be reduced to level 8, scoring 46 points.
6. **#7 – Fla. Stat. 782.04(4) – Killing without design while engaged in certain felonies – Increase to Level 18** – Under the existing chart presently in force, this is currently a Level 8 offense that scores 74 points. With the 120-day enhancement for Death, that increases to a total of 194 points. This offense should be increased to Level 18, scoring 180 points.
7. **#10 – Fla. Stat. 784.07(2)(c) – Aggravated assault on law enforcement officer – Increase to Level 14** – Under the existing chart presently in force, this is currently a Level 6 offense that scores 36 points. With the 1.5-times multiplier for law enforcement victims, as well as the 40-point enhancement for Severe injuries, that increases to a total of 94 points. This offense should be increased to Level 14, scoring 92 points.
8. **#13 – Fla. Stat. 790.163(1) – False bomb reports – Decrease to Level 7** – Under the existing chart presently in force, this is currently a Level 5 offense that scores 28 points. There does not seem to be a need to increase the severity of this offense by an additional 24 points. Moreover, this is less serious than other offenses the chart classifies as Level 9, such as discharging weapons in schools. This should be characterized as a Level 7 offense, scoring 36 points.
9. **#16 – Fla. Stat. 796.05(1) – Living off the earnings of a prostitute, first offense – Decrease to Level 7** – Under the existing chart presently in force, this is currently a Level 5 offense that scores 28 points. There does not seem to be a need to increase the severity of this offense by an additional 24 points. Moreover, this is less serious than other offenses the chart classifies as Level 9, such as discharging weapons in schools. This should be characterized as a Level 6 offense, scoring 28 points.

10. **#17 – Fla. Stat. 800.04(6)(b) – Lewd and Lascivious Conduct – Increase to Level 12** – Under the existing chart presently in force, this is currently a Level 6 offense that scores 36 points. With the 40-point enhancement for sexual contact, that is increased to a total of 76 points. This offense should therefore be assigned to Level 12, scoring 76 points.
11. **#18 – Fla. Stat. 806.031(2) – Arson resulting in great bodily harm – Increase to Level 12** – Under the existing chart presently in force, this is currently a Level 6 offense that scores 36 points. With the 40-point enhancement for severe injury, that is increased to a total of 76 points. This offense should therefore be assigned to Level 12, scoring 76 points.
12. **#21 – Fla. Stat. 812.014(2)(b)1 – Second degree grand theft, \$20,000-100,000 – Increase to Level 10** – Under the existing chart presently in force, this is currently a Level 6 offense that scores 36 points. Given the amount of money involved, it should be increased to Level 10, scoring 60 points.
13. **#25 – Fla. Stat. 825.1025(3) – Lewd or Lascivious molestation of elderly person – Increase to Level 12** – Under the existing chart presently in force, this is currently a Level 6 offense that scores 36 points. With the 40-point enhancement for sexual contact, that totals 76 points. This offense should therefore be assigned to Level 12, scoring 76 points.
14. **#38 – Fla. Stat. 896.104(4)(a)1 – Structuring transactions \$300-20,000 – Decrease to Level 7** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. This offense involves a limited amount of money and the avoidance of reporting requirements. It is less serious than other offenses characterized in the new Level 9. It should be assigned instead to Level 7, scoring 36 points, thereby avoiding mandatory prison.
15. **#40 – Fla. Stat. 943.0435(8) – Failure to Comply with Reporting Requirements: Sexual offender remains in state after indicating intent to leave – Decrease to Level 8** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. Remaining in the state after indicating an intent to leave appears less serious than the other accompanying violations of sex offender reporting requirements (#39, 41-43, 45, 47-48, 51). This offense should therefore be assigned to Level 8, scoring 46 points.
16. **#46 – Fla. Stat. 943.0435(8) – Failure to Comply with Reporting Requirements: Failure to Take Digital Photo – Decrease to Level 8** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. Failing to take a digital photo – especially since the state will already have photographs of convicted sex offender – appears less serious than the other accompanying violations of sex offender reporting requirements (#39, 41-43, 45, 47-48, 51). This offense should therefore be assigned to Level 8, scoring 46 points.
17. **#50 – Fla. Stat. 985.4815(10) – Failure to Comply with Reporting Requirements: Failure to Take Digital Photo – Decrease to Level 8** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. Failing to take a digital photo – especially since the state will already have photographs of convicted sex offender – appears less serious than the other accompanying violations of sex offender reporting requirements (#39, 41-43, 45, 47-48, 51). This offense should therefore be assigned to Level 8, scoring 46 points.

