

# SENATE AMENDMENT NO. \_\_\_\_\_

Offered by \_\_\_\_\_ of \_\_\_\_\_

Amend \_\_\_\_\_ SCS/Senate Bill No. 6, Page 31, Section 195.805, Line 15,

2 by inserting immediately after said line the following:

3 "556.061. In this code, unless the context requires a  
4 different definition, the following terms shall mean:

5 (1) "Access", to instruct, communicate with, store data in,  
6 retrieve or extract data from, or otherwise make any use of any  
7 resources of, a computer, computer system, or computer network;

8 (2) "Affirmative defense":

9 (a) The defense referred to is not submitted to the trier  
10 of fact unless supported by evidence; and

11 (b) If the defense is submitted to the trier of fact the  
12 defendant has the burden of persuasion that the defense is more  
13 probably true than not;

14 (3) "Burden of injecting the issue":

15 (a) The issue referred to is not submitted to the trier of  
16 fact unless supported by evidence; and

17 (b) If the issue is submitted to the trier of fact any  
18 reasonable doubt on the issue requires a finding for the  
19 defendant on that issue;

20 (4) "Commercial film and photographic print processor", any  
21 person who develops exposed photographic film into negatives,  
22 slides or prints, or who makes prints from negatives or slides,  
23 for compensation. The term commercial film and photographic

1 print processor shall include all employees of such persons but  
2 shall not include a person who develops film or makes prints for  
3 a public agency;

4 (5) "Computer", the box that houses the central processing  
5 unit (CPU), along with any internal storage devices, such as  
6 internal hard drives, and internal communication devices, such as  
7 internal modems capable of sending or receiving electronic mail  
8 or fax cards, along with any other hardware stored or housed  
9 internally. Thus, computer refers to hardware, software and data  
10 contained in the main unit. Printers, external modems attached  
11 by cable to the main unit, monitors, and other external  
12 attachments will be referred to collectively as peripherals and  
13 discussed individually when appropriate. When the computer and  
14 all peripherals are referred to as a package, the term "computer  
15 system" is used. Information refers to all the information on a  
16 computer system including both software applications and data;

17 (6) "Computer equipment", computers, terminals, data  
18 storage devices, and all other computer hardware associated with  
19 a computer system or network;

20 (7) "Computer hardware", all equipment which can collect,  
21 analyze, create, display, convert, store, conceal or transmit  
22 electronic, magnetic, optical or similar computer impulses or  
23 data. Hardware includes, but is not limited to, any data  
24 processing devices, such as central processing units, memory  
25 typewriters and self-contained laptop or notebook computers;  
26 internal and peripheral storage devices, transistor-like binary  
27 devices and other memory storage devices, such as floppy disks,  
28 removable disks, compact disks, digital video disks, magnetic  
29 tape, hard drive, optical disks and digital memory; local area

1 networks, such as two or more computers connected together to a  
2 central computer server via cable or modem; peripheral input or  
3 output devices, such as keyboards, printers, scanners, plotters,  
4 video display monitors and optical readers; and related  
5 communication devices, such as modems, cables and connections,  
6 recording equipment, RAM or ROM units, acoustic couplers,  
7 automatic dialers, speed dialers, programmable telephone dialing  
8 or signaling devices and electronic tone-generating devices; as  
9 well as any devices, mechanisms or parts that can be used to  
10 restrict access to computer hardware, such as physical keys and  
11 locks;

12 (8) "Computer network", two or more interconnected  
13 computers or computer systems;

14 (9) "Computer program", a set of instructions, statements,  
15 or related data that directs or is intended to direct a computer  
16 to perform certain functions;

17 (10) "Computer software", digital information which can be  
18 interpreted by a computer and any of its related components to  
19 direct the way they work. Software is stored in electronic,  
20 magnetic, optical or other digital form. The term commonly  
21 includes programs to run operating systems and applications, such  
22 as word processing, graphic, or spreadsheet programs, utilities,  
23 compilers, interpreters and communications programs;

24 (11) "Computer-related documentation", written, recorded,  
25 printed or electronically stored material which explains or  
26 illustrates how to configure or use computer hardware, software  
27 or other related items;

28 (12) "Computer system", a set of related, connected or  
29 unconnected, computer equipment, data, or software;

1 (13) "Confinement":

2 (a) A person is in confinement when such person is held in  
3 a place of confinement pursuant to arrest or order of a court,  
4 and remains in confinement until:

