

By Representative Trovillion

1 A bill to be entitled
2 An act relating to controlled substances and
3 other regulated chemical substances; amending
4 s. 316.193, F.S., relating to the offense of
5 driving under the influence and penalties;
6 providing that a person commits the offense of
7 driving under the influence when any amount of
8 a harmful chemical substance specified under s.
9 877.111, F.S., or a controlled substance under
10 chapter 893, F.S., is present in the person's
11 blood or urine, regardless of the presence of
12 alcohol in the person's breath or blood;
13 providing a defense; providing penalties;
14 reenacting s. 318.143(1), (4), and (5), F.S.,
15 relating to sanctions for infractions by
16 minors, s. 318.17(3) and (8), F.S., relating to
17 excepted offenses, s. 322.03(2), F.S., relating
18 to driver's license requirement and penalties
19 for violation of requirement, s.
20 322.0602(2)(a), F.S., relating to Youthful
21 Drunk Driver Visitation Program, s. 322.12(2),
22 F.S., relating to examination of driver's
23 license applicants, s. 322.25(5), F.S.,
24 relating to forwarding of surrendered licenses
25 and reporting of certain convictions, s.
26 322.2615(1), (2), (7), (8)(b), (10)(b), and
27 (14), F.S., relating to suspension of license
28 and right to review, s. 322.2616(1)(a), (15),
29 and (18), F.S., relating to suspension of
30 license of person under 21 years of age and
31 right to review, s. 322.264(1)(b), F.S.,

1 relating to definition of "habitual traffic
2 offender," s. 322.271(2)(a) and (c) and (4),
3 F.S., relating to authority to modify
4 revocation, cancellation, or suspension order,
5 s. 322.282(2)(a), F.S., relating to procedure
6 when court revokes or suspends license or
7 driving privilege and orders reinstatement, s.
8 322.291, F.S., relating to driver improvement
9 school course requirements for certain
10 violators, s. 322.44, F.S., relating to Driver
11 License Compact, s. 322.62(3), F.S., relating
12 to driving-under-the-influence violations by
13 commercial motor vehicle operators, s.
14 322.63(2)(d) and (6), F.S., relating to alcohol
15 or drug testing of commercial motor vehicle
16 operators, s. 322.64(1), (2), (7)(a), (8)(b),
17 (14), and (15), F.S., relating to driving with
18 unlawful blood-alcohol level and refusal to
19 submit to breath, urine, or blood test by
20 holder of commercial driver's license, s.
21 327.35(6), F.S., relating to
22 boating-under-the-influence offenses and
23 penalties, s. 397.405(10), F.S., relating to
24 certain licensure exemptions, s. 440.09(7)(b),
25 F.S., relating to worker's compensation
26 coverage, s. 493.6101(1)(d), F.S., relating to
27 certain license requirements, s. 627.758(4),
28 F.S., relating to conditions and limit for
29 surety on auto club traffic arrest bond and
30 bail bond; s. 790.06(2)(f) and (10)(f), F.S.,
31 relating to license to carry concealed weapon

1 or firearm, s. 903.36(2), F.S., relating to
2 guaranteed arrest bond certificates as cash
3 bail, s. 921.0022(3)(f), (g), (h), and (i),
4 F.S., relating to the Criminal Punishment Code
5 offense severity ranking chart, s. 938.07,
6 F.S., relating to court costs for the offense
7 of driving under the influence, s. 938.21,
8 F.S., relating to alcohol and drug abuse
9 programs, s. 938.23(1), F.S., relating to
10 assistance grants for alcohol and other drug
11 abuse programs, and s. 960.03(3)(b), F.S.,
12 relating to certain definitions with respect to
13 crimes compensation, to incorporate said
14 amendment in references; amending s. 893.03,
15 F.S.; providing for inclusion in the Schedule I
16 list of controlled substances of all mushroom
17 species in the genera psilocybe and conocybe;
18 reenacting s. 782.04(1)(a) and (4)(1), F.S.,
19 relating to murder, s. 817.563(1), F.S.,
20 relating to penalties for sale of substances in
21 lieu of specified controlled substances, s.
22 831.31(1)(a), F.S., relating to penalties for
23 selling, manufacturing, delivering, or
24 possessing with intent to sell, manufacture, or
25 deliver counterfeit controlled substance, s.
26 893.12(2)(b), (c), and (d), F.S., relating to
27 seizure, forfeiture, and sale of contraband,
28 and s. 893.13(1)(a), (c), (d), and (e), (2)(a),
29 (4)(b), (5)(b), (6)(a), (7), and (8), F.S.,
30 relating to prohibited acts and penalties, to
31 incorporate said amendment in references;

1 creating s. 893.133, F.S.; providing that proof
2 of possession by a person of specified
3 quantities of crack cocaine, powder cocaine,
4 cannabis, heroin, amphetamine, or
5 methamphetamine gives rise to an inference that
6 the person was possessing with intent to sell
7 or deliver the respective substance; amending
8 s. 893.135, F.S., relating to the offense of
9 trafficking in cannabis; providing that knowing
10 sale, purchase, manufacture, delivery, or
11 bringing into the state, or actual or
12 constructive possession, of 10 pounds or more
13 of cannabis constitutes the first degree felony
14 offense of trafficking in cannabis; providing
15 penalties; providing for applicability of the
16 Criminal Punishment Code; reenacting s.
17 397.451(7), F.S., relating to background checks
18 of certain service provider personnel who have
19 direct contact with unmarried minor clients or
20 clients who are developmentally disabled, s.
21 414.095(1), F.S., relating to determining
22 eligibility for the WAGES program, s.
23 772.12(2), F.S., relating to the Drug Dealer
24 Liability Act, s. 782.04(1)(a), (3)(a), and
25 (4)(a), F.S., relating to murder, s.
26 893.1351(1), F.S., relating to lease or rent
27 for the purpose of trafficking in a controlled
28 substance, s. 903.133, F.S., relating to
29 prohibitions against bail on appeal of certain
30 felony convictions, s. 907.041(4)(b), F.S.,
31 relating to pretrial detention and release, s.

1 921.0024(1)(b), F.S., relating to the Criminal
2 Punishment Code worksheet computations and
3 scoresheets, s. 921.142(2), F.S., relating to
4 further proceedings to determine sentence of
5 death or life imprisonment for capital drug
6 trafficking felonies, s. 943.0585, F.S.,
7 relating to court-ordered expunction of
8 criminal history records, and s. 943.059, F.S.,
9 relating to court-ordered sealing of criminal
10 history records, to incorporate said amendment
11 in references; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Paragraph (d) is added to subsection (1) of
16 section 316.193, Florida Statutes, to read:

17 316.193 Driving under the influence; penalties.--

18 (1) A person is guilty of the offense of driving under
19 the influence and is subject to punishment as provided in
20 subsection (2) if the person is driving or in actual physical
21 control of a vehicle within this state and:

22 (a) The person is under the influence of alcoholic
23 beverages, any chemical substance set forth in s. 877.111, or
24 any substance controlled under chapter 893, when affected to
25 the extent that the person's normal faculties are impaired;

26 (b) The person has a blood-alcohol level of 0.08 or
27 more grams of alcohol per 100 milliliters of blood; ~~or~~

28 (c) The person has a breath-alcohol level of 0.08 or
29 more grams of alcohol per 210 liters of breath; ~~or-~~

30 (d) There is any amount of a chemical substance set
31 forth in s. 877.111 or any substance controlled under chapter

1 893 present in the person's blood or urine, or both, including
2 the metabolites and derivatives of each or both, without
3 regard to whether or not any alcohol is present in the
4 person's breath or blood. It is a defense to this paragraph
5 that the person consumed the chemical substance or controlled
6 substance under a valid prescription or order of a licensed
7 medical practitioner who acted in the course of the
8 practitioner's professional practice.

9 (2)(a) Except as provided in paragraph (b), subsection
10 (3), or subsection (4), any person who is convicted of a
11 violation of subsection (1) shall be punished:

12 1. By a fine of:

13 a. Not less than \$250 or more than \$500 for a first
14 conviction.

15 b. Not less than \$500 or more than \$1,000 for a second
16 conviction.

17 c. Not less than \$1,000 or more than \$2,500 for a
18 third conviction; and

19 2. By imprisonment for:

20 a. Not more than 6 months for a first conviction.

21 b. Not more than 9 months for a second conviction.

22 c. Not more than 12 months for a third conviction.

23 (b) Any person who is convicted of a fourth or
24 subsequent violation of this section is guilty of a felony of
25 the third degree, punishable as provided in s. 775.082, s.
26 775.083, or s. 775.084; however, the fine imposed for such
27 fourth or subsequent violation may be not less than \$1,000.

28 (3) Any person:

29 (a) Who is in violation of subsection (1);

30 (b) Who operates a vehicle; and

31 (c) Who, by reason of such operation, causes:

- 1 1. Damage to the property or person of another commits
2 a misdemeanor of the first degree, punishable as provided in
3 s. 775.082 or s. 775.083.
- 4 2. Serious bodily injury to another, as defined in s.
5 316.1933, commits a felony of the third degree, punishable as
6 provided in s. 775.082, s. 775.083, or s. 775.084.
- 7 3. The death of any human being commits DUI
8 manslaughter, and commits:
- 9 a. A felony of the second degree, punishable as
10 provided in s. 775.082, s. 775.083, or s. 775.084.
- 11 b. A felony of the first degree, punishable as
12 provided in s. 775.082, s. 775.083, or s. 775.084, if:
- 13 (I) At the time of the accident, the person knew, or
14 should have known, that the accident occurred; and
- 15 (II) The person failed to give information and render
16 aid as required by s. 316.062.
- 17 (4) Any person who is convicted of a violation of
18 subsection (1) and who has a blood-alcohol level or
19 breath-alcohol level of 0.20 or higher, or any person who is
20 convicted of a violation of subsection (1) and who at the time
21 of the offense was accompanied in the vehicle by a person
22 under the age of 18 years, shall be punished:
- 23 (a) By a fine of:
- 24 1. Not less than \$500 or more than \$1,000 for a first
25 conviction.
- 26 2. Not less than \$1,000 or more than \$2,000 for a
27 second conviction.
- 28 3. Not less than \$2,000 or more than \$5,000 for a
29 third conviction.
- 30 (b) By imprisonment for:
- 31 1. Not more than 9 months for a first conviction.

1 2. Not more than 12 months for a second conviction.

2 3. Not more than 12 months for a third conviction.

3

4 For the purposes of this subsection, any conviction for a
5 violation of s. 327.35, only the instant offense is required
6 to be a violation of subsection (1) by a person who has a
7 blood-alcohol level or breath-alcohol level of 0.20 or higher.

8 (5) The court shall place any offender convicted of
9 violating this section on monthly reporting probation and
10 shall require attendance at a substance abuse course licensed
11 by the department; and the agency conducting the course may
12 refer the offender to an authorized service provider for
13 substance abuse evaluation and treatment, in addition to any
14 sentence or fine imposed under this section. The offender
15 shall assume reasonable costs for such education, evaluation,
16 and treatment, with completion of all such education,
17 evaluation, and treatment being a condition of reporting
18 probation. Treatment resulting from a psychosocial evaluation
19 may not be waived without a supporting psychosocial evaluation
20 conducted by an agency appointed by the court and with access
21 to the original evaluation. The offender shall bear the cost
22 of this procedure. The term "substance abuse" means the abuse
23 of alcohol or any substance named or described in Schedules I
24 through V of s. 893.03. If an offender referred to treatment
25 under this subsection fails to report for or complete such
26 treatment or fails to complete the substance abuse education
27 course, the DUI program shall notify the court and the
28 department of the failure. Upon receipt of the notice, the
29 department shall cancel the offender's driving privilege. The
30 department shall reinstate the driving privilege when the
31 offender completes the substance abuse education course or

1 enters treatment required under this subsection. The
2 organization that conducts the substance abuse education and
3 evaluation may not provide required substance abuse treatment
4 unless a waiver has been granted to that organization by the
5 department. A waiver may be granted only if the department
6 determines, in accordance with its rules, that the service
7 provider that conducts the substance abuse education and
8 evaluation is the most appropriate service provider and is
9 licensed under chapter 397 or is exempt from such licensure.
10 All DUI treatment programs providing treatment services on
11 January 1, 1994, shall be allowed to continue to provide such
12 services until the department determines whether a waiver
13 should be granted. A statistical referral report shall be
14 submitted quarterly to the department by each organization
15 authorized to provide services under this section.

16 (6) With respect to any person convicted of a
17 violation of subsection (1), regardless of any penalty imposed
18 pursuant to subsection (2), subsection (3), or subsection (4):

19 (a) For the first conviction, the court shall place
20 the defendant on probation for a period not to exceed 1 year
21 and, as a condition of such probation, shall order the
22 defendant to participate in public service or a community work
23 project for a minimum of 50 hours; or the court may order
24 instead, that any defendant pay an additional fine of \$10 for
25 each hour of public service or community work otherwise
26 required, if, after consideration of the residence or location
27 of the defendant at the time public service or community work
28 is required, payment of the fine is in the best interests of
29 the state. However, the total period of probation and
30 incarceration may not exceed 1 year.

31

1 (b) For the second conviction for an offense that
2 occurs within a period of 5 years after the date of a prior
3 conviction for violation of this section, the court shall
4 order imprisonment for not less than 10 days. At least 48
5 hours of confinement must be consecutive.

6 (c) For the third or subsequent conviction for an
7 offense that occurs within a period of 10 years after the date
8 of a prior conviction for violation of this section, the court
9 shall order imprisonment for not less than 30 days. At least
10 48 hours of confinement must be consecutive.