### **Offense Level #10 (60 points)**

1. **#6 – Fla. Stat. 790.166(3) – Possessing, selling, or using a hoax weapon of mass destruction – Increase to Level 11** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. The accompanying offenses—possessing, selling, or using a hoax bomb (#4)—are classified in the new Level 10. Committing the same acts with a hoax weapon of mass destruction seems more serious, and should be classified at a higher offense level. This offense should therefore be assigned to Level 11, scoring 68.
2. **#7 – Fla. Stat. 790.166(4) – Possessing, selling, or threatening to use a hoax weapon of mass destruction while committing a felony – Increase to Level 11** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. The accompanying offense—possessing, displaying, or threatening to use a hoax bomb in the commission of a felony (#5)—are classified in the new Level 10. Committing the same acts with a hoax weapon of mass destruction seems more serious, and should be classified at a higher offense level. This offense should therefore be assigned to Level 11, scoring 68.
3. **#9 – Fla. Stat. 794.05(1) – Sex between 16-17 year-old victim and 24+ year-old defendant – Increase to Level 16** – Under the existing chart presently in force, this is currently a Level 6 offense that scores 36 points. With the 80-point enhancement for sexual penetration, this totals 116 points. This offense should therefore be assigned to Level 16, scoring 122 points.
4. **#18 – Fla. Stat. 817.234(9) – Organizing or participating in intentional motor vehicle collision – Increase to Level 11** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. The accompanying offense, soliciting motor vehicle accident victims, is recommended to be a Level 10 offense on the new chart, scoring 60 points. Since actually participating in or organizing an intentional motor vehicle crash is much more serious than simply soliciting participants, this offense should be ranked at the next higher offense level. This offense should therefore be assigned to Level 11, scoring 68 points.
5. **#19 – Fla. Stat. 817.611(2)(b) – Traffic in or possess 15-49 counterfeit cards – Increase to Level 9** – Under the existing chart presently in force, this is a Level 7 offense that scores 56 points. This document recommends that the proposed new chart characterize the more serious offense of Trafficking in 50 Counterfeit Cards (see new chart, Level 8, #21) as a Level 10 offense. Consequently, this lesser-included offense should be reduced to Level 9, scoring 52 points, which is comparable to its current categorization.
6. **#20 – Fla. Stat. 827.04(3) – Impregnation of a child under 16 by defendant 21 or older – Increase to Level 17** – Under the existing chart presently in force, this is a Level 7 offense that scores 56 points. With the Sexual Penetration Enhancement of 80 points, that would be increased to a total of 136 points. This offense should therefore be assigned to Level 17, scoring 140 points.
7. **#26 – Fla. Stat. 847.0135(2) – Facilitating sexual contact with minor or its depiction – Increase to Level 12** – Under the existing chart presently in force, this is a Level 6 offense that scores 36 points. With the Sexual Contact Enhancement of 40 points, that would be increased to a total of 76 points. This offense should therefore be assigned to Level 12, scoring 76 points.

8. #28 – Fla. Stat. 896.101(5)(b) – Money laundering, \$20,000-100,000 – Increase to Level 12 – Under the existing chart presently in force, this is currently a Level 8 offense that scores 74 points. There is no reason to reduce the severity of this offense, particularly given its close connection to drugs, violence, racketeering, weapons, human trafficking, and smuggling. This offense should therefore be assigned to Level 12, scoring 76 points.

DRAFT

### **Offense Level #11 (68 points)**

1. **#1 – Fla. Stat. 409.920(2)(b)1.b – Medicaid Provider Fraud, \$10,000-50,000 – Decrease to Level 10** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. There does not appear to be any reason that this should be categorized that much more severely. This should be reassigned to level 10 in the new chart, scoring 60 points.

\*\*\*2. **#4 – Fla. Stat. 800.04(4)(b) – Lewd or Lascivious Battery – Increase to Level 16** – Under the existing chart presently in force, this is currently a Level 8 offense that scores 74 points. **It should definitely not be decreased in severity.** Furthermore, with the 40-point enhancement for Sexual Contact, this would be increased to a total of 114 points. This should be reassigned to Level 16, or 122 points.