5 a. A court orders the person's release; or

6 b. The person is released on bail, bond, or recognizance,  
7 personal or otherwise; or

8 c. A public servant having the legal power and duty to  
9 confine the person authorizes his release without guard and  
10 without condition that he return to confinement;

11 (b) A person is not in confinement if:

12 a. The person is on probation or parole, temporary or  
13 otherwise; or

14 b. The person is under sentence to serve a term of  
15 confinement which is not continuous, or is serving a sentence  
16 under a work-release program, and in either such case is not  
17 being held in a place of confinement or is not being held under  
18 guard by a person having the legal power and duty to transport  
19 the person to or from a place of confinement;

20 (14) "Consent": consent or lack of consent may be  
21 expressed or implied. Assent does not constitute consent if:

22 (a) It is given by a person who lacks the mental capacity  
23 to authorize the conduct charged to constitute the offense and  
24 such mental incapacity is manifest or known to the actor; or

25 (b) It is given by a person who by reason of youth, mental  
26 disease or defect, intoxication, a drug-induced state, or any  
27 other reason is manifestly unable or known by the actor to be  
28 unable to make a reasonable judgment as to the nature or  
29 harmfulness of the conduct charged to constitute the offense; or

1 (c) It is induced by force, duress or deception;

2 (15) "Controlled substance", a drug, substance, or  
3 immediate precursor in schedules I through V as defined in  
4 chapter 195;

5 (16) "Criminal negligence", failure to be aware of a  
6 substantial and unjustifiable risk that circumstances exist or a  
7 result will follow, and such failure constitutes a gross  
8 deviation from the standard of care which a reasonable person  
9 would exercise in the situation;

10 (17) "Custody", a person is in custody when he or she has  
11 been arrested but has not been delivered to a place of  
12 confinement;

13 (18) "Damage", when used in relation to a computer system  
14 or network, means any alteration, deletion, or destruction of any  
15 part of the computer system or network;

16 (19) "Dangerous felony", the felonies of arson in the first  
17 degree, assault in the first degree, attempted rape in the first  
18 degree if physical injury results, attempted forcible rape if  
19 physical injury results, attempted sodomy in the first degree if  
20 physical injury results, attempted forcible sodomy if physical  
21 injury results, rape in the first degree, forcible rape, sodomy  
22 in the first degree, forcible sodomy, assault in the second  
23 degree if the victim of such assault is a special victim as  
24 defined in subdivision (14) of section 565.002, kidnapping in the  
25 first degree, kidnapping, murder in the second degree, assault of  
26 a law enforcement officer in the first degree, domestic assault  
27 in the first degree, elder abuse in the first degree, robbery in  
28 the first degree, statutory rape in the first degree when the  
29 victim is a child less than twelve years of age at the time of

1 the commission of the act giving rise to the offense, statutory  
2 sodomy in the first degree when the victim is a child less than  
3 twelve years of age at the time of the commission of the act  
4 giving rise to the offense, child molestation in the first or  
5 second degree, abuse of a child if the child dies as a result of  
6 injuries sustained from conduct chargeable under section 568.060,  
7 child kidnapping, parental kidnapping committed by detaining or  
8 concealing the whereabouts of the child for not less than one  
9 hundred twenty days under section 565.153, and an  
10 "intoxication-related traffic offense" or "intoxication-related  
11 boating offense" if the person is found to be a "habitual  
12 offender" or "habitual boating offender" as such terms are  
13 defined in section 577.001, and delivery of a controlled  
14 substance when the substance is a mixture or substance containing  
15 a detectable amount of heroin;

16 (20) "Dangerous instrument", any instrument, article or  
17 substance, which, under the circumstances in which it is used, is  
18 readily capable of causing death or other serious physical  
19 injury;

20 (21) "Data", a representation of information, facts,  
21 knowledge, concepts, or instructions prepared in a formalized or  
22 other manner and intended for use in a computer or computer  
23 network. Data may be in any form including, but not limited to,  
24 printouts, microfiche, magnetic storage media, punched cards and  
25 as may be stored in the memory of a computer;

26 (22) "Deadly weapon", any firearm, loaded or unloaded, or  
27 any weapon from which a shot, readily capable of producing death  
28 or serious physical injury, may be discharged, or a switchblade  
29 knife, dagger, billy club, blackjack or metal knuckles;

1           (23) "Digital camera", a camera that records images in a  
2 format which enables the images to be downloaded into a computer;