11 (d) In addition to the penalty imposed under paragraph
12 (a), paragraph (b), or paragraph (c), the court shall also
13 order the impoundment or immobilization of the vehicle that
14 was driven by, or in the actual physical control of, the
15 offender, unless the court finds that the family of the owner
16 of the vehicle has no other public or private means of
17 transportation. The period of impoundment or immobilization is
18 10 days, or, for the second conviction within 3 years, 30
19 days, or, for the third conviction within 5 years, 90 days and
20 may not be concurrent with probation or imprisonment. If the
21 vehicle is leased or rented, the period of impoundment or
22 immobilization may not extend beyond the expiration of the
23 lease or rental agreement. Within 7 business days after the
24 date that the court issues the order of impoundment or
25 immobilization, the clerk of the court shall send notice by
26 certified mail, return receipt requested, to the registered
27 owner of the vehicle if the registered owner is a person other
28 than the offender and to each person of record claiming a lien
29 against the vehicle. All costs and fees for the impoundment or
30 immobilization, including the cost of notification, must be
31 paid by the owner of the vehicle or, if the vehicle is leased

1 or rented, by the person leasing or renting the vehicle. The
2 person who owns a vehicle that is impounded or immobilized
3 under this paragraph, or a person who has a lien of record
4 against such a vehicle, may, within 10 days after the date
5 that person has knowledge of the location of the vehicle, file
6 a complaint in the county in which the owner resides to
7 determine whether the vehicle was wrongfully taken or withheld
8 from the owner or lienholder. Upon the filing of a complaint,
9 the owner or lienholder may have the vehicle released by
10 posting with the court a bond or other adequate security equal
11 to the amount of the costs and fees for impoundment or
12 immobilization, including towing or storage, to ensure the
13 payment of such costs and fees if the owner or lienholder does
14 not prevail. When the bond is posted and the fee is paid as
15 set forth in s. 28.24, the clerk of the court shall issue a
16 certificate releasing the vehicle. At the time of release,
17 after reasonable inspection, the owner or lienholder must give
18 a receipt to the towing or storage company indicating any loss
19 or damage to the vehicle or to the contents of the vehicle.

20 (e) A defendant, in the court's discretion, may be
21 required to serve all or any portion of a term of imprisonment
22 to which the defendant has been sentenced pursuant to this
23 section in a residential alcoholism treatment program or a
24 residential drug abuse treatment program. Any time spent in
25 such a program must be credited by the court toward the term
26 of imprisonment.

27
28 For the purposes of this section, any conviction for a
29 violation of s. 327.35; a previous conviction for the
30 violation of former s. 316.1931, former s. 860.01, or former
31 s. 316.028; or a previous conviction outside this state for

1 driving under the influence, driving while intoxicated,
2 driving with an unlawful blood-alcohol level, driving with an
3 unlawful breath-alcohol level, or any other similar
4 alcohol-related or drug-related traffic offense, is also
5 considered a previous conviction for violation of this
6 section. However, in satisfaction of the fine imposed pursuant
7 to this section, the court may, upon a finding that the
8 defendant is financially unable to pay either all or part of
9 the fine, order that the defendant participate for a specified
10 additional period of time in public service or a community
11 work project in lieu of payment of that portion of the fine
12 which the court determines the defendant is unable to pay. In
13 determining such additional sentence, the court shall consider
14 the amount of the unpaid portion of the fine and the
15 reasonable value of the services to be ordered; however, the
16 court may not compute the reasonable value of services at a
17 rate less than the federal minimum wage at the time of
18 sentencing.

19 (7) A conviction under this section does not bar any
20 civil suit for damages against the person so convicted.

21 (8) At the arraignment, or in conjunction with any
22 notice of arraignment provided by the clerk of the court, the
23 clerk shall provide any person charged with a violation of
24 this section with notice that upon conviction the court shall
25 suspend or revoke the offender's driver's license and that the
26 offender should make arrangements for transportation at any
27 proceeding in which the court may take such action. Failure
28 to provide such notice does not affect the court's suspension
29 or revocation of the offender's driver's license.

30 (9) A person who is arrested for a violation of this
31 section may not be released from custody:

1 (a) Until the person is no longer under the influence
2 of alcoholic beverages, any chemical substance set forth in s.
3 877.111, or any substance controlled under chapter 893 and
4 affected to the extent that his or her normal faculties are
5 impaired;

6 (b) Until the person's blood-alcohol level or
7 breath-alcohol level is less than 0.05; or

8 (c) Until 8 hours have elapsed from the time the
9 person was arrested.

10 (10) The rulings of the Department of Highway Safety
11 and Motor Vehicles under s. 322.2615 shall not be considered
12 in any trial for a violation of this section. Testimony or
13 evidence from the administrative proceedings or any written
14 statement submitted by a person in his or her request for
15 administrative review is inadmissible into evidence or for any
16 other purpose in any criminal proceeding, unless timely
17 disclosed in criminal discovery pursuant to Rule 3.220,
18 Florida Rules of Criminal Procedure.

19 Section 2. For the purpose of incorporating the
20 amendment to section 316.193, Florida Statutes, in references
21 thereto, the following sections or subdivisions of Florida
22 Statutes are reenacted to read:

23 318.143 Sanctions for infractions by minors.--

24 (1) If the court finds that a minor has committed a
25 violation of any of the provisions of chapter 316, the court
26 may also impose one or more of the following sanctions:

27 (a) The court may reprimand or counsel the minor and
28 his or her parents or guardian.

29 (b) The court may require the minor to attend, for a
30 reasonable period, a traffic school conducted by a public
31 authority.

1 (c) The court may order the minor to remit to the
2 general fund of the local governmental body a sum not
3 exceeding the maximum fine applicable to an adult for a like
4 offense.

5 (d) The court may order the minor to participate in
6 public service or a community work project for a minimum
7 number of hours. A minor who participates in such a work
8 program is considered an employee of the state for the
9 purposes of chapter 440.

10 (e) The court may impose a curfew or other restriction
11 on the liberty of the minor for a period not to exceed 6
12 months.

13 (4) For the first conviction for a violation of s.
14 316.193, the court may order the Department of Highway Safety
15 and Motor Vehicles to revoke the minor's driver's license
16 until the minor is 18 years of age. For a second or subsequent
17 conviction for such a violation, the court may order the
18 Department of Highway Safety and Motor Vehicles to revoke the
19 minor's driver's license until the minor is 21 years of age.

20 (5) A minor who is arrested for a violation of s.
21 316.193 may be released from custody as soon as:

22 (a) The minor is no longer under the influence of
23 alcoholic beverages, of any chemical substance set forth in s.
24 877.111, or of any substance controlled under chapter 893, and
25 is not affected to the extent that his or her normal faculties
26 are impaired;

27 (b) The minor's blood-alcohol level is less than 0.05
28 percent; or

29 (c) Six hours have elapsed after the minor's arrest.
30
31

1 318.17 Offenses excepted.--No provision of this
2 chapter is available to a person who is charged with any of
3 the following offenses:

4 (3) Driving, or being in actual physical control of,
5 any vehicle while under the influence of alcoholic beverages,
6 any chemical substance set forth in s. 877.111, or any
7 substance controlled under chapter 893, in violation of s.
8 316.193, or driving with an unlawful blood-alcohol level;

9 (8) Any other offense in chapter 316 which is
10 classified as a criminal violation.

11 322.03 Drivers must be licensed; penalties.--

12 (2) Prior to issuing a driver's license, the
13 department shall require any person who has been convicted two
14 or more times of a violation of s. 316.193 or of a
15 substantially similar alcohol-related or drug-related offense
16 outside this state within the preceding 5 years, or who has
17 been convicted of three or more such offenses within the
18 preceding 10 years, to present proof of successful completion
19 of or enrollment in a department-approved substance abuse
20 education course. If the person fails to complete such
21 education course within 90 days after issuance, the department
22 shall cancel the license. Further, prior to issuing the
23 driver's license the department shall require such person to
24 present proof of financial responsibility as provided in s.
25 324.031. For the purposes of this paragraph, a previous
26 conviction for violation of former s. 316.028, former s.
27 316.1931, or former s. 860.01 shall be considered a previous
28 conviction for violation of s. 316.193.

29 322.0602 Youthful Drunk Driver Visitation Program.--

30 (2) COURT-ORDERED PARTICIPATION IN PROGRAM; PREFERENCE
31 FOR PARTICIPATION.--

1 (a) If a person is convicted of a violation of s.
2 316.193, the court may order, as a term and condition of
3 probation in addition to any other term or condition required
4 or authorized by law, that the probationer participate in the
5 Youthful Drunk Driver Visitation Program.

6 322.12 Examination of applicants.--

7 (2) The department shall examine every applicant for a
8 driver's license, including an applicant who is licensed in
9 another state or country, except as otherwise provided in this
10 chapter. A person who holds a learner's driver's license as
11 provided for in s. 322.161 is not required to pay a fee for
12 successfully completing the examination showing his or her
13 ability to operate a motor vehicle as provided for herein and
14 need not pay the fee for a replacement license as provided in
15 s. 322.17(2). Any person who applies for reinstatement
16 following the suspension or revocation of his or her driver's
17 license shall pay a service fee of \$25 following a suspension,
18 and \$50 following a revocation, which is in addition to the
19 fee for a license. Any person who applies for reinstatement of
20 a commercial driver's license following the disqualification
21 of his or her privilege to operate a commercial motor vehicle
22 shall pay a service fee of \$50, which is in addition to the
23 fee for a license. The department shall collect all of these
24 fees at the time of reinstatement. The department shall issue
25 proper receipts for such fees and shall promptly transmit all
26 funds received by it as follows:

27 (a) Of the \$25 fee received from a licensee for
28 reinstatement following a suspension, the department shall
29 deposit \$15 in the General Revenue Fund and the remaining \$10
30 in the Highway Safety Operating Trust Fund.

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1 (b) Of the \$50 fee received from a licensee for
2 reinstatement following a revocation or disqualification, the
3 department shall deposit \$35 in the General Revenue Fund and
4 the remaining \$15 in the Highway Safety Operating Trust Fund.

5
6 If the revocation or suspension of the driver's license was
7 for a violation of s. 316.193, or for refusal to submit to a
8 lawful breath, blood, or urine test, an additional fee of \$105
9 must be charged. However, only one such \$105 fee is to be
10 collected from one person convicted of such violations arising
11 out of the same incident. The department shall collect the
12 \$105 fee and deposit it into the Highway Safety Operating
13 Trust Fund at the time of reinstatement of the person's
14 driver's license, but the fee must not be collected if the
15 suspension or revocation was overturned.

16 322.25 When court to forward license to department and
17 report convictions; temporary reinstatement of driving
18 privileges.--

19 (5) For the purpose of this chapter, the entrance of a
20 plea of nolo contendere by the defendant to a charge of
21 driving while intoxicated, driving under the influence,
22 driving with an unlawful blood-alcohol level, or any other
23 alcohol-related or drug-related traffic offense similar to the
24 offenses specified in s. 316.193, accepted by the court and
25 under which plea the court has entered a fine or sentence,
26 whether in this state or any other state or country, shall be
27 equivalent to a conviction.

28 322.2615 Suspension of license; right to review.--

29 (1)(a) A law enforcement officer or correctional
30 officer shall, on behalf of the department, suspend the
31 driving privilege of a person who has been arrested by a law

1 enforcement officer for a violation of s. 316.193, relating to
2 unlawful blood-alcohol level or breath-alcohol level, or of a
3 person who has refused to submit to a breath, urine, or blood
4 test authorized by s. 316.1932. The officer shall take the
5 person's driver's license and issue the person a 30-day
6 temporary permit if the person is otherwise eligible for the
7 driving privilege and shall issue the person a notice of
8 suspension. If a blood test has been administered, the results
9 of which are not available to the officer at the time of the
10 arrest, the agency employing the officer shall transmit such
11 results to the department within 5 days after receipt of the
12 results. If the department then determines that the person
13 was arrested for a violation of s. 316.193 and that the person
14 had a blood-alcohol level or breath-alcohol level of 0.08 or
15 higher, the department shall suspend the person's driver's
16 license pursuant to subsection (3).

17 (b) The suspension under paragraph (a) shall be
18 pursuant to, and the notice of suspension shall inform the
19 driver of, the following:

20 1.a. The driver refused to submit to a lawful breath,
21 blood, or urine test and his or her driving privilege is
22 suspended for a period of 1 year for a first refusal or for a
23 period of 18 months if his or her driving privilege has been
24 previously suspended as a result of a refusal to submit to
25 such a test; or

26 b. The driver violated s. 316.193 by driving with an
27 unlawful blood-alcohol level as provided in that section and
28 his or her driving privilege is suspended for a period of 6
29 months for a first offense or for a period of 1 year if his or
30 her driving privilege has been previously suspended for a
31 violation of s. 316.193.

1 2. The suspension period shall commence on the date of
2 arrest or issuance of the notice of suspension, whichever is
3 later.

4 3. The driver may request a formal or informal review
5 of the suspension by the department within 10 days after the
6 date of arrest or issuance of the notice of suspension,
7 whichever is later.

8 4. The temporary permit issued at the time of arrest
9 will expire at midnight of the 30th day following the date of
10 arrest or issuance of the notice of suspension, whichever is
11 later.

12 5. The driver may submit to the department any
13 materials relevant to the arrest.

14 (2) Except as provided in paragraph (1)(a), the law
15 enforcement officer shall forward to the department, within 5
16 days after the date of the arrest, a copy of the notice of
17 suspension, the driver's license of the person arrested, and a
18 report of the arrest, including an affidavit stating the
19 officer's grounds for belief that the person arrested was in
20 violation of s. 316.193; the results of any breath or blood
21 test or an affidavit stating that a breath, blood, or urine
22 test was requested by a law enforcement officer or
23 correctional officer and that the person arrested refused to
24 submit; a copy of the citation issued to the person arrested;
25 and the officer's description of the person's field sobriety
26 test, if any. The failure of the officer to submit materials
27 within the 5-day period specified in this subsection and in
28 subsection (1) shall not affect the department's ability to
29 consider any evidence submitted at or prior to the hearing.
30 The officer may also submit a copy of a videotape of the field
31 sobriety test or the attempt to administer such test.