3. **#5 – Fla. Stat. 800.04(5)(c)1 – Lewd or Lascivious Molestation, victim under 12, offender under 18 – Increase to Level 14** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. With the 40-point enhancement for Sexual Contact, this would be increased to a total of 96 points. This should be reassigned to Level 14, or 92 points.

4. **#6 – Fla. Stat. 800.04(5)(c)2 – Lewd or Lascivious Molestation, victim 12-16, offender over 18 – Increase to Level 14** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. With the 40-point enhancement for Sexual Contact, this would be increased to a total of 96 points. This should be reassigned to Level 14, or 92 points.

5. **#8 – Fla. Stat. 810.02(3)(a) – Burglary of Occupied Dwelling; Unarmed, No Assault or Battery – Increase to Level 12** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. Since this is a more serious offense than the accompanying crime of burglary of an occupied conveyance (#9), it should be assigned a higher offense level. This should be reassigned to Level 12, or 76 points.

6. **#10 – Fla. Stat. 825.102(3)(b) – Neglecting an Elderly Person or Disabled Adult + Great Bodily Harm – Increase to Level 14** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. With the 40-point enhancement for Severe Injury, this would be increased to a total of 96 points. This should be reassigned to Level 14, or 92 points.

7. **#12 – Fla. Stat. 827.03(2)(b) – Neglecting a Child + Great Bodily Harm – Increase to Level 14** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. With the 40-point enhancement for Severe Injury, this would be increased to a total of 96 points. This should be reassigned to Level 14, or 92 points.

8. **#14 – Fla. Stat. 872.06 – Abuse of Dead Human Body – Decrease to Level 10** – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. There does not appear to be any reason that this should be categorized that much more severely. This should be reassigned to level 10 in the new chart, scoring 60 points.

### **Offense Level #12 (76 points)**

1. #1 – Fla. Stat. 402.319(2) – *Misrepresentation/negligence resulting in great bodily harm or disfigurement* – Increase to Level 14 – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. With a 40 point enhancement for severe injury, that would be increased to a total of 96 points. This must be characterized as a Level 14 offense scoring 92 points.
2. #2 – Fla. Stat. 456.065(2) – *Practicing medicine without a license resulting in great bodily harm or disfigurement* – Increase to Level 14 – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. With a 40 point enhancement for severe injury, that would be increased to a total of 96 points. This must be characterized as a Level 14 offense scoring 92 points.
3. #8 – Fla. Stat. 794.011(5)(b) – *Sexual battery, victim 18+, offender 18+, no force likely to cause serious injury* – Increase to Level 17 – Under the existing chart presently in force, this is currently a Level 8 offense that scores 74 points. With an 80-point enhancement for sexual penetration, that would be increased to a total of 154 points. This must be characterized as a Level 17 offense scoring 140 points.
4. #9 – Fla. Stat. 794.011(5)(c) – *Sexual battery, victim 12+, offender under, no force likely to cause serious injury* – Increase to Level 17 – Under the existing chart presently in force, this is currently a Level 8 offense that scores 74 points. With an 80-point enhancement for sexual penetration, that would be increased to a total of 154 points. This must be characterized as a Level 17 offense scoring 140 points.
5. #11 – Fla. Stat. 796.05(1) – *Living off the earnings of a prostitute* – Decrease to Level 9 – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. There does not seem to be a need to substantially increase the severity by 20 additional points. This should be characterized as a Level 9 offense scoring 52 points.
6. #17 – Fla. Stat. 817.234(11)(c) – *Insurance fraud, \$100,000+* – Increase to Level 13 – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. Most other offenses involving a minimum of \$100,000 in stolen or fraudulently obtained funds are categorized as Level 13 offenses. This should be characterized as a Level 13 offense scoring 84 points.
7. #19 – Fla. Stat. 817.505(4)(c) – *Patient brokering, 20+ patients* – Decrease to Level 9 – Under the existing chart presently in force, this is currently a Level 8 offense that scores 74 points. There does not seem to be a need to increase the severity by 20 additional points, and this is an offense primarily concerning protective measures against conflicts of interest for which the severity could be reduced. It does not result in physical or direct financial harm to the victims. This should be characterized as a Level 9 offense scoring 52 points.