3           (24) "Disability", a mental, physical, or developmental  
4 impairment that substantially limits one or more major life  
5 activities or the ability to provide adequately for one's care or  
6 protection, whether the impairment is congenital or acquired by  
7 accident, injury or disease, where such impairment is verified by  
8 medical findings;

9           (25) "Elderly person", a person sixty years of age or  
10 older;

11           (26) "Felony", an offense so designated or an offense for  
12 which persons found guilty thereof may be sentenced to death or  
13 imprisonment for a term of more than one year;

14           (27) "Forcible compulsion" either:

15           (a) Physical force that overcomes reasonable resistance; or

16           (b) A threat, express or implied, that places a person in  
17 reasonable fear of death, serious physical injury or kidnapping  
18 of such person or another person;

19           (28) "Incapacitated", a temporary or permanent physical or  
20 mental condition in which a person is unconscious, unable to  
21 appraise the nature of his or her conduct, or unable to  
22 communicate unwillingness to an act;

23           (29) "Infraction", a violation defined by this code or by  
24 any other statute of this state if it is so designated or if no  
25 sentence other than a fine, or fine and forfeiture or other civil  
26 penalty, is authorized upon conviction;

27           (30) "Inhabitable structure", a vehicle, vessel or  
28 structure:

29           (a) Where any person lives or carries on business or other

1 calling; or

2 (b) Where people assemble for purposes of business,  
3 government, education, religion, entertainment, or public  
4 transportation; or

5 (c) Which is used for overnight accommodation of persons.  
6

7 Any such vehicle, vessel, or structure is inhabitable regardless  
8 of whether a person is actually present. If a building or  
9 structure is divided into separately occupied units, any unit not  
10 occupied by the actor is an inhabitable structure of another;

11 (31) "Knowingly", when used with respect to:

12 (a) Conduct or attendant circumstances, means a person is  
13 aware of the nature of his or her conduct or that those  
14 circumstances exist; or

15 (b) A result of conduct, means a person is aware that his  
16 or her conduct is practically certain to cause that result;

17 (32) "Law enforcement officer", any public servant having  
18 both the power and duty to make arrests for violations of the  
19 laws of this state, and federal law enforcement officers  
20 authorized to carry firearms and to make arrests for violations  
21 of the laws of the United States;

22 (33) "Misdemeanor", an offense so designated or an offense  
23 for which persons found guilty thereof may be sentenced to  
24 imprisonment for a term of which the maximum is one year or less;

25 (34) "Of another", property that any entity, including but  
26 not limited to any natural person, corporation, limited liability  
27 company, partnership, association, governmental subdivision or  
28 instrumentality, other than the actor, has a possessory or  
29 proprietary interest therein, except that property shall not be



1 deemed property of another who has only a security interest  
2 therein, even if legal title is in the creditor pursuant to a  
3 conditional sales contract or other security arrangement;

4 (35) "Offense", any felony or misdemeanor;

5 (36) "Physical injury", slight impairment of any function  
6 of the body or temporary loss of use of any part of the body;

7 (37) "Place of confinement", any building or facility and  
8 the grounds thereof wherein a court is legally authorized to  
9 order that a person charged with or convicted of a crime be held;

10 (38) "Possess" or "possessed", having actual or  
11 constructive possession of an object with knowledge of its  
12 presence. A person has actual possession if such person has the  
13 object on his or her person or within easy reach and convenient  
14 control. A person has constructive possession if such person has  
15 the power and the intention at a given time to exercise dominion  
16 or control over the object either directly or through another  
17 person or persons. Possession may also be sole or joint. If one  
18 person alone has possession of an object, possession is sole. If  
19 two or more persons share possession of an object, possession is  
20 joint;

21 (39) "Property", anything of value, whether real or  
22 personal, tangible or intangible, in possession or in action;

23 (40) "Public servant", any person employed in any way by a  
24 government of this state who is compensated by the government by  
25 reason of such person's employment, any person appointed to a  
26 position with any government of this state, or any person elected  
27 to a position with any government of this state. It includes,  
28 but is not limited to, legislators, jurors, members of the  
29 judiciary and law enforcement officers. It does not include

1 witnesses;

2 (41) "Purposely", when used with respect to a person's  
3 conduct or to a result thereof, means when it is his or her  
4 conscious object to engage in that conduct or to cause that  
5 result;