1 (7) In a formal review hearing under subsection (6) or
2 an informal review hearing under subsection (4), the hearing
3 officer shall determine by a preponderance of the evidence
4 whether sufficient cause exists to sustain, amend, or
5 invalidate the suspension. The scope of the review shall be
6 limited to the following issues:

7 (a) If the license was suspended for driving with an
8 unlawful blood-alcohol level in violation of s. 316.193:

9 1. Whether the arresting law enforcement officer had
10 probable cause to believe that the person was driving or in
11 actual physical control of a motor vehicle in this state while
12 under the influence of alcoholic beverages or controlled
13 substances.

14 2. Whether the person was placed under lawful arrest
15 for a violation of s. 316.193.

16 3. Whether the person had an unlawful blood-alcohol
17 level as provided in s. 316.193.

18 (b) If the license was suspended for refusal to submit
19 to a breath, blood, or urine test:

20 1. Whether the arresting law enforcement officer had
21 probable cause to believe that the person was driving or in
22 actual physical control of a motor vehicle in this state while
23 under the influence of alcoholic beverages or controlled
24 substances.

25 2. Whether the person was placed under lawful arrest
26 for a violation of s. 316.193.

27 3. Whether the person refused to submit to any such
28 test after being requested to do so by a law enforcement
29 officer or correctional officer.

30 4. Whether the person was told that if he or she
31 refused to submit to such test his or her privilege to operate

1 a motor vehicle would be suspended for a period of 1 year or,
2 in the case of a second or subsequent refusal, for a period of
3 18 months.

4 (8) Based on the determination of the hearing officer
5 pursuant to subsection (7) for both informal hearings under
6 subsection (4) and formal hearings under subsection (6), the
7 department shall:

8 (b) Sustain the suspension of the person's driving
9 privilege for a period of 6 months for a violation of s.
10 316.193, or for a period of 1 year if the driving privilege of
11 such person has been previously suspended as a result of a
12 violation of s. 316.193. The suspension period commences on
13 the date of the arrest or issuance of the notice of
14 suspension, whichever is later.

15 (10) A person whose driver's license is suspended
16 under subsection (1) or subsection (3) may apply for issuance
17 of a license for business or employment purposes only if the
18 person is otherwise eligible for the driving privilege
19 pursuant to s. 322.271.

20 (b) If the suspension of the driver's license of the
21 person arrested for a violation of s. 316.193, relating to
22 unlawful blood-alcohol level, is sustained, the person is not
23 eligible to receive a license for business or employment
24 purposes only pursuant to s. 322.271 until 30 days have
25 elapsed after the expiration of the 30-day temporary permit
26 issued pursuant to this section or s. 322.64. If the driver
27 is not issued a 30-day permit pursuant to this section or s.
28 322.64 because he or she is ineligible for the permit and the
29 suspension for a violation of s. 316.193, relating to unlawful
30 blood-alcohol level, is not invalidated by the department, the
31 driver is not eligible to receive a business or employment

1 license pursuant to s. 322.271 until 30 days have elapsed from
2 the date of the arrest.

3 (14) The decision of the department under this section
4 shall not be considered in any trial for a violation of s.
5 316.193, nor shall any written statement submitted by a person
6 in his or her request for departmental review under this
7 section be admissible into evidence against him or her in any
8 such trial. The disposition of any related criminal
9 proceedings shall not affect a suspension imposed pursuant to
10 this section.

11 322.2616 Suspension of license; persons under 21 years
12 of age; right to review.--

13 (1)(a) Notwithstanding s. 316.193, it is unlawful for
14 a person under the age of 21 who has a breath-alcohol level of
15 0.02 percent or higher to drive or be in actual physical
16 control of a motor vehicle.

17 (15) The decision of the department under this section
18 shall not be considered in any trial for a violation of s.
19 316.193, nor shall any written statement submitted by a person
20 in his or her request for departmental review under this
21 section be admissible into evidence against him or her in any
22 such trial. The disposition of any related criminal
23 proceedings shall not affect a suspension imposed under this
24 section.

25 (18) A violation of this section is neither a traffic
26 infraction nor a criminal offense, nor does being detained
27 pursuant to this section constitute an arrest. A violation of
28 this section is subject to the administrative action
29 provisions of this section, which are administered by the
30 department through its administrative processes.
31 Administrative actions taken pursuant to this section shall be

1 recorded in the motor vehicle records maintained by the
2 department. This section does not bar prosecution under s.
3 316.193. However, if the department suspends a person's
4 license under s. 322.2615 for a violation of s. 316.193, it
5 may not also suspend the person's license under this section
6 for the same episode that was the basis for the suspension
7 under s. 322.2615.

8 322.264 "Habitual traffic offender" defined.--A
9 "habitual traffic offender" is any person whose record, as
10 maintained by the Department of Highway Safety and Motor
11 Vehicles, shows that such person has accumulated the specified
12 number of convictions for offenses described in subsection (1)
13 or subsection (2) within a 5-year period:

14 (1) Three or more convictions of any one or more of
15 the following offenses arising out of separate acts:

16 (b) Any violation of s. 316.193, former s. 316.1931,
17 or former s. 860.01;

18
19 Any violation of any federal law, any law of another state or
20 country, or any valid ordinance of a municipality or county of
21 another state similar to a statutory prohibition specified in
22 subsection (1) or subsection (2) shall be counted as a
23 violation of such prohibition. In computing the number of
24 convictions, all convictions during the 5 years previous to
25 July 1, 1972, will be used, provided at least one conviction
26 occurs after that date. The fact that previous convictions
27 may have resulted in suspension, revocation, or
28 disqualification under another section does not exempt them
29 from being used for suspension or revocation under this
30 section as a habitual offender.

31

1 322.271 Authority to modify revocation, cancellation,
2 or suspension order.--
3 (2)(a) Upon such hearing, the person whose license has
4 been suspended, canceled, or revoked may show that such
5 suspension, cancellation, or revocation of his or her license
6 causes a serious hardship and precludes the person's carrying
7 out his or her normal business occupation, trade, or
8 employment and that the use of the person's license in the
9 normal course of his or her business is necessary to the
10 proper support of the person or his or her family. Except as
11 otherwise provided in this subsection, the department shall
12 require proof of the successful completion of an approved
13 driver training or substance abuse education course and may
14 require letters of recommendation from respected business
15 persons in the community, law enforcement officers, or
16 judicial officers in determining whether such person should be
17 permitted to operate a motor vehicle on a restricted basis for
18 business or employment use only and in determining whether
19 such person can be trusted to so operate a motor vehicle. If a
20 driver's license has been suspended under the point system or
21 pursuant to s. 322.2615, the department shall require proof of
22 enrollment in an approved driver training course or substance
23 abuse education course, and may require the letters of
24 recommendation described in this subsection to determine if
25 the driver should be reinstated on a restricted basis; if such
26 person fails to complete the approved course within 90 days
27 after reinstatement, the department shall cancel his or her
28 driver's license until the course is successfully completed.
29 The privilege of driving on a limited or restricted basis for
30 business or employment use shall not be granted to a person
31 who has been convicted of a violation of s. 316.193 until

1 completion of such education or training course. Except as
2 provided in paragraph (b), the privilege of driving on a
3 limited or restricted basis for business or employment use
4 shall not be granted to a person whose license is revoked
5 pursuant to s. 322.28 or suspended pursuant to s. 322.2615 and
6 who has been convicted of a violation of s. 316.193 two or
7 more times or whose license has been suspended two or more
8 times for refusal to submit to a test pursuant to s. 322.2615
9 or former s. 322.261.

10 (c) For the purpose of this section, a previous
11 conviction of driving under the influence, driving while
12 intoxicated, driving with an unlawful blood-alcohol level, or
13 any other similar alcohol-related or drug-related offense
14 outside this state or a previous conviction of former s.
15 316.1931, former s. 316.028, or former s. 860.01 shall be
16 considered a previous conviction for violation of s. 316.193.

17 (4) Notwithstanding the provisions of s. 322.28(2)(e),
18 a person whose driving privilege has been permanently revoked
19 because he or she has been convicted four times of violating
20 s. 316.193 or former s. 316.1931 or because he or she has been
21 convicted of DUI manslaughter in violation of s. 316.193 may,
22 upon the expiration of 5 years after the date of such
23 revocation or the expiration of 5 years after the termination
24 of any term of incarceration under s. 316.193 or former s.
25 316.1931, whichever date is later, petition the department for
26 reinstatement of his or her driving privilege.

27 (a) Within 30 days after the receipt of such a
28 petition, the department shall afford the petitioner an
29 opportunity for a hearing. At the hearing, the petitioner
30 must demonstrate to the department that he or she:

31

- 1 1. Has not been arrested for a drug-related offense
2 during the 5 years preceding the filing of the petition;
3 2. Has not driven a motor vehicle without a license
4 for at least 5 years prior to the hearing;
5 3. Has been drug-free for at least 5 years prior to
6 the hearing; and
7 4. Has completed a DUI program licensed by the
8 department.

9 (b) At such hearing, the department shall determine
10 the petitioner's qualification, fitness, and need to drive.
11 Upon such determination, the department may, in its
12 discretion, reinstate the driver's license of the petitioner.
13 Such reinstatement must be made subject to the following
14 qualifications:

- 15 1. The license must be restricted for employment
16 purposes for not less than 1 year; and
17 2. Such person must be supervised by a DUI program
18 licensed by the department and report to the program for such
19 supervision and education at least four times a year or
20 additionally as required by the program for the remainder of
21 the revocation period. Such supervision shall include
22 evaluation, education, referral into treatment, and other
23 activities required by the department.

24 (c) Such person must assume the reasonable costs of
25 supervision. If such person fails to comply with the required
26 supervision, the program shall report the failure to the
27 department, and the department shall cancel such person's
28 driving privilege.

29 (d) If, after reinstatement, such person is convicted
30 of an offense for which mandatory revocation of his or her
31

1 license is required, the department shall revoke his or her
2 driving privilege.

3 (e) The department shall adopt rules regulating the
4 providing of services by DUI programs pursuant to this
5 section.

6 322.282 Procedure when court revokes or suspends
7 license or driving privilege and orders reinstatement.--When a
8 court suspends or revokes a person's license or driving
9 privilege and, in its discretion, orders reinstatement as
10 provided by s. 322.28(2)(d) or former s. 322.261(5):

11 (2)(a) The court shall issue an order of
12 reinstatement, on a form to be furnished by the department,
13 which the person may take to any driver's license examining
14 office. The department shall issue a temporary driver's
15 permit to a licensee who presents the court's order of
16 reinstatement, proof of completion of a department-approved
17 driver training or substance abuse education course, and a
18 written request for a hearing under s. 322.271. The permit
19 shall not be issued if a record check by the department shows
20 that the person has previously been convicted for a violation
21 of s. 316.193, former s. 316.1931, former s. 316.028, former
22 s. 860.01, or a previous conviction outside this state for
23 driving under the influence, driving while intoxicated,
24 driving with an unlawful blood-alcohol level, or any similar
25 alcohol-related or drug-related traffic offense; that the
26 person's driving privilege has been previously suspended for
27 refusal to submit to a lawful test of breath, blood, or urine;
28 or that the person is otherwise not entitled to issuance of a
29 driver's license. This paragraph shall not be construed to
30 prevent the reinstatement of a license or driving privilege
31 that is presently suspended for driving with an unlawful

1 blood-alcohol level or a refusal to submit to a breath, urine,
2 or blood test and is also revoked for a conviction for a
3 violation of s. 316.193 or former s. 316.1931, if the
4 suspension and revocation arise out of the same incident.

5 322.291 Driver improvement schools; required in
6 certain suspension and revocation cases.--Except as provided
7 in s. 322.03(2), any person:

8 (1) Whose driving privilege has been revoked:

9 (a) Upon conviction for:

10 1. Driving, or being in actual physical control of,
11 any vehicle while under the influence of alcoholic beverages,
12 any chemical substance set forth in s. 877.111, or any
13 substance controlled under chapter 893, in violation of s.
14 316.193;

15 2. Driving with an unlawful blood- or breath-alcohol
16 level;

17 3. Manslaughter resulting from the operation of a
18 motor vehicle;

19 4. Failure to stop and render aid as required under
20 the laws of this state in the event of a motor vehicle
21 accident resulting in the death or personal injury of another;

22 5. Reckless driving; or

23 (b) As an habitual offender;

24 (c) Upon direction of the court, if the court feels
25 that the seriousness of the offense and the circumstances
26 surrounding the conviction warrant the revocation of the
27 licensee's driving privilege; or

28 (2) Whose license was suspended under the point
29 system, was suspended for driving with an unlawful
30 blood-alcohol level of 0.10 percent or higher before January
31 1, 1994, was suspended for driving with an unlawful

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ARTICLE III

REPORTS OF CONVICTION.--The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code, or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered or the conviction was a result of the forfeiture of bail, bond, or other security; and shall include any special findings made in connection therewith.

ARTICLE IV

EFFECT OF CONVICTION.--

(1) The licensing authority in the home state, for the purposes of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to article III, as it would if such conduct had occurred in the home state, in the case of convictions for:

(a) Manslaughter or negligent homicide resulting from the operation of a motor vehicle, as provided by ss. 316.193 and 322.26;

(b) Driving a motor vehicle while under the influence of alcoholic beverages or a narcotic drug, or under the influence of any other drug to a degree which renders the

1 driver incapable of safely driving a motor vehicle, as
2 provided by s. 316.193;

3 (c) Any felony in the commission of which a motor
4 vehicle is used, as provided by s. 322.26; or

5 (d) Failure to stop and render aid in the event of a
6 motor vehicle accident resulting in the death or personal
7 injury of another, as provided by s. 322.26.