8. #21 – Fla. Stat. 874.05(2)(b) – *Encouraging or Recruiting a Person Under 13 to Join a Gang; Second Offense* – Increase to Level 13 – Under the existing chart presently in force, this is currently a Level 7 offense that scores 56 points. With the 1.5-times point multiplier for gang offenses, that is increased to a total of 84 points. This offense must be characterized as a Level 13 offense scoring 84 points to compensate for failure to apply that enhancement.

9. #25 to 42 – Fla. Stat. 893.135 – *Trafficking various illegal drugs*- Increase to Level 13 – Under the existing chart presently in force, each of these crimes is currently a level 7 offense that scores 56 points. With the 1.5-times point multiplier for drug trafficking, that is increased to a total of 84 points. This offense must be characterized as a Level 13 offense scoring 84 points to compensate for failure to apply that enhancement.

DRAFT

### **Offense Level #13 (84 points)**

1. **#1 – Fla. Stat. 316.1935(4)(b) – Aggravated Fleeing with Serious Bodily Injury or Death – Increase to Level 16** – Under the existing chart presently in force, this is currently a Level 8 offense that scores 74 points. With a 4-point enhancement for fleeing and 40-point severe injury enhancement, that would be increased to a total of 118 points. This must be characterized as a Level 16 offense scoring 122 points.
2. **#2 – Fla. Stat. 409.920(2)(b)1.c – Medicaid provider fraud, \$50,000+ – Decrease to Level 12** – Under the existing chart presently in force, this is currently a Level 9 offense scoring 92 points. Other offenses involving theft of at least \$50,000 are now ranked at offense level 12. This should be characterized as a Level 12 offense scoring 76 points.
3. **#3 – Fla. Stat. 499.0051(6) – Trafficking in Contraband Prescription Drugs – Increase Level 15** – Under the existing chart presently in force, this is currently a Level 8 offense that scores 74 points. With a 1.5-times multiplier for drug trafficking, this would be increased to a total of 111 points. This must be characterized as a Level 15 offense scoring 108 points.
4. **#5 – Fla. Stat. 560.123(8)(b)3 – Failure to Report Currency Transaction Totaling \$100,000 – Increase to Level 14** – Under the existing chart presently in force, this is currently a Level 9 offense scoring 92 points. Given the amount of money involved and the close connection to other illicit crimes, there is no reason to reduce the severity of the offense. This should be characterized as a Level 14 offense scoring 92 points.
5. **#6 – Fla. Stat. 560.125(5)(c) – Unauthorized Money Transmission Business – Increase to Level 15** – Under the existing chart presently in force, this is currently a Level 9 offense scoring 92 points. Given the amount of money involved and the close connection to other illicit crimes, there is no reason to reduce the severity of the offense. Moreover, operating an ongoing illegal business seems more serious than just a discrete, potentially single transmission. This should be characterized as a Level 15 offense scoring 108 points.
6. **#7 – Fla. Stat. 655.50(10)(b)3 – Failure to Report Financial Transaction Totaling \$100,000 – Increase to Level 14** – Under the existing chart presently in force, this is currently a Level 9 offense scoring 92 points. Given the amount of money involved and the close connection to other illicit crimes, there is no reason to reduce the severity of the offense. This should be characterized as a Level 14 offense scoring 92 points.
7. **#11 – Fla. Stat. 782.07(1) – Killing through act or negligence of another (manslaughter) – Increase to Level 18** – Under the existing chart presently in force, this is currently a Level 7 offense scoring 56 points. With the 120-point death enhancement, this would increase to a total of 176 points. This should be characterized as a Level 18 offense scoring 180 points.
8. **#12 – Fla. Stat. 782.071 – Killing Unborn Child with Reckless Driving (vehicular manslaughter) – Increase to Level 18** – Under the existing chart presently in force, this is currently a Level 7 offense scoring 56 points. With the 120-point death enhancement, this would increase to a total of 176 points. This should be characterized as a Level 18 offense scoring 180 points.

9. #13 – Fla. Stat. 782.072 – *Killing Person with Reckless Driving of a Vessel (vessel homicide)* – Increase to Level 18 – Under the existing chart presently in force, this is currently a Level 7 offense scoring 56 points. With the 120-point death enhancement, this would increase to a total of 176 points. This should be characterized as a Level 18 offense scoring 180 points.