6 (42) "Recklessly", consciously disregarding a substantial  
7 and unjustifiable risk that circumstances exist or that a result  
8 will follow, and such disregard constitutes a gross deviation  
9 from the standard of care which a reasonable person would  
10 exercise in the situation;

11 (43) "Serious emotional injury", an injury that creates a  
12 substantial risk of temporary or permanent medical or  
13 psychological damage, manifested by impairment of a behavioral,  
14 cognitive or physical condition. Serious emotional injury shall  
15 be established by testimony of qualified experts upon the  
16 reasonable expectation of probable harm to a reasonable degree of  
17 medical or psychological certainty;

18 (44) "Serious physical injury", physical injury that  
19 creates a substantial risk of death or that causes serious  
20 disfigurement or protracted loss or impairment of the function of  
21 any part of the body;

22 (45) "Services", when used in relation to a computer system  
23 or network, means use of a computer, computer system, or computer  
24 network and includes, but is not limited to, computer time, data  
25 processing, and storage or retrieval functions;

26 (46) "Sexual orientation", male or female heterosexuality,  
27 homosexuality or bisexuality by inclination, practice, identity  
28 or expression, or having a self-image or identity not  
29 traditionally associated with one's gender;

1 (47) "Vehicle", a self-propelled mechanical device designed  
2 to carry a person or persons, excluding vessels or aircraft;

3 (48) "Vessel", any boat or craft propelled by a motor or by  
4 machinery, whether or not such motor or machinery is a principal  
5 source of propulsion used or capable of being used as a means of  
6 transportation on water, or any boat or craft more than twelve  
7 feet in length which is powered by sail alone or by a combination  
8 of sail and machinery, and used or capable of being used as a  
9 means of transportation on water, but not any boat or craft  
10 having, as the only means of propulsion, a paddle or oars;

11 (49) "Voluntary act":

12 (a) A bodily movement performed while conscious as a result  
13 of effort or determination. Possession is a voluntary act if the  
14 possessor knowingly procures or receives the thing possessed, or  
15 having acquired control of it was aware of his or her control for  
16 a sufficient time to have enabled him or her to dispose of it or  
17 terminate his or her control; or

18 (b) An omission to perform an act of which the actor is  
19 physically capable. A person is not guilty of an offense based  
20 solely upon an omission to perform an act unless the law defining  
21 the offense expressly so provides, or a duty to perform the  
22 omitted act is otherwise imposed by law;

23 (50) "Vulnerable person", any person in the custody, care,  
24 or control of the department of mental health who is receiving  
25 services from an operated, funded, licensed, or certified  
26 program."; and

27 Further amend said bill, page 32, section 579.015, line 26,  
28 by inserting immediately after said line the following:

29 "579.020. 1. A person commits the offense of delivery of a

1 controlled substance if, except as authorized in this chapter or  
2 chapter 195, he or she:

3 (1) Knowingly distributes or delivers a controlled  
4 substance;

5 (2) Attempts to distribute or deliver a controlled  
6 substance;

7 (3) Knowingly possesses a controlled substance with the  
8 intent to distribute or deliver any amount of a controlled  
9 substance; or

10 (4) Knowingly permits a minor to purchase or transport  
11 illegally obtained controlled substances.

12 2. Except when the controlled substance is thirty-five  
13 grams or less of marijuana or synthetic cannabinoid or as  
14 otherwise provided under subsection 5 of this section, the  
15 offense of delivery of a controlled substance is a class C  
16 felony.

17 3. Except as otherwise provided under subsection 4 of this  
18 section, the offense of delivery of thirty-five grams or less of  
19 marijuana or synthetic cannabinoid is a class E felony.

20 4. The offense of delivery of thirty-five grams or less of  
21 marijuana or synthetic cannabinoid to a person less than  
22 seventeen years of age who is at least two years younger than the  
23 defendant is a class C felony.

24 5. The offense of delivery of a controlled substance is a  
25 class B felony if:

26 (1) The delivery or distribution is any amount of a  
27 controlled substance except thirty-five grams or less of  
28 marijuana or synthetic cannabinoid, to a person less than  
29 seventeen years of age who is at least two years younger than the

1 defendant; [or]

2 (2) The person knowingly permits a minor to purchase or  
3 transport illegally obtained controlled substances; or

4 (3) The person knowingly distributes or delivers a mixture  
5 or substance containing a detectable amount of heroin."; and

6 Further amend the title and enacting clause accordingly.

7