8 (2) As to other convictions, reported pursuant to
9 article III, the licensing authority in the home state shall
10 give such effect to the conduct as is provided by the laws of
11 the home state.

12
13 ARTICLE V
14

15 APPLICATIONS FOR NEW LICENSES.--Upon application for a
16 license to drive, the licensing authority in a party state
17 shall ascertain whether the applicant has ever held, or is the
18 holder of, a license to drive issued by any other party state.
19 The licensing authority in the state where application is made
20 shall not issue a license to drive to the applicant if:

21 (1) The applicant has held such a license, but the
22 same has been suspended by reason, in whole or in part, of a
23 violation and if such suspension period has not terminated.

24 (2) The applicant has held such a license, but the
25 same has been revoked by reason, in whole or in part, of a
26 violation and if such revocation has not terminated, except
27 that after the expiration of 1 year from the date the license
28 was revoked, such person may make application for a new
29 license if permitted by law. The licensing authority may
30 refuse to issue a license to any such applicant if, after
31 investigation, the licensing authority determines that it will

1 not be safe to grant to such person the privilege of driving a
2 motor vehicle on the public highways.

3 (3) The applicant is the holder of a license to drive
4 issued by another party state and currently in force unless
5 the applicant surrenders such license.

6

7

ARTICLE VI

8

9 APPLICABILITY OF OTHER LAWS.--Except as expressly
10 required by provisions of this compact, nothing contained
11 herein shall be construed to affect the right of any party
12 state to apply any of its other laws relating to licenses to
13 drive to any person or circumstance, nor to invalidate or
14 prevent any driver license agreement or other cooperative
15 arrangement between a party state and a nonparty state.

16

17

ARTICLE VII

18

19 COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION.--

20 (1) The head of the licensing authority of each party
21 state shall be the administrator of this compact for his or
22 her state. The administrators, acting jointly, shall have the
23 power to formulate all necessary and proper procedures for the
24 exchange of information under this compact.

25

26 (2) The administrator of each party state shall
27 furnish to the administrator of each other party state any
28 information or documents reasonably necessary to facilitate
the administration of this compact.

29

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ARTICLE VIII

31

1 ENTRY INTO FORCE AND WITHDRAWAL.--

2 (1) This compact shall enter into force and become
3 effective as to any state when it has enacted the same into
4 law.

5 (2) Any party state may withdraw from this compact by
6 enacting a statute repealing the same, but no such withdrawal
7 shall take effect until 6 months after the executive head of
8 the withdrawing state has given notice of the withdrawal to
9 the executive heads of all other party states. No withdrawal
10 shall affect the validity or applicability by the licensing
11 authorities of states remaining party to the compact of any
12 report of conviction occurring prior to the withdrawal.

13

14 ARTICLE IX

15

16 CONSTRUCTION AND SEVERABILITY.--This compact shall be
17 liberally construed so as to effectuate the purposes thereof.
18 The provisions of this compact shall be severable; and if any
19 phrase, clause, sentence, or provision of this compact is
20 declared to be contrary to the constitution of any party state
21 or of the United States or the applicability thereof to any
22 government, agency, person, or circumstance is held invalid,
23 the validity of the remainder of this compact and the
24 applicability thereof to any government, agency, person, or
25 circumstance shall not be affected thereby. If this compact
26 shall be held contrary to the constitution of any state party
27 thereto, the compact shall remain in full force and effect as
28 to the remaining states and in full force and effect as to the
29 state affected as to all severable matters.

30 322.62 Driving under the influence; commercial motor
31 vehicle operators.--

1 (3) This section does not supersede s. 316.193.
2 Nothing in this section prohibits the prosecution of a person
3 who drives a commercial motor vehicle for driving under the
4 influence of alcohol or controlled substances whether or not
5 such person is also prosecuted for a violation of this
6 section.

7 322.63 Alcohol or drug testing; commercial motor
8 vehicle operators.--

9 (2) The chemical and physical tests authorized by this
10 section shall only be required if a law enforcement officer
11 has reasonable cause to believe that a person driving a
12 commercial motor vehicle has any alcohol, chemical substance,
13 or controlled substance in his or her body.

14 (d) The administration of one test under paragraph
15 (a), paragraph (b), or paragraph (c) shall not preclude the
16 administration of a different test under paragraph (a),
17 paragraph (b), or paragraph (c). However, a urine test may
18 not be used to determine alcohol concentration and a breath
19 test may not be used to determine the presence of controlled
20 substances or chemical substances in a person's body.
21 Notwithstanding the provisions of this paragraph, in the event
22 a Florida licensee has been convicted in another state for an
23 offense substantially similar to s. 316.193 or to s. 322.62,
24 which conviction was based upon evidence of test results
25 prohibited by this paragraph, that out-of-state conviction
26 shall constitute a conviction for the purposes of this
27 chapter.

28 (6) Notwithstanding any provision of law pertaining to
29 the confidentiality of hospital records or other medical
30 records, information relating to the alcohol content of a
31 person's blood or the presence of chemical substances or

1 controlled substances in a person's blood obtained pursuant to
2 this section shall be released to a court, prosecuting
3 attorney, defense attorney, or law enforcement officer in
4 connection with an alleged violation of s. 316.193 or s.
5 322.62 upon request for such information.

6 322.64 Holder of commercial driver's license; driving
7 with unlawful blood-alcohol level; refusal to submit to
8 breath, urine, or blood test.--

9 (1)(a) A law enforcement officer or correctional
10 officer shall, on behalf of the department, disqualify from
11 operating any commercial motor vehicle a person who while
12 operating or in actual physical control of a commercial motor
13 vehicle is arrested for a violation of s. 316.193, relating to
14 unlawful blood-alcohol level or breath-alcohol level, or a
15 person who has refused to submit to a breath, urine, or blood
16 test authorized by s. 322.63 arising out of the operation or
17 actual physical control of a commercial motor vehicle. Upon
18 disqualification of the person, the officer shall take the
19 person's driver's license and issue the person a 30-day
20 temporary permit if the person is otherwise eligible for the
21 driving privilege and shall issue the person a notice of
22 disqualification. If the person has been given a blood,
23 breath, or urine test, the results of which are not available
24 to the officer at the time of the arrest, the agency employing
25 the officer shall transmit such results to the department
26 within 5 days after receipt of the results. If the department
27 then determines that the person was arrested for a violation
28 of s. 316.193 and that the person had a blood-alcohol level or
29 breath-alcohol level of 0.08 or higher, the department shall
30 disqualify the person from operating a commercial motor
31 vehicle pursuant to subsection (3).

1 (b) The disqualification under paragraph (a) shall be
2 pursuant to, and the notice of disqualification shall inform
3 the driver of, the following:

4 1.a. The driver refused to submit to a lawful breath,
5 blood, or urine test and he or she is disqualified from
6 operating a commercial motor vehicle for a period of 1 year,
7 for a first refusal, or permanently, if he or she has
8 previously been disqualified as a result of a refusal to
9 submit to such a test; or

10 b. The driver violated s. 316.193 by driving with an
11 unlawful blood-alcohol level and he or she is disqualified
12 from operating a commercial motor vehicle for a period of 6
13 months for a first offense or for a period of 1 year if he or
14 she has previously been disqualified, or his or her driving
15 privilege has been previously suspended, for a violation of s.
16 316.193.

17 2. The disqualification period shall commence on the
18 date of arrest or issuance of notice of disqualification,
19 whichever is later.

20 3. The driver may request a formal or informal review
21 of the disqualification by the department within 10 days after
22 the date of arrest or issuance of notice of disqualification,
23 whichever is later.

24 4. The temporary permit issued at the time of arrest
25 or disqualification will expire at midnight of the 30th day
26 following the date of disqualification.

27 5. The driver may submit to the department any
28 materials relevant to the arrest.

29 (2) Except as provided in paragraph (1)(a), the law
30 enforcement officer shall forward to the department, within 5
31 days after the date of the arrest or the issuance of the

1 notice of disqualification, whichever is later, a copy of the
2 notice of disqualification, the driver's license of the person
3 arrested, and a report of the arrest, including, if
4 applicable, an affidavit stating the officer's grounds for
5 belief that the person arrested was in violation of s.
6 316.193; the results of any breath or blood test or an
7 affidavit stating that a breath, blood, or urine test was
8 requested by a law enforcement officer or correctional officer
9 and that the person arrested refused to submit; a copy of the
10 citation issued to the person arrested; and the officer's
11 description of the person's field sobriety test, if any. The
12 failure of the officer to submit materials within the 5-day
13 period specified in this subsection or subsection (1) shall
14 not affect the department's ability to consider any evidence
15 submitted at or prior to the hearing. The officer may also
16 submit a copy of a videotape of the field sobriety test or the
17 attempt to administer such test.

18 (7) In a formal review hearing under subsection (6) or
19 an informal review hearing under subsection (4), the hearing
20 officer shall determine by a preponderance of the evidence
21 whether sufficient cause exists to sustain, amend, or
22 invalidate the disqualification. The scope of the review
23 shall be limited to the following issues:

24 (a) If the person was disqualified from operating a
25 commercial motor vehicle for driving with an unlawful
26 blood-alcohol level in violation of s. 316.193:

27 1. Whether the arresting law enforcement officer had
28 probable cause to believe that the person was driving or in
29 actual physical control of a commercial motor vehicle in this
30 state while he or she had any alcohol, chemical substances, or
31 controlled substances in his or her body.

1 2. Whether the person was placed under lawful arrest
2 for a violation of s. 316.193.

3 3. Whether the person had an unlawful blood-alcohol
4 level as provided in s. 316.193.

5 (8) Based on the determination of the hearing officer
6 pursuant to subsection (7) for both informal hearings under
7 subsection (4) and formal hearings under subsection (6), the
8 department shall:

9 (b) Sustain the disqualification for a period of 6
10 months for a violation of s. 316.193 or for a period of 1 year
11 if the person has been previously disqualified from operating
12 a commercial motor vehicle or his or her driving privilege has
13 been previously suspended as a result of a violation of s.
14 316.193. The disqualification period commences on the date of
15 the arrest or issuance of the notice of disqualification,
16 whichever is later.

17 (14) The decision of the department under this section
18 shall not be considered in any trial for a violation of s.
19 316.193, s. 322.61, or s. 322.62, nor shall any written
20 statement submitted by a person in his or her request for
21 departmental review under this section be admissible into
22 evidence against him or her in any such trial. The
23 disposition of any related criminal proceedings shall not
24 affect a disqualification imposed pursuant to this section.

25 (15) This section does not preclude the suspension of
26 the driving privilege pursuant to s. 322.2615. The driving
27 privilege of a person who has been disqualified from operating
28 a commercial motor vehicle also may be suspended for a
29 violation of s. 316.193.

30 327.35 Boating under the influence; penalties.--

31

1 (6) With respect to any person convicted of a
2 violation of subsection (1), regardless of any other penalty
3 imposed:

4 (a) For the first conviction, the court shall place
5 the defendant on probation for a period not to exceed 1 year
6 and, as a condition of such probation, shall order the
7 defendant to participate in public service or a community work
8 project for a minimum of 50 hours. The total period of
9 probation and incarceration may not exceed 1 year.

10 (b) For the second conviction for an offense that
11 occurs within a period of 5 years after the date of a prior
12 conviction for violation of this section, the court shall
13 order imprisonment for not less than 10 days. At least 48
14 hours of confinement must be consecutive.

15 (c) For the third or subsequent conviction for an
16 offense that occurs within a period of 10 years after the date
17 of a prior conviction for violation of this section, the court
18 shall order imprisonment for not less than 30 days. At least
19 48 hours of confinement must be consecutive.

20 (d) In addition to any other penalty imposed, the
21 court shall also order the impoundment or immobilization of
22 the vessel that was operated by, or in the actual physical
23 control of, the offender. The period of impoundment or
24 immobilization is 10 days, or, for the second conviction
25 within 3 years, 30 days, or, for the third conviction within 5
26 years, 90 days and may not be concurrent with probation or
27 imprisonment. If the vessel is leased or rented, the period of
28 impoundment or immobilization may not extend beyond the
29 expiration of the lease or rental agreement. Within 7 business
30 days after the date that the court issues the order of
31 impoundment or immobilization, the clerk of the court shall

1 send notice by certified mail, return receipt requested, to
2 the registered owner of the vessel if the registered owner is
3 a person other than the offender and to each person of record
4 claiming a lien against the vessel. All costs and fees for the
5 impoundment or immobilization, including the cost of
6 notification, must be paid by the owner of the vessel or, if
7 the vessel is leased or rented, by the person leasing or
8 renting the vessel. The person who owns a vessel that is
9 impounded or immobilized under this paragraph, or a person who
10 has a lien of record against such a vessel, may, within 10
11 days after the date that person has knowledge of the location
12 of the vessel, file a complaint in the county in which the
13 owner resides to determine whether the vessel was wrongfully
14 taken or withheld from the owner or lienholder. Upon the
15 filing of a complaint, the owner or lienholder may have the
16 vessel released by posting with the court a bond or other
17 adequate security equal to the amount of the costs and fees
18 for impoundment or immobilization, including towing or
19 storage, to ensure the payment of the costs and fees if the
20 owner or lienholder does not prevail. When the bond is posted
21 and the fee is paid as set forth in s. 28.24, the clerk of the
22 court shall issue a certificate releasing the vessel. At the
23 time of release, after reasonable inspection, the owner or
24 lienholder must give a receipt to the towing or storage
25 company indicating any loss or damage to the vessel or to the
26 contents of the vessel.