10. #14 – Fla. Stat. 784.07(2)(d) – *Aggravated Battery on Law Enforcement Officer* – Increase to Level 16 – Under the existing chart presently in force, this is currently a Level 7 offense triggering 56 points. With a 1.5-times multiplier for law enforcement victim and a 40-point enhancement for severe injury, that would be increased to a total of 124 points. This must be characterized as a Level 16 offense scoring 122 points.

11. #15 – Fla. Stat. 784.074(1)(a) – *Aggravated Battery on Sexual Predators Facility Staff* – Increase to Level 16 – Under the existing chart presently in force, this is currently a Level 7 offense triggering 56 points. With a 1.5-times multiplier for law enforcement victim and a 40-point enhancement for severe injury, that would be increased to a total of 124 points. This must be characterized as a Level 16 offense scoring 122 points.

12. #16 – Fla. Stat. 784.07(2)(d) – *Aggravated Battery on Person 65+* – Increase to Level 14 – Under the existing chart presently in force, this is currently a Level 7 offense triggering 56 points. With a 40-point enhancement for severe injury, that would be increased to a total of 96 points. This must be characterized as a Level 14 offense scoring 92 points.

13. #17 – Fla. Stat. 784.081(1) – *Aggravated Battery on Specified Official/Employee* – Increase to Level 14 – Under the existing chart presently in force, this is currently a Level 7 offense triggering 56 points. With a 40-point enhancement for severe injury, that would be increased to a total of 96 points. This must be characterized as a Level 14 offense scoring 92 points.

14. #18 – Fla. Stat. 784.082(1) – *Aggravated Battery by Detained Person on Visitor or Other Detainee* – Increase to Level 15 – Under the existing chart presently in force, this is currently a Level 7 offense triggering 56 points. With a 40-point enhancement for severe injury and additional 4-point incarceration enhancement, that would be increased to a total of 100 points. This must be characterized as a Level 15 offense scoring 100 points.

15. #19 – Fla. Stat. 784.083(1) – *Aggravated Battery on Code Inspector* – Increase to Level 14 – Under the existing chart presently in force, this is currently a Level 7 offense triggering 56 points. With a 40-point enhancement for severe injury, that would be increased to a total of 96 points. This must be characterized as a Level 14 offense scoring 92 points.

16. #26 – Fla. Stat. 794.011(5)(a) – *Sexual battery, victim 12-18, offender 18+, no force likely to cause serious injury* – Increase to Level 17 – Under the existing chart presently in force, this is currently a Level 8 offense scoring 74 points. With an 80-point enhancement for penetration, that would be increased to a total of 154 points. This must be characterized as a Level 17 offense scoring 140 points.

17. #28 – Fla. Stat. 800.04(5)(e) – *Lewd and Lascivious molestation, victim 12-16, offender 18+ and prior sex conviction* – Increase to Level 15 – Under the existing chart presently in force, this is currently a Level 7 offense scoring 56 points. With the 40-point sexual contact enhancement, that is increased to a total of 96 points. This must be characterized as a Level 15 offense scoring 108 points.

18. #31 – Fla. Stat. 817.034(4)(a)1 – *Communications Fraud, \$50,000+ - Decrease to Level 12* – Under the existing chart presently in force, this is currently a Level 7 offense scoring 56 points. The other monetarily-based offenses in the proposed new Level 13 with no other aggravating factors (i.e., vulnerable population) are all triggered by \$100,000 or more. Conversely, the other monetarily-based offenses in the proposed new Level 12 are all triggered by \$50,000, like this one. Moreover, there does not seem to be a need to increase the points assigned to this offense by an additional 28 points. This should be characterized as a Level 12 offense.

19. #36 – Fla. Stat. 860.121(2)(c) – *Throwing or shooting objects in path of train resulting in great bodily harm* – Increase to Level 15 – Under the existing chart presently in force, this is currently a Level 8 offense scoring 74 points. With the 40-point enhancement for Severe Injury, that rises to a total of 114 points. This should be characterized as a Level 15 offense, scoring 108 points, to reflect our resolutions.

20. #42-56 – Fla. Stat. 893.135(1)(b)1.b to 893.135(1)(a)2 – *Trafficking various controlled substances* – Increase to Level 15 – Under the existing chart presently in force, each of these is currently a Level 8 offense scoring 74 points. With the 1.5-times point multiplier for Drug Trafficking offenses, each of these would be increased to a total of 111 points. Each offense should therefore be characterized as a Level 15 offense.

21. #61 – Fla. Stat. 896.101(5)(c) – *Money laundering, \$100,000+ - Increase to Level 14* – Under the existing chart presently in force, this is a Level 9 offense scoring 92 points. There is no basis for reducing the severity of this offense down to 84 points. Moreover, this is more serious than the accompanying offense of mere structuring, #61, also characterized at the new level 13. Consequently, this offense should be recharacterized as Level 14 to maintain its same point score.

### **Offense Level #14 (92 points)**

1. #2 – Fla. Stat. 316.193(3)(c)3.a – *DUI Manslaughter* – increase to Level 18 – Under the existing chart presently in force, this is currently a level 8 offense that scores 74 points. With a 120-point death enhancement, that would be increased to a total of 194 points. This must be characterized as a Level 18 offense scoring 180 points.
2. #3 – Fla. Stat. 316.193(3)(c)3.b – *DUI Manslaughter + Failure to Render Aid* – increase to Level 19 – Under the existing chart presently in force, this is currently a level 9 offense that scores 92 points. With a 120-point death enhancement, that would be increased to a total of 212 points. This is a more serious offense than DUI Manslaughter alone (discussed above). This must be characterized as a Level 19 offense scoring 240 points.
3. #4 – Fla. Stat. 316.1935(3)(b) – *Causing SBI/Death while driving at high speed to evade law enforcement with siren and lights activated* – increase to Level 18 – Under the existing chart presently in force, this is currently a level 7 offense that scores 56 points. With a 120-point death enhancement, and a 4-point fleeing enhancement, that would be increased to a total of 180 points. This must be characterized as a Level 18 offense scoring 180 points.
4. #5 – Fla. Stat. 327.35(3)(c)3.b – *BUI Manslaughter + Failure to Render Aid* – increase to Level 19 – Under the existing chart presently in force, this is currently a level 9 offense that scores 92 points. With a 120-point death enhancement, that would be increased to a total of 212 points. This is a more serious offense than BUI Manslaughter alone (discussed below). This must be characterized as a Level 19 offense scoring 240 points.
5. #6 – Fla. Stat. 327.35(3)(c)3 – *Vessel BUI Manslaughter* – increase to Level 18 – Under the existing chart presently in force, this is currently a level 8 offense that scores 74 points. With a 120-point death enhancement, that would be increased to a total of 194 points. This must be characterized as a Level 18 offense scoring 180 points.
6. #7 – Fla. Stat. 499.0051(8) – *Knowing sale or purchase of contraband drugs resulting in great bodily harm* – increase to Level 17 – Under the existing chart presently in force, this is currently a Level 9 offense that scores 92 points. With a 40-point severe injury enhancement, that scores 132 points. This must be characterized as a Level 17 offense scoring 140 points.
7. #10 – Fla. Stat. 782.07(2) – *Aggravated manslaughter of an elderly person or disabled adult* – increase to Level 19 – Under the existing chart presently in force, this is currently a Level 9 offense that scores 92 points. With a 120-point death enhancement, that scores 212 points. This must be characterized as a Level 19 offense scoring 240 points.
8. #11 – Fla. Stat. 782.071(1)(b) – *Committing vehicular homicide and failing to render aid or give information* – increase to Level 18 – Under the existing chart presently in force, this is currently a Level 8 offense that scores 74 points. With a 120-point death enhancement, that scores 194 points. This must be characterized as a Level 18 offense scoring 180 points.

9. #12 – Fla. Stat. 782.072(2) – *Committing vessel homicide and failing to render aid or give information* – increase to Level 18 – Under the existing chart presently in force, this is currently a Level 8 offense that scores 74 points. With a 120-point death enhancement, that scores 194 points. This must be characterized as a Level 18 offense scoring 180 points.

10. #22 – Fla. Stat. 794.011(4)(b) – *Sexual battery, certain circumstances; victim and offender 18 years of age or older* – increase to Level 18 – Under the existing chart presently in force, this is currently a Level 9 offense that scores 92 points. With an 80-point sexual penetration enhancement, that would be increased to a total of 172 points. This must be characterized as a Level 18 offense scoring 180 points.