27 (e) A defendant, in the court's discretion, may be
28 required to serve all or any portion of a term of imprisonment
29 to which the defendant has been sentenced pursuant to this
30 section in a residential alcoholism treatment program or a
31 residential drug abuse treatment program. Any time spent in

1 such a program must be credited by the court toward the term
2 of imprisonment.

3

4 For the purposes of this section, any conviction for a
5 violation of s. 316.193, a previous conviction for the
6 violation of former s. 316.1931, former s. 860.01, or former
7 s. 316.028, or a previous conviction outside this state for
8 driving under the influence, driving while intoxicated,
9 driving with an unlawful blood-alcohol level, driving with an
10 unlawful breath-alcohol level, or any other similar
11 alcohol-related or drug-related traffic offense, is also
12 considered a previous conviction for violation of this
13 section.

14 397.405 Exemptions from licensure.--The following are
15 exempt from the licensing provisions of this chapter:

16 (10) DUI education and screening services required to
17 be attended pursuant to ss. 316.192, 316.193, 322.095,
18 322.271, and 322.291 are exempt from licensure under this
19 chapter. Treatment programs must continue to be licensed
20 under this chapter.

21

22 The exemptions from licensure in this section do not apply to
23 any facility or entity which receives an appropriation, grant,
24 or contract from the state to operate as a service provider as
25 defined in this chapter or to any substance abuse program
26 regulated pursuant to s. 397.406. No provision of this
27 chapter shall be construed to limit the practice of a
28 physician licensed under chapter 458 or chapter 459, a
29 psychologist licensed under chapter 490, or a psychotherapist
30 licensed under chapter 491, providing outpatient or inpatient
31 substance abuse treatment to a voluntary patient, so long as

1 the physician, psychologist, or psychotherapist does not
2 represent to the public that he or she is a licensed service
3 provider under this act. Failure to comply with any
4 requirement necessary to maintain an exempt status under this
5 section is a misdemeanor of the first degree, punishable as
6 provided in s. 775.082 or s. 775.083.

7 440.09 Coverage.--

8 (7)

9 (b) If the employee has, at the time of the injury, a
10 blood alcohol level equal to or greater than the level
11 specified in s. 316.193, or if the employee has a positive
12 confirmation of a drug as defined in this act, it is presumed
13 that the injury was occasioned primarily by the intoxication
14 of, or by the influence of the drug upon, the employee. In the
15 absence of a drug-free workplace program, this presumption may
16 be rebutted by clear and convincing evidence that the
17 intoxication or influence of the drug did not contribute to
18 the injury. Percent by weight of alcohol in the blood must be
19 based upon grams of alcohol per 100 milliliters of blood. If
20 the results are positive, the testing facility must maintain
21 the specimen for a minimum of 90 days. Blood serum may be used
22 for testing purposes under this chapter; however, if this test
23 is used, the presumptions under this section do not arise
24 unless the blood alcohol level is proved to be medically and
25 scientifically equivalent to or greater than the comparable
26 blood alcohol level that would have been obtained if the test
27 were based on percent by weight of alcohol in the blood.
28 However, if, before the accident, the employer had actual
29 knowledge of and expressly acquiesced in the employee's
30 presence at the workplace while under the influence of such
31

1 alcohol or drug, the presumptions specified in this subsection
2 do not apply.

3 493.6106 License requirements; posting.--

4 (1) Each individual licensed by the department must:

5 (d) Not be a chronic and habitual user of alcoholic
6 beverages to the extent that her or his normal faculties are
7 impaired; not have been committed under chapter 397, former
8 chapter 396, or a similar law in any other state; not have
9 been found to be a habitual offender under s. 856.011(3) or a
10 similar law in any other state; and not have had two or more
11 convictions under s. 316.193 or a similar law in any other
12 state within the 3-year period immediately preceding the date
13 the application was filed, unless the individual establishes
14 that she or he is not currently impaired and has successfully
15 completed a rehabilitation course.

16 627.758 Surety on auto club traffic arrest bond;
17 conditions, limit; bail bond.--

18 (4) Notwithstanding the provisions of s. 626.311 or
19 chapter 648, any surety insurer identified in a guaranteed
20 traffic arrest bond certificate or any licensed general lines
21 agent of the surety insurer may execute a bail bond for the
22 automobile club or association member identified in the
23 guaranteed traffic arrest bond certificate in an amount not in
24 excess of \$5,000 for any violation of chapter 316 or any
25 similar traffic law or ordinance except for driving under the
26 influence of alcoholic beverages, chemical substances, or
27 controlled substances, as prohibited by s. 316.193.

28 790.06 License to carry concealed weapon or firearm.--

29 (2) The Department of State shall issue a license if
30 the applicant:

31

1 (f) Does not chronically and habitually use alcoholic
2 beverages or other substances to the extent that his or her
3 normal faculties are impaired. It shall be presumed that an
4 applicant chronically and habitually uses alcoholic beverages
5 or other substances to the extent that his or her normal
6 faculties are impaired if the applicant has been committed
7 under chapter 397 or under the provisions of former chapter
8 396 or has been convicted under s. 790.151 or has been deemed
9 a habitual offender under s. 856.011(3), or has had two or
10 more convictions under s. 316.193 or similar laws of any other
11 state, within the 3-year period immediately preceding the date
12 on which the application is submitted;

13 (10) A license issued under this section shall be
14 suspended or revoked pursuant to chapter 120 if the licensee:

15 (f) Is convicted of a second violation of s. 316.193,
16 or a similar law of another state, within 3 years of a
17 previous conviction of such section, or similar law of another
18 state, even though the first violation may have occurred prior
19 to the date on which the application was submitted;

20 903.36 Guaranteed arrest bond certificates as cash
21 bail.--

22 (2) The execution of a bail bond by a licensed general
23 lines agent of a surety insurer for the automobile club or
24 association member identified in the guaranteed traffic arrest
25 bond certificate, as provided in s. 627.758(4), shall be
26 accepted as bail in an amount not to exceed \$5,000 for the
27 appearance of the person named in the certificate in any court
28 to answer for the violation of a provision of chapter 316 or a
29 similar traffic law or ordinance, except driving under the
30 influence of alcoholic beverages, chemical substances, or
31 controlled substances, as prohibited by s. 316.193.

1 Presentation of the guaranteed traffic arrest bond certificate
2 and a power of attorney from the surety insurer for its
3 licensed general lines agents is authorization for such agent
4 to execute the bail bond.

5 921.0022 Criminal Punishment Code; offense severity
6 ranking chart.--

7 (3) OFFENSE SEVERITY RANKING CHART

8

9 Florida	Felony	
10 Statute	Degree	Description
		(f) LEVEL 6
13 316.027(1)(b)	2nd	Accident involving death, failure 14 to stop; leaving scene.
15 316.193(2)(b)	3rd	Felony DUI, 4th or subsequent 16 conviction.
17 775.0875(1)	3rd	Taking firearm from law 18 enforcement officer.
19 784.021(1)(a)	3rd	Aggravated assault; deadly weapon 20 without intent to kill.
21 784.021(1)(b)	3rd	Aggravated assault; intent to 22 commit felony.
23 784.048(3)	3rd	Aggravated stalking; credible 24 threat.
25 784.07(2)(c)	2nd	Aggravated assault on law 26 enforcement officer.
27 784.08(2)(b)	2nd	Aggravated assault on a person 65 28 years of age or older.
29 784.081(2)	2nd	Aggravated assault on specified 30 official or employee.

31

1	784.082(2)	2nd	Aggravated assault by detained
2			person on visitor or other
3			detainee.
4	787.02(2)	3rd	False imprisonment; restraining
5			with purpose other than those in
6			s. 787.01.
7	790.115(2)(d)	2nd	Discharging firearm or weapon on
8			school property.
9	790.161(2)	2nd	Make, possess, or throw
10			destructive device with intent to
11			do bodily harm or damage
12			property.
13	790.164(1)	2nd	False report of deadly explosive
14			or act of arson or violence to
15			state property.
16	790.19	2nd	Shooting or throwing deadly
17			missiles into dwellings, vessels,
18			or vehicles.
19	794.011(8)(a)	3rd	Solicitation of minor to
20			participate in sexual activity by
21			custodial adult.
22	794.05(1)	2nd	Unlawful sexual activity with
23			specified minor.
24	806.031(2)	2nd	Arson resulting in great bodily
25			harm to firefighter or any other
26			person.
27	810.02(3)(c)	2nd	Burglary of occupied structure;
28			unarmed; no assault or battery.
29	812.014(2)(b)	2nd	Property stolen \$20,000 or more,
30			but less than \$100,000, grand
31			theft in 2nd degree.

1	812.13(2)(c)	2nd	Robbery, no firearm or other
2			weapon (strong-arm robbery).
3	817.034(4)(a)1.	1st	Communications fraud, value
4			greater than \$50,000.
5	817.4821(5)	2nd	Possess cloning paraphernalia
6			with intent to create cloned
7			cellular telephones.
8	825.102(1)	3rd	Abuse of an elderly person or
9			disabled adult.
10	825.102(3)(c)	3rd	Neglect of an elderly person or
11			disabled adult.
12	825.1025(3)	3rd	Lewd or lascivious molestation of
13			an elderly person or disabled
14			adult.
15	825.103(2)(c)	3rd	Exploiting an elderly person or
16			disabled adult and property is
17			valued at \$100 or more, but less
18			than \$20,000.
19	827.03(1)	3rd	Abuse of a child.
20	827.03(3)(c)	3rd	Neglect of a child.
21	827.071(2)&(3)	2nd	Use or induce a child in a sexual
22			performance, or promote or direct
23			such performance.
24	836.05	2nd	Threats; extortion.
25	836.10	2nd	Written threats to kill or do
26			bodily injury.
27	843.12	3rd	Aids or assists person to escape.
28	914.23	2nd	Retaliation against a witness,
29			victim, or informant, with bodily
30			injury.
31			

1	944.35(3)(a)2.	3rd	Committing malicious battery upon
2			or inflicting cruel or inhuman
3			treatment on an inmate or
4			offender on community
5			supervision, resulting in great
6			bodily harm.
7	944.40	2nd	Escapes.
8	944.46	3rd	Harboring, concealing, aiding
9			escaped prisoners.
10	944.47(1)(a)5.	2nd	Introduction of contraband
11			(firearm, weapon, or explosive)
12			into correctional facility.
13	951.22(1)	3rd	Intoxicating drug, firearm, or
14			weapon introduced into county
15			facility.
16			(g) LEVEL 7
17	316.193(3)(c)2.	3rd	DUI resulting in serious bodily
18			injury.
19	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious
20			bodily injury.
21	409.920(2)	3rd	Medicaid provider fraud.
22	494.0018(2)	1st	Conviction of any violation of
23			ss. 494.001-494.0077 in which the
24			total money and property
25			unlawfully obtained exceeded
26			\$50,000 and there were five or
27			more victims.
28	782.07(1)	2nd	Killing of a human being by the
29			act, procurement, or culpable
30			negligence of another
31			(manslaughter).

1	782.071	3rd	Killing of human being by the
2			operation of a motor vehicle in a
3			reckless manner (vehicular
4			homicide).
5	782.072	3rd	Killing of a human being by the
6			operation of a vessel in a
7			reckless manner (vessel
8			homicide).
9	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
10			causing great bodily harm or
11			disfigurement.
12	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
13			weapon.
14	784.045(1)(b)	2nd	Aggravated battery; perpetrator
15			aware victim pregnant.
16	784.048(4)	3rd	Aggravated stalking; violation of
17			injunction or court order.
18	784.07(2)(d)	1st	Aggravated battery on law
19			enforcement officer.
20	784.08(2)(a)	1st	Aggravated battery on a person 65
21			years of age or older.
22	784.081(1)	1st	Aggravated battery on specified
23			official or employee.
24	784.082(1)	1st	Aggravated battery by detained
25			person on visitor or other
26			detainee.
27	790.07(4)	1st	Specified weapons violation
28			subsequent to previous conviction
29			of s. 790.07(1) or (2).
30	790.16(1)	1st	Discharge of a machine gun under
31			specified circumstances.