11. #23 – Fla. Stat. 794.011(4)(c) – *Sexual battery, certain circumstances; victim 12 or older, defendant under 18* – increase to Level 17 or Level 18 – Under the existing chart presently in force, this is currently a Level 9 offense that scores 92 points. With an 80-point sexual penetration enhancement, that would be increased to a total of 172 points. Ordinarily, this should be characterized as a Level 18 offense scoring 180 points. However, since this has a mitigating factor (defendant under 18) not present in offense #22 above, consider whether it should be a lower ranking (Level 17, scoring 140 points).

12. #24 – Fla. Stat. 794.011(5)(d) – *Sexual battery; victim 12 or older, offender does not use force; offender has prior sex conviction* – increase to Level 17 or 18 – Under the existing chart presently in force, this is currently a Level 8 offense that scores 74 points. With an 80-point sexual penetration enhancement, that would be increased to a total of 154 points. This must be characterized as a Level 17 (140 points) or Level 18 offense (scoring 160 points).

13. #26 – Fla. Stat. 800.04(4)(c) – *Lewd or lascivious battery, offender over 18, offender has prior sex conviction* – increase to Level 16 – Under the existing chart presently in force, this is currently a Level 8 offense that scores 74 points. With a 40-point sexual contact enhancement, that would be increased to a total of 114 points. This must be characterized as a Level 16 offense (scoring 122 points).

14. #29 – Fla. Stat. 825.102(2) – *Aggravated Abuse of an Elderly Person or Disabled Adult* – increase to Level 16 – Under the existing chart presently in force, this is currently a Level 8 offense that scores 84 points. With a 40-point Severe Injury enhancement, that would be increased to a total of 114 points. This must be a Level 16 offense (scoring 122 points).

15. #30 – Fla. Stat. 800.1025(2) – *Lewd or lascivious battery of elderly person or disabled child* – increase to Level 16 – Under the chart presently in force, this is a Level 8 offense scoring 74 points. With a 40-point sexual contact enhancement, that would be increased to a total of 114 points. This must be characterized as a Level 16 offense (scoring 122 points).

16. #31 – Fla. Stat. 827.03(2)(a) – *Aggravated Child Abuse* – Increase to Level 17 – Under the existing chart presently in force, this is currently a Level 9 offense that scores 92 points. With a 40-point severe injury enhancement, that scores 132 points. This must be characterized as a Level 17 offense scoring 140 points.

17. #36-49 – Fla. Stat. 893.135(1)(a)-(n) – *Drug trafficking (various drugs)* – Increase to Level 17 – Under the existing chart presently in force, each is a Level 9 offense scoring 92 points. With 1.5-times enhancement for trafficking, that scores 138 points. Each must be characterized as a Level 17 offense scoring 140 points.

**Offense Level #15 (108 points)**

1. #1 – Fla. Stat. 499.0051(9) – *Selling contraband drugs resulting in death* – increase to Level 19 – Under the existing chart presently in force, this is currently a level 10 offense that scores 116 points. With a 120-point death enhancement, that would be increased to a total of 236 points. This must be characterized as a Level 19 offense scoring 240 points to be consistent with other resolutions.

2. #2 – Fla. Stat. 782.04(3) – *Accomplice to Felony Murder* – increase to Level 19 – Under the existing chart presently in force, this is currently a level 9 offense that scores 92 points. With a 120-point death enhancement, that would be increased to a total of 208 points. This must be characterized as a Level 19 offense scoring 240 points to be consistent with other resolutions.

3. #8 – Fla. Stat. 794.011(2) – *Sexual battery, victim under 12 and offender under 18* – increase to Level 18 – Under the existing chart presently in force, this is currently a level 9 offense that scores 92 points. With an 80-point sexual penetration enhancement, that would be increased to a total of 172 points. This must be characterized as a Level 18 offense scoring 180 points to be consistent with other resolutions.

4. #9 – Fla. Stat. 794.011(4)(a) – *Sexual battery, victim 12-18, offender over 18* – increase to Level 18 – Under the existing chart presently in force, this is currently a level 9 offense that scores 92 points. With an 80-point sexual penetration enhancement, that would be increased to a total of 172 points. This must be characterized as a Level 18 offense scoring 180 points to be consistent with other resolutions.

5. #12 – Fla. Stat. 812.135(2)(a) – *Home invasion robbery with firearm* – Increase to Level 16 – Under the existing chart presently in force, this is currently a level 10 offense that scores 116 points. This is a terrifying offense, in the sanctity of one's home, when a person or their children are present, that creates a serious risk of sexual assault or death. There is no basis for decreasing the points assigned to it. This should be increased to level 16 so the assigned points are not reduced.