1	796.03	2nd	Procuring any person under 16
2			years for prostitution.
3	800.04	2nd	Handle, fondle, or assault child
4			under 16 years in lewd,
5			lascivious, or indecent manner.
6	806.01(2)	2nd	Maliciously damage structure by
7			fire or explosive.
8	810.02(3)(a)	2nd	Burglary of occupied dwelling;
9			unarmed; no assault or battery.
10	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
11			unarmed; no assault or battery.
12	810.02(3)(d)	2nd	Burglary of occupied conveyance;
13			unarmed; no assault or battery.
14	812.014(2)(a)	1st	Property stolen, valued at
15			\$100,000 or more; property stolen
16			while causing other property
17			damage; 1st degree grand theft.
18	812.019(2)	1st	Stolen property; initiates,
19			organizes, plans, etc., the theft
20			of property and traffics in
21			stolen property.
22	812.133(2)(b)	1st	Carjacking; no firearm, deadly
23			weapon, or other weapon.
24	825.102(3)(b)	2nd	Neglecting an elderly person or
25			disabled adult causing great
26			bodily harm, disability, or
27			disfigurement.
28	825.1025(2)	2nd	Lewd or lascivious battery upon
29			an elderly person or disabled
30			adult.
31			

1	825.103(2)(b)	2nd	Exploiting an elderly person or
2			disabled adult and property is
3			valued at \$20,000 or more, but
4			less than \$100,000.
5	827.03(3)(b)	2nd	Neglect of a child causing great
6			bodily harm, disability, or
7			disfigurement.
8	827.04(4)	3rd	Impregnation of a child under 16
9			years of age by person 21 years
10			of age or older.
11	872.06	2nd	Abuse of a dead human body.
12	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
13			cocaine (or other s.
14			893.03(1)(a), (1)(b), (1)(d),
15			(2)(a), or (2)(b) drugs) within
16			1,000 feet of a school.
17	893.13(4)(a)	1st	Deliver to minor cocaine (or
18			other s. 893.03(1)(a), (1)(b),
19			(1)(d), (2)(a), or (2)(b) drugs).
20	893.135(1)(a)1.	1st	Trafficking in cannabis, more
21			than 50 lbs., less than 2,000
22			lbs.
23	893.135		
24	(1)(b)1.a.	1st	Trafficking in cocaine, more than
25			28 grams, less than 200 grams.
26	893.135		
27	(1)(c)1.a.	1st	Trafficking in illegal drugs,
28			more than 4 grams, less than 14
29			grams.
30			
31			

1	893.135		
2	(1)(d)1.	1st	Trafficking in phencyclidine,
3			more than 28 grams, less than 200
4			grams.
5	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
6			than 200 grams, less than 5
7			kilograms.
8	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
9			than 14 grams, less than 28
10			grams.
11			(h) LEVEL 8
12	316.193		
13	(3)(c)3.a.	2nd	DUI manslaughter.
14	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
15	777.03(2)(a)	1st	Accessory after the fact, capital
16			felony.
17	782.04(4)	2nd	Killing of human without design
18			when engaged in act or attempt of
19			any felony other than arson,
20			sexual battery, robbery,
21			burglary, kidnapping, aircraft
22			piracy, or unlawfully discharging
23			bomb.
24	782.071(2)	2nd	Committing vehicular homicide and
25			failing to render aid or give
26			information.
27	782.072(2)	2nd	Committing vessel homicide and
28			failing to render aid or give
29			information.
30			
31			

1	790.161(3)	1st	Discharging a destructive device
2			which results in bodily harm or
3			property damage.
4	794.011(5)	2nd	Sexual battery, victim 12 years
5			or over, offender does not use
6			physical force likely to cause
7			serious injury.
8	806.01(1)	1st	Maliciously damage dwelling or
9			structure by fire or explosive,
10			believing person in structure.
11	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
12	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
13			or dangerous weapon.
14	810.02(2)(c)	1st	Burglary of a dwelling or
15			structure causing structural
16			damage or \$1,000 or more property
17			damage.
18	812.13(2)(b)	1st	Robbery with a weapon.
19	812.135(2)	1st	Home-invasion robbery.
20	825.102(2)	2nd	Aggravated abuse of an elderly
21			person or disabled adult.
22	825.103(2)(a)	1st	Exploiting an elderly person or
23			disabled adult and property is
24			valued at \$100,000 or more.
25	827.03(2)	2nd	Aggravated child abuse.
26	860.121(2)(c)	1st	Shooting at or throwing any
27			object in path of railroad
28			vehicle resulting in great bodily
29			harm.
30	860.16	1st	Aircraft piracy.
31			

1	893.13(1)(b)	1st	Sell or deliver in excess of 10
2			grams of any substance specified
3			in s. 893.03(1)(a) or (b).
4	893.13(2)(b)	1st	Purchase in excess of 10 grams of
5			any substance specified in s.
6			893.03(1)(a) or (b).
7	893.13(6)(c)	1st	Possess in excess of 10 grams of
8			any substance specified in s.
9			893.03(1)(a) or (b).
10	893.135(1)(a)2.	1st	Trafficking in cannabis, more
11			than 2,000 lbs., less than 10,000
12			lbs.
13	893.135		
14	(1)(b)1.b.	1st	Trafficking in cocaine, more than
15			200 grams, less than 400 grams.
16	893.135		
17	(1)(c)1.b.	1st	Trafficking in illegal drugs,
18			more than 14 grams, less than 28
19			grams.
20	893.135		
21	(1)(d)1.b.	1st	Trafficking in phencyclidine,
22			more than 200 grams, less than
23			400 grams.
24	893.135		
25	(1)(e)1.b.	1st	Trafficking in methaqualone, more
26			than 5 kilograms, less than 25
27			kilograms.
28	893.135		
29	(1)(f)1.b.	1st	Trafficking in amphetamine, more
30			than 28 grams, less than 200
31			grams.

1	895.03(1)	1st	Use or invest proceeds derived
2			from pattern of racketeering
3			activity.
4	895.03(2)	1st	Acquire or maintain through
5			racketeering activity any
6			interest in or control of any
7			enterprise or real property.
8	895.03(3)	1st	Conduct or participate in any
9			enterprise through pattern of
10			racketeering activity.
11			(i) LEVEL 9
12	316.193		
13	(3)(c)3.b.	1st	DUI manslaughter; failing to
14			render aid or give information.
15	782.04(1)	1st	Attempt, conspire, or solicit to
16			commit premeditated murder.
17	782.04(3)	1st,PBL	Accomplice to murder in
18			connection with arson, sexual
19			battery, robbery, burglary, and
20			other specified felonies.
21	782.07(2)	1st	Aggravated manslaughter of an
22			elderly person or disabled adult.
23	782.07(3)	1st	Aggravated manslaughter of a
24			child.
25	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
26			reward or as a shield or hostage.
27	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
28			or facilitate commission of any
29			felony.
30			
31			

1	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
2			interfere with performance of any
3			governmental or political
4			function.
5	787.02(3)(a)	1st	False imprisonment; child under
6			age 13; perpetrator also commits
7			child abuse, sexual battery,
8			lewd, or lascivious act, etc.
9	790.161	1st	Attempted capital destructive
10			device offense.
11	794.011(2)	1st	Attempted sexual battery; victim
12			less than 12 years of age.
13	794.011(2)	Life	Sexual battery; offender younger
14			than 18 years and commits sexual
15			battery on a person less than 12
16			years.
17	794.011(4)	1st	Sexual battery; victim 12 years
18			or older, certain circumstances.
19	794.011(8)(b)	1st	Sexual battery; engage in sexual
20			conduct with minor 12 to 18 years
21			by person in familial or
22			custodial authority.
23	812.13(2)(a)	1st,PBL	Robbery with firearm or other
24			deadly weapon.
25	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
26			deadly weapon.
27	847.0145(1)	1st	Selling, or otherwise
28			transferring custody or control,
29			of a minor.
30			
31			

1	847.0145(2)	1st	Purchasing, or otherwise
2			obtaining custody or control, of
3			a minor.
4	859.01	1st	Poisoning food, drink, medicine,
5			or water with intent to kill or
6			injure another person.
7	893.135	1st	Attempted capital trafficking
8			offense.
9	893.135(1)(a)3.	1st	Trafficking in cannabis, more
10			than 10,000 lbs.
11	893.135		
12	(1)(b)1.c.	1st	Trafficking in cocaine, more than
13			400 grams, less than 150
14			kilograms.
15	893.135		
16	(1)(c)1.c.	1st	Trafficking in illegal drugs,
17			more than 28 grams, less than 30
18			kilograms.
19	893.135		
20	(1)(d)1.c.	1st	Trafficking in phencyclidine,
21			more than 400 grams.
22	893.135		
23	(1)(e)1.c.	1st	Trafficking in methaqualone, more
24			than 25 kilograms.
25	893.135		
26	(1)(f)1.c.	1st	Trafficking in amphetamine, more
27			than 200 grams.
28	938.07		Driving under the influence.--Notwithstanding
29			any other provision of s. 316.193, a court cost of \$135 shall
30			be added to any fine imposed pursuant to s. 316.193, of which
31			\$25 shall be deposited in the Emergency Medical Services Trust

1 Fund, \$50 shall be deposited in the Criminal Justice Standards
2 and Training Trust Fund of the Department of Law Enforcement
3 to be used for operational expenses of the Division of Local
4 Law Enforcement Assistance in conducting the statewide
5 criminal analysis laboratory system established in s. 943.32,
6 and \$60 shall be deposited in the Brain and Spinal Cord Injury
7 Rehabilitation Trust Fund created in s. 413.613.

8 938.21 Alcohol and drug abuse
9 programs.--Notwithstanding any provision to the contrary of
10 the laws of this state, the court may assess for alcohol and
11 other drug abuse programs as provided in s. 893.165 any
12 defendant who pleads guilty or nolo contendere to, or is
13 convicted of, a violation of any provision of chapter 893 or
14 which involves a criminal violation of s. 316.193, s. 856.011,
15 s. 856.015, or chapter 562, chapter 567, or chapter 568, in
16 addition to any fine and other penalty provided by law, a
17 court cost in an amount up to the amount of the fine
18 authorized for the violation. The court is authorized to order
19 a defendant to pay an additional assessment if it finds that
20 the defendant has the ability to pay the fine and the
21 additional assessment and will not be prevented thereby from
22 being rehabilitated or from making restitution.

23 938.23 Assistance grants for alcohol and other drug
24 abuse programs.--

25 (1) In addition to any fine imposed by law for any
26 criminal offense under chapter 893 or for any criminal
27 violation of s. 316.193, s. 856.011, s. 856.015, or chapter
28 562, chapter 567, or chapter 568, the court shall be
29 authorized, pursuant to the requirements of s. 938.21, to
30 impose an additional assessment in an amount up to the amount
31 of the fine authorized for the offense. Such additional

1 assessments shall be deposited for the purpose of providing
2 assistance grants to drug abuse treatment or alcohol treatment
3 or education programs as provided in s. 893.165.

4 960.03 Definitions.--As used in ss. 960.01-960.28,
5 unless the context otherwise requires, the term:

6 (3) "Crime" means:

7 (b) A violation of s. 316.193, s. 316.027(1), or s.
8 782.071(2), which results in physical injury or death;
9 however, no other act involving the operation of a motor
10 vehicle, boat, or aircraft which results in injury or death
11 shall constitute a crime for the purpose of this chapter
12 unless the injury or death was intentionally inflicted through
13 the use of such vehicle, boat, or aircraft or unless such
14 vehicle, boat, or aircraft is an implement of a crime to which
15 this act applies.

16 Section 3. Paragraph (c) of subsection (1) of section
17 893.03, Florida Statutes, is amended to read:

18 893.03 Standards and schedules.--The substances
19 enumerated in this section are controlled by this chapter.
20 The controlled substances listed or to be listed in Schedules
21 I, II, III, IV, and V are included by whatever official,
22 common, usual, chemical, or trade name designated. The
23 provisions of this section shall not be construed to include
24 within any of the schedules contained in this section any
25 excluded drugs listed within the purview of 21 C.F.R. s.
26 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24,
27 styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32,
28 styled "Exempted Prescription Products"; or 21 C.F.R. s.
29 1308.34, styled "Exempt Anabolic Steroid Products."

30 (1) SCHEDULE I.--A substance in Schedule I has a high
31 potential for abuse and has no currently accepted medical use

1 in treatment in the United States and in its use under medical
2 supervision does not meet accepted safety standards. The
3 following substances are controlled in Schedule I:

4 (c) Unless specifically excepted or unless listed in
5 another schedule, any material, compound, mixture, or
6 preparation which contains any quantity of the following
7 hallucinogenic substances or which contains any of their
8 salts, isomers, and salts of isomers, whenever the existence
9 of such salts, isomers, and salts of isomers is possible
10 within the specific chemical designation:

- 11 1. Alpha-ethyltryptamine.
- 12 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline
13 (4-methylaminorex).
- 14 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
- 15 4. 4-Bromo-2,5-dimethoxyamphetamine.
- 16 5. 4-Bromo-2, 5-dimethoxyphenethylamine.
- 17 6. Bufotenine.
- 18 7. Cannabis.
- 19 8. Cathinone.
- 20 9. Diethyltryptamine.
- 21 10. 2,5-Dimethoxyamphetamine.
- 22 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
- 23 12. Dimethyltryptamine.
- 24 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine
25 analog of phencyclidine).
- 26 14. N-Ethyl-3-piperidyl benzilate.
- 27 15. N-ethylamphetamine.
- 28 16. Fenethylamine.
- 29 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
- 30 18. Ibogaine.
- 31 19. Lysergic acid diethylamide (LSD).

- 1 20. Mescaline.
2 21. Methcathinone.
3 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
4 23. 4-methoxyamphetamine.
5 24. 4-Methyl-2,5-dimethoxyamphetamine.
6 25. 3,4-Methylenedioxy-N-ethylamphetamine.
7 26. 3,4-Methylenedioxyamphetamine.
8 27. N-Methyl-3-piperidyl benzilate.
9 28. N,N-dimethylamphetamine.
10 29. Parahexyl.
11 30. Peyote.
12 31. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY)
13 (Pyrrolidine analog of phencyclidine).
14 32. Psilocybin, including all mushroom species in the
15 genera psilocybe and conocybe.
16 33. Psilocyn.
17 34. Tetrahydrocannabinols.
18 35. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
19 (Thiophene analog of phencyclidine).
20 36. 3,4,5-Trimethoxyamphetamine.
21 Section 4. For the purpose of incorporating the
22 amendment to section 893.03(1)(c), Florida Statutes, in
23 references thereto, the following sections or subdivisions of
24 Florida Statutes are reenacted to read:
25 782.04 Murder.--
26 (1)(a) The unlawful killing of a human being:
27 1. When perpetrated from a premeditated design to
28 effect the death of the person killed or any human being; or
29 2. When committed by a person engaged in the
30 perpetration of, or in the attempt to perpetrate, any:
31 a. Trafficking offense prohibited by s. 893.135(1),

1 b. Arson,
2 c. Sexual battery,
3 d. Robbery,
4 e. Burglary,
5 f. Kidnapping,
6 g. Escape,
7 h. Aggravated child abuse,
8 i. Aggravated abuse of an elderly person or disabled
9 adult,
10 j. Aircraft piracy,
11 k. Unlawful throwing, placing, or discharging of a
12 destructive device or bomb,
13 l. Carjacking,
14 m. Home-invasion robbery,
15 n. Aggravated stalking, or
16 3. Which resulted from the unlawful distribution of
17 any substance controlled under s. 893.03(1), cocaine as
18 described in s. 893.03(2)(a)4., or opium or any synthetic or
19 natural salt, compound, derivative, or preparation of opium by
20 a person 18 years of age or older, when such drug is proven to
21 be the proximate cause of the death of the user,
22
23 is murder in the first degree and constitutes a capital
24 felony, punishable as provided in s. 775.082.
25 (4) The unlawful killing of a human being, when
26 perpetrated without any design to effect death, by a person
27 engaged in the perpetration of, or in the attempt to
28 perpetrate, any felony other than any:
29 (1) Unlawful distribution of any substance controlled
30 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,
31 or opium or any synthetic or natural salt, compound,

1 derivative, or preparation of opium by a person 18 years of
2 age or older, when such drug is proven to be the proximate
3 cause of the death of the user,
4

5 is murder in the third degree and constitutes a felony of the
6 second degree, punishable as provided in s. 775.082, s.
7 775.083, or s. 775.084.

8 817.563 Controlled substance named or described in s.
9 893.03; sale of substance in lieu thereof.--It is unlawful for
10 any person to agree, consent, or in any manner offer to
11 unlawfully sell to any person a controlled substance named or
12 described in s. 893.03 and then sell to such person any other
13 substance in lieu of such controlled substance. Any person who
14 violates this section with respect to:

15 (1) A controlled substance named or described in s.
16 893.03(1), (2), (3), or (4) is guilty of a felony of the third
17 degree, punishable as provided in s. 775.082, s. 775.083, or
18 s. 775.084.

19 831.31 Counterfeit controlled substance; sale,
20 manufacture, delivery, or possession with intent to sell,
21 manufacture, or deliver.--

22 (1) It is unlawful for any person to sell,
23 manufacture, or deliver, or to possess with intent to sell,
24 manufacture, or deliver, a counterfeit controlled substance.
25 Any person who violates this subsection with respect to:

26 (a) A controlled substance named or described in s.
27 893.03(1), (2), (3), or (4) is guilty of a felony of the third
28 degree, punishable as provided in s. 775.082, s. 775.083, or
29 s. 775.084.

30 893.12 Contraband; seizure, forfeiture, sale.--
31 (2)

1 (b) All real property, including any right, title,
2 leasehold interest, and other interest in the whole of any lot
3 or tract of land and any appurtenances or improvements, which
4 real property is used, or intended to be used, in any manner
5 or part, to commit or to facilitate the commission of, or
6 which real property is acquired with proceeds obtained as a
7 result of, a violation of any provision of this chapter
8 related to a controlled substance described in s. 893.03(1) or
9 (2) may be seized and forfeited as provided by the Florida
10 Contraband Forfeiture Act except that no property shall be
11 forfeited under this paragraph to the extent of an interest of
12 an owner or lienholder by reason of any act or omission
13 established by that owner or lienholder to have been committed
14 or omitted without the knowledge or consent of that owner or
15 lienholder.

16 (c) All moneys, negotiable instruments, securities,
17 and other things of value furnished or intended to be
18 furnished by any person in exchange for a controlled substance
19 described in s. 893.03(1) or (2) or a listed chemical in
20 violation of any provision of this chapter, all proceeds
21 traceable to such an exchange, and all moneys, negotiable
22 instruments, and securities used or intended to be used to
23 facilitate any violation of any provision of this chapter or
24 which are acquired with proceeds obtained in violation of any
25 provision of this chapter may be seized and forfeited as
26 provided by the Florida Contraband Forfeiture Act, except that
27 no property shall be forfeited under this paragraph to the
28 extent of an interest of an owner or lienholder by reason of
29 any act or omission established by that owner or lienholder to
30 have been committed or omitted without the knowledge or
31 consent of that owner or lienholder.

1 (d) All books, records, and research, including
2 formulas, microfilm, tapes, and data which are used, or
3 intended for use, or which are acquired with proceeds
4 obtained, in violation of any provision of this chapter
5 related to a controlled substance described in s. 893.03(1) or
6 (2) or a listed chemical may be seized and forfeited as
7 provided by the Florida Contraband Forfeiture Act.

8 893.13 Prohibited acts; penalties.--

9 (1)(a) Except as authorized by this chapter and
10 chapter 499, it is unlawful for any person to sell,
11 manufacture, or deliver, or possess with intent to sell,
12 manufacture, or deliver, a controlled substance. Any person
13 who violates this provision with respect to:

14 1. A controlled substance named or described in s.
15 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a
16 felony of the second degree, punishable as provided in s.
17 775.082, s. 775.083, or s. 775.084.

18 2. A controlled substance named or described in s.
19 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the
20 third degree, punishable as provided in s. 775.082, s.
21 775.083, or s. 775.084.

22 3. A controlled substance named or described in s.
23 893.03(5) commits a misdemeanor of the first degree,
24 punishable as provided in s. 775.082 or s. 775.083.

25 (c) Except as authorized by this chapter, it is
26 unlawful for any person to sell, manufacture, or deliver, or
27 possess with intent to sell, manufacture, or deliver a
28 controlled substance in, on, or within 1,000 feet of the real
29 property comprising a child care facility as defined in s.
30 402.302 or a public or private elementary, middle, or
31

1 secondary school between the hours of 6 a.m. and 12 a.m. Any
2 person who violates this paragraph with respect to:

3 1. A controlled substance named or described in s.
4 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a
5 felony of the first degree, punishable as provided in s.
6 775.082, s. 775.083, or s. 775.084. The defendant must be
7 sentenced to a minimum term of imprisonment of 3 calendar
8 years unless the offense was committed within 1,000 feet of
9 the real property comprising a child care facility as defined
10 in s. 402.302.

11 2. A controlled substance named or described in s.
12 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the
13 second degree, punishable as provided in s. 775.082, s.
14 775.083, or s. 775.084.

15 3. Any other controlled substance, except as lawfully
16 sold, manufactured, or delivered, must be sentenced to pay a
17 \$500 fine and to serve 100 hours of public service in addition
18 to any other penalty prescribed by law.

19 (d) Except as authorized by this chapter, it is
20 unlawful for any person to sell, manufacture, or deliver, or
21 possess with intent to sell, manufacture, or deliver, a
22 controlled substance in, on, or within 200 feet of the real
23 property comprising a public housing facility, within 200 feet
24 of the real property comprising a public or private college,
25 university, or other postsecondary educational institution, or
26 within 200 feet of any public park. Any person who violates
27 this paragraph with respect to:

28 1. A controlled substance named or described in s.
29 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a
30 felony of the first degree, punishable as provided in s.
31 775.082, s. 775.083, or s. 775.084.

1 2. A controlled substance named or described in s.
2 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the
3 second degree, punishable as provided in s. 775.082, s.
4 775.083, or s. 775.084.

5 3. Any other controlled substance, except as lawfully
6 sold, manufactured, or delivered, must be sentenced to pay a
7 \$500 fine and to serve 100 hours of public service in addition
8 to any other penalty prescribed by law.

9 (e) Except as authorized by this chapter, it is
10 unlawful for any person to sell, manufacture, or deliver, or
11 possess with intent to sell, manufacture, or deliver, a
12 controlled substance not authorized by law in, on, or within
13 1,000 feet of a physical place for worship at which a church
14 or religious organization regularly conducts religious
15 services or within 1,000 feet of a convenience business as
16 defined in s. 812.171. Any person who violates this paragraph
17 with respect to:

18 1. A controlled substance named or described in s.
19 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a
20 felony of the first degree, punishable as provided in s.
21 775.082, s. 775.083, or s. 775.084.

22 2. A controlled substance named or described in s.
23 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the
24 second degree, punishable as provided in s. 775.082, s.
25 775.083, or s. 775.084.

26 3. Any other controlled substance, except as lawfully
27 sold, manufactured, or delivered, must be sentenced to pay a
28 \$500 fine and to serve 100 hours of public service in addition
29 to any other penalty prescribed by law.

30 (2)

31

1 (a) Except as authorized by this chapter and chapter
2 499, it is unlawful for any person to purchase, or possess
3 with intent to purchase, a controlled substance. Any person
4 who violates this provision with respect to:

5 1. A controlled substance named or described in s.
6 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a
7 felony of the second degree, punishable as provided in s.
8 775.082, s. 775.083, or s. 775.084.

9 2. A controlled substance named or described in s.
10 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the
11 third degree, punishable as provided in s. 775.082, s.
12 775.083, or s. 775.084.

13 3. A controlled substance named or described in s.
14 893.03(5) commits a misdemeanor of the first degree,
15 punishable as provided in s. 775.082 or s. 775.083.

16 (4) Except as authorized by this chapter, it is
17 unlawful for any person 18 years of age or older to deliver
18 any controlled substance to a person under the age of 18
19 years, or to use or hire a person under the age of 18 years as
20 an agent or employee in the sale or delivery of such a
21 substance, or to use such person to assist in avoiding
22 detection or apprehension for a violation of this chapter.
23 Any person who violates this provision with respect to:

24 (b) A controlled substance named or described in s.
25 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the
26 second degree, punishable as provided in s. 775.082, s.
27 775.083, or s. 775.084.

28
29 Imposition of sentence may not be suspended or deferred, nor
30 shall the person so convicted be placed on probation.
31

1 (5) It is unlawful for any person to bring into this
2 state any controlled substance unless the possession of such
3 controlled substance is authorized by this chapter or unless
4 such person is licensed to do so by the appropriate federal
5 agency. Any person who violates this provision with respect
6 to:

7 (b) A controlled substance named or described in s.
8 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the
9 third degree, punishable as provided in s. 775.082, s.
10 775.083, or s. 775.084.

11 (6)(a) It is unlawful for any person to be in actual
12 or constructive possession of a controlled substance unless
13 such controlled substance was lawfully obtained from a
14 practitioner or pursuant to a valid prescription or order of a
15 practitioner while acting in the course of his or her
16 professional practice or to be in actual or constructive
17 possession of a controlled substance except as otherwise
18 authorized by this chapter. Any person who violates this
19 provision commits a felony of the third degree, punishable as
20 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

30
31

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

4 5. To keep or maintain any store, shop, warehouse,
5 dwelling, building, vehicle, boat, aircraft, or other
6 structure or place which is resorted to by persons using
7 controlled substances in violation of this chapter for the
8 purpose of using these substances, or which is used for
9 keeping or selling them in violation of this chapter.

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

14 7. To withhold information from a practitioner from
15 whom the person seeks to obtain a controlled substance or a
16 prescription for a controlled substance that the person has
17 received a controlled substance or a prescription for a
18 controlled substance of like therapeutic use from another
19 practitioner within the last 30 days.

20 8. To possess a prescription form which has not been
21 completed and signed by the practitioner whose name appears
22 printed thereon, unless the person is that practitioner, is an
23 agent or employee of that practitioner, is a pharmacist, or is
24 a supplier of prescription forms who is authorized by that
25 practitioner to possess those forms.

26 9. To acquire or obtain, or attempt to acquire or
27 obtain, possession of a controlled substance by
28 misrepresentation, fraud, forgery, deception, or subterfuge.

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

31

1 11. To furnish false or fraudulent material
2 information in, or omit any material information from, any
3 report or other document required to be kept or filed under
4 this chapter or any record required to be kept by this
5 chapter.

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

12 (c) Any person who violates the provisions of
13 subparagraphs (a)9.-11. commits a felony of the third degree,
14 punishable as provided in s. 775.082, s. 775.083, or s.
15 775.084.

16 (8) The provisions of subsections (1) through (7) are
17 not applicable to the delivery to, or actual or constructive
18 possession for medical or scientific use or purpose only of
19 controlled substances by, persons included in any of the
20 following classes, or the agents or employees of such persons,
21 for use in the usual course of their business or profession or
22 in the performance of their official duties:

23 (a) Pharmacists.

24 (b) Practitioners.

25 (c) Persons who procure controlled substances in good
26 faith and in the course of professional practice only, by or
27 under the supervision of pharmacists or practitioners employed
28 by them, or for the purpose of lawful research, teaching, or
29 testing, and not for resale.

30
31

1 (d) Hospitals that procure controlled substances for
2 lawful administration by practitioners, but only for use by or
3 in the particular hospital.

4 (e) Officers or employees of state, federal, or local
5 governments acting in their official capacity only, or
6 informers acting under their jurisdiction.

7 (f) Common carriers.

8 (g) Manufacturers, wholesalers, and distributors.

9 (h) Law enforcement officers for bona fide law
10 enforcement purposes in the course of an active criminal
11 investigation.

12 Section 5. Section 893.133, Florida Statutes, is
13 created to read:

14 893.133 Evidence of possession with intent to sell or
15 deliver controlled substance; inferences.--

16 (1) Proof that a person possesses 10 or more rocks of
17 crack cocaine or 5 or more grams of powder cocaine gives rise
18 to an inference that the person was possessing the cocaine
19 with the intent to sell or deliver the cocaine.

20 (2) Proof that a person possesses 1 pound or more of
21 cannabis gives rise to an inference that the person was
22 possessing the cannabis with the intent to sell or deliver the
23 cannabis.

24 (3) Proof that a person possesses 20 decks or more of
25 heroin or 1 gram or more of heroin gives rise to an inference
26 that the person was possessing the heroin with the intent to
27 sell or deliver the heroin.