### **Offense Level #16 (124 points)**

1. #1 – Fla. Stat. 782.04(2) – *Second-degree murder* – Increase to Level 20 – Under the existing chart presently in force, this is currently a level 10 offense that scores 116 points. With the 240-point second-degree murder enhancement, that is increased to a total of 356 points. This must be characterized a Level 20 offense scoring 360 points to be consistent with other resolutions.

2. #2 – Fla. Stat. 782.07(3) – *Aggravated manslaughter of a child* – Increase to Level 19 – Under the existing chart presently in force, this is currently a level 10 offense that scores 116 points. With the 120-point death enhancement, that would be increased to a total of 236 points. This must be characterized a Level 19 offense scoring 240 points to be consistent with other resolutions.

3. #4 – Fla. Stat. 787.01(3)(a) – *Kidnapping of child under 13 with commission of molestation or sexual battery* – Increase to Level 19 – Under the chart presently in force, this is currently a level 10 offense scoring 116 points. With the adult-on-minor sexual offense enhancement (which doubles the points), that increases to a total of 232 points. This must be characterized a Level 19 offense scoring 240 points to be consistent with other resolutions.

4. #5 – Fla. Stat. 787.02(3)(a) – *False imprisonment of child under 13 with commission of molestation or sexual battery* – Increase to Level 18 – Under the existing chart presently in force, this is currently a level 9 offense that scores 92 points. With the adult-on-minor sexual offense enhancement (which doubles the point value), that is raised to a total of 184 points. This must be characterized a Level 18 offense scoring 180 points to be consistent with other resolutions.

5. #8 – Fla. Stat. 794.011(3) – *Sexual battery, victim 12 or under; offender uses/threatens force to cause injury* – Increase to Level 19 – In the chart presently in force, this is a level 10 offense scoring 116 points. With the severe injury enhancement of 40 points & sex penetration enhancement of 80 points, that is raised to 236 points. This must be characterized as a Level 19 offense scoring 240 points to be consistent with other resolutions.

6. #9 – Fla. Stat. 794.011(4)(d) – *Sexual battery, victim over 12, offender had previous sex convictions* – Increase to Level 18 – Under the existing chart presently in force, this is currently a level 9 offense that scores 92 points. With the sex penetration enhancement of 80 points, this would be increased to a total of 172 points. This must be characterized as a Level 18 offense scoring 180 points to be consistent with other resolutions.

7. #10 – Fla. Stat. 794.011(8)(b) – *Sexual battery, victim is 12-18 years old, offender had custody of them* – Increase to Level 18 – Under the existing chart presently in force, this is currently a level 9 offense that scores 92 points. With the sex penetration enhancement of 80 points, this would be increased to a total of 172 points. This must be characterized as a new Level 18 offense scoring 180 points to be consistent with other resolutions.

8. #11 – Fla. Stat. 800.04(5)(b) – *Molestation, victim under 12, offender over 18* – Increase to Level 18 – Under the existing chart presently in force, this is currently a level 9 offense that scores 92 points. With the sex penetration enhancement of 80 points, that is increased to a total of 172 points. This must be characterized as a new Level 18 offense scoring 180 points to be consistent with other resolutions.

**Notes on New Offense Levels**

**Current System**

Existing Offense Level	Current Points
1	4
2	10
3	16
4	22
5	28
6	36
7	56
8	74
9	92
10	116

*Levels 1 – 4 (22 or less points): non-prison sanction may be required*

*Levels 1 – 6 (44 or less points): non-prison sanction possible*

*Levels 7 – 10 (over 44 points): prison sentence required*

**Recommended New System**

New Offense Level	Recommended Points
1	4
2	8
3	12
4	16
5	22
6	28
7	36
8	46
9	52
10	60
11	68
12	76
13	84
14	92
15	108
16	<b><u>124</u></b>
17	140
18	180
19	240
20	360

White background: general offense levels  
 Grey background: enhanced offense levels to reflect eliminating large enhancements

*Levels 1 – 5 (22 or less points): non-prison sanction may be required*

*Levels 1 – 8 (44 or less points): non-prison sanction possible*

*Levels 9 – 16 (over 44 points): prison sentence required*

DRAFT