28 (4) Proof that a person possesses 5 grams or more of
29 amphetamine or methamphetamine gives rise to an inference that
30 the person was possessing the amphetamine or methamphetamine
31

1 with the intent to sell or deliver the amphetamine or
2 methamphetamine, respectively.

3 Section 6. Paragraph (a) of subsection (1) of section
4 893.135, Florida Statutes, is amended to read:

5 893.135 Trafficking; mandatory sentences; suspension
6 or reduction of sentences; conspiracy to engage in
7 trafficking.--

8 (1) Except as authorized in this chapter or in chapter
9 499 and notwithstanding the provisions of s. 893.13:

10 (a) Any person who knowingly sells, purchases,
11 manufactures, delivers, or brings into this state, or who is
12 knowingly in actual or constructive possession of, 10 in
13 ~~excess of 50 pounds or more~~ of cannabis commits a felony of
14 the first degree, which felony shall be known as "trafficking
15 in cannabis." If the quantity of cannabis involved:

16 1. Is 10 pounds or more but no more than 50 pounds,
17 such person shall be sentenced pursuant to the Criminal
18 Punishment Code and pay a fine of \$15,000.

19 ~~2.1.~~ Is in excess of 50 pounds, but less than 2,000
20 pounds, such person shall be sentenced pursuant to the
21 Criminal Punishment Code and pay a fine of \$25,000.

22 ~~3.2.~~ Is 2,000 pounds or more, but less than 10,000
23 pounds, such person shall be sentenced pursuant to the
24 Criminal Punishment Code and pay a fine of \$50,000.

25 ~~4.3.~~ Is 10,000 pounds or more, such person shall be
26 sentenced to a mandatory minimum term of imprisonment of 15
27 calendar years and pay a fine of \$200,000.

28 (2) A person acts knowingly under subsection (1) if
29 that person intends to sell, purchase, manufacture, deliver,
30 or bring into this state, or to actually or constructively
31 possess, any of the controlled substances listed in subsection

1 (1), regardless of which controlled substance listed in
2 subsection (1) is in fact sold, purchased, manufactured,
3 delivered, or brought into this state, or actually or
4 constructively possessed.

5 (3) Notwithstanding the provisions of s. 948.01, with
6 respect to any person who is found to have violated this
7 section, adjudication of guilt or imposition of sentence shall
8 not be suspended, deferred, or withheld, nor shall such person
9 be eligible for parole prior to serving the mandatory minimum
10 term of imprisonment prescribed by this section.

11 (4) The state attorney may move the sentencing court
12 to reduce or suspend the sentence of any person who is
13 convicted of a violation of this section and who provides
14 substantial assistance in the identification, arrest, or
15 conviction of any of that person's accomplices, accessories,
16 coconspirators, or principals or of any other person engaged
17 in trafficking in controlled substances. The arresting agency
18 shall be given an opportunity to be heard in aggravation or
19 mitigation in reference to any such motion. Upon good cause
20 shown, the motion may be filed and heard in camera. The judge
21 hearing the motion may reduce or suspend the sentence if the
22 judge finds that the defendant rendered such substantial
23 assistance.

24 (5) Any person who agrees, conspires, combines, or
25 confederates with another person to commit any act prohibited
26 by subsection (1) commits a felony of the first degree and is
27 punishable as if he or she had actually committed such
28 prohibited act. Nothing in this subsection shall be construed
29 to prohibit separate convictions and sentences for a violation
30 of this subsection and any violation of subsection (1).

31

1 Section 7. For the purpose of incorporating the
2 amendment to section 893.135, Florida Statutes, in references
3 thereto, the following sections or subdivisions of Florida
4 Statutes are reenacted to read:

5 397.451 Background checks of service provider
6 personnel who have direct contact with unmarried minor clients
7 or clients who are developmentally disabled.--

8 (7) DISQUALIFICATION FROM RECEIVING STATE
9 FUNDS.--State funds may not be disseminated to any service
10 provider owned or operated by an owner or director who has
11 been convicted of, has entered a plea of guilty or nolo
12 contendere to, or has had adjudication withheld for, a
13 violation of s. 893.135 pertaining to trafficking in
14 controlled substances, or a violation of the law of another
15 state, the District of Columbia, the United States or any
16 possession or territory thereof, or any foreign jurisdiction
17 which is substantially similar in elements and penalties to a
18 trafficking offense in this state, unless the owner's or
19 director's civil rights have been restored.

20 414.095 Determining eligibility for the WAGES
21 Program.--

22 (1) ELIGIBILITY.--An applicant must meet eligibility
23 requirements of this section before receiving services or
24 temporary cash assistance under this chapter, except that an
25 applicant shall be required to engage in work activities in
26 accordance with s. 414.065 and may receive support services or
27 child care assistance in conjunction with such requirement.
28 The department shall make a determination of eligibility based
29 on the criteria listed in this chapter. The department shall
30 monitor continued eligibility for temporary cash assistance
31 through periodic reviews consistent with the food stamp

1 eligibility process. Benefits shall not be denied to an
2 individual solely based on a felony drug conviction, unless
3 the conviction is for trafficking pursuant to s. 893.135. To
4 be eligible under this section, an individual convicted of a
5 drug felony must be satisfactorily meeting the requirements of
6 the WAGES Program, including all substance abuse treatment
7 requirements. Within the limits specified in this chapter, the
8 state opts out of the provision of Pub. L. No. 104-193, s.
9 115, that eliminates eligibility for temporary cash assistance
10 and food stamps for any individual convicted of a controlled
11 substance felony.

12 772.12 Drug Dealer Liability Act.--

13 (2) A person, including any governmental entity, has a
14 cause of action for threefold the actual damages sustained and
15 is entitled to minimum damages in the amount of \$1,000 and
16 reasonable attorney's fees and court costs in the trial and
17 appellate courts, if the person proves by the greater weight
18 of the evidence that:

19 (a) The person was injured because of the defendant's
20 actions that resulted in the defendant's conviction for:

21 1. A violation of s. 893.13, except for a violation of
22 s. 893.13(2)(a) or (b), (3), (5), (6)(a), (b), or (c), (7); or

23 2. A violation of s. 893.135; and

24 (b) The person was not injured by reason of his or her
25 participation in the same act or transaction that resulted in
26 the defendant's conviction for any offense described in
27 subparagraph (a)1.

28 782.04 Murder.--

29 (1)(a) The unlawful killing of a human being:

30 1. When perpetrated from a premeditated design to
31 effect the death of the person killed or any human being; or

1 2. When committed by a person engaged in the
2 perpetration of, or in the attempt to perpetrate, any:
3 a. Trafficking offense prohibited by s. 893.135(1),
4 b. Arson,
5 c. Sexual battery,
6 d. Robbery,
7 e. Burglary,
8 f. Kidnapping,
9 g. Escape,
10 h. Aggravated child abuse,
11 i. Aggravated abuse of an elderly person or disabled
12 adult,
13 j. Aircraft piracy,
14 k. Unlawful throwing, placing, or discharging of a
15 destructive device or bomb,
16 l. Carjacking,
17 m. Home-invasion robbery,
18 n. Aggravated stalking, or
19 3. Which resulted from the unlawful distribution of
20 any substance controlled under s. 893.03(1), cocaine as
21 described in s. 893.03(2)(a)4., or opium or any synthetic or
22 natural salt, compound, derivative, or preparation of opium by
23 a person 18 years of age or older, when such drug is proven to
24 be the proximate cause of the death of the user,
25
26 is murder in the first degree and constitutes a capital
27 felony, punishable as provided in s. 775.082.
28 (3) When a person is killed in the perpetration of, or
29 in the attempt to perpetrate, any:
30 (a) Trafficking offense prohibited by s. 893.135(1),
31

1 by a person other than the person engaged in the perpetration
2 of or in the attempt to perpetrate such felony, the person
3 perpetrating or attempting to perpetrate such felony is guilty
4 of murder in the second degree, which constitutes a felony of
5 the first degree, punishable by imprisonment for a term of
6 years not exceeding life or as provided in s. 775.082, s.
7 775.083, or s. 775.084.

8 (4) The unlawful killing of a human being, when
9 perpetrated without any design to effect death, by a person
10 engaged in the perpetration of, or in the attempt to
11 perpetrate, any felony other than any:

12 (a) Trafficking offense prohibited by s. 893.135(1),
13
14 is murder in the third degree and constitutes a felony of the
15 second degree, punishable as provided in s. 775.082, s.
16 775.083, or s. 775.084.

17 893.1351 Lease or rent for the purpose of trafficking
18 in a controlled substance.--

19 (1) A person may not lease or rent any place,
20 structure, or part thereof, trailer, or other conveyance, with
21 the knowledge that such place, structure, trailer, or
22 conveyance will be used for the purpose of trafficking in a
23 controlled substance, as provided in s. 893.135, or the sale
24 of a controlled substance, as provided in s. 893.13.

25 903.133 Bail on appeal; prohibited for certain felony
26 convictions.--Notwithstanding the provisions of s. 903.132, no
27 person adjudged guilty of a felony of the first degree for a
28 violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s.
29 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a
30 violation of s. 794.011(2) or (3), shall be admitted to bail
31 pending review either by posttrial motion or appeal.

1 907.041 Pretrial detention and release.--

2 (4) PRETRIAL DETENTION.--

3 (b) The court may order pretrial detention if it finds
4 a substantial probability, based on a defendant's past and
5 present patterns of behavior, the criteria in s. 903.046, and
6 any other relevant facts, that:

7 1. The defendant has previously violated conditions of
8 release and that no further conditions of release are
9 reasonably likely to assure the defendant's appearance at
10 subsequent proceedings;

11 2. The defendant, with the intent to obstruct the
12 judicial process, has threatened, intimidated, or injured any
13 victim, potential witness, juror, or judicial officer, or has
14 attempted or conspired to do so, and that no condition of
15 release will reasonably prevent the obstruction of the
16 judicial process;

17 3. The defendant is charged with trafficking in
18 controlled substances as defined by s. 893.135, that there is
19 a substantial probability that the defendant has committed the
20 offense, and that no conditions of release will reasonably
21 assure the defendant's appearance at subsequent criminal
22 proceedings; or

23 4. The defendant poses the threat of harm to the
24 community. The court may so conclude if it finds that the
25 defendant is presently charged with a dangerous crime, that
26 there is a substantial probability that the defendant
27 committed such crime, that the factual circumstances of the
28 crime indicate a disregard for the safety of the community,
29 and that there are no conditions of release reasonably
30 sufficient to protect the community from the risk of physical
31

1 harm to persons. In addition, the court must find that at
2 least one of the following conditions is present:

3 a. The defendant has previously been convicted of a
4 crime punishable by death or life imprisonment.

5 b. The defendant has been convicted of a dangerous
6 crime within the 10 years immediately preceding the date of
7 his or her arrest for the crime presently charged.

8 c. The defendant is on probation, parole, or other
9 release pending completion of sentence or on pretrial release
10 for a dangerous crime at the time of the current arrest.

11 921.0024 Criminal Punishment Code; worksheet
12 computations; scoresheets.--

13 (1)

14

15 (b) WORKSHEET KEY:

16

17 Legal status points are assessed when any form of legal status
18 existed at the time the offender committed an offense before
19 the court for sentencing. Four (4) sentence points are
20 assessed for an offender's legal status.

21

22 Community sanction violation points are assessed when a
23 community sanction violation is before the court for
24 sentencing. Six (6) sentence points are assessed for each
25 community sanction violation, and each successive community
26 sanction violation; however, if the community sanction
27 violation includes a new felony conviction before the
28 sentencing court, twelve (12) community sanction violation
29 points are assessed for such violation, and for each
30 successive community sanction violation involving a new felony
31 conviction. Multiple counts of community sanction violations

1 before the sentencing court shall not be a basis for
2 multiplying the assessment of community sanction violation
3 points.

4
5 Prior serious felony points: If the offender has a primary
6 offense or any additional offense ranked in level 8, level 9,
7 or level 10, and one or more prior serious felonies, a single
8 assessment of 30 points shall be added. For purposes of this
9 section, a prior serious felony is an offense in the
10 offender's prior record that is ranked in level 8, level 9, or
11 level 10 under s. 921.0022 or s. 921.0023 and for which the
12 offender is serving a sentence of confinement, supervision, or
13 other sanction or for which the offender's date of release
14 from confinement, supervision, or other sanction, whichever is
15 later, is within 3 years before the date the primary offense
16 or any additional offense was committed.

17
18 Prior capital felony points: If the offender has one or more
19 prior capital felonies, points shall be added to the subtotal
20 sentence points of the offender equal to twice the number of
21 points the offender receives for the primary offense and any
22 additional offense. A prior capital felony is a capital
23 felony offense for which the offender has been found guilty;
24 or a felony in another jurisdiction which is a capital felony
25 in that jurisdiction, or would be a capital felony if the
26 offense were committed in this state.

27
28 Possession of a firearm, semiautomatic firearm, or machine
29 gun: If the offender is convicted of committing or attempting
30 to commit any felony other than those enumerated in s.
31 775.087(2) while having in his possession: a firearm as

1 defined in s. 790.001(6), an additional 18 sentence points are
2 assessed; or if the offender is convicted of committing or
3 attempting to commit any felony other than those enumerated in
4 s. 775.087(3) while having in his possession a semiautomatic
5 firearm as defined in s. 775.087(3) or a machine gun as
6 defined in s. 790.001(9), an additional 25 sentence points are
7 assessed.

8

9 Sentencing multipliers:

10

11 Drug trafficking: If the primary offense is drug trafficking
12 under s. 893.135, the subtotal sentence points are multiplied,
13 at the discretion of the court, for a level 7 or level 8
14 offense, by 1.5. The state attorney may move the sentencing
15 court to reduce or suspend the sentence of a person convicted
16 of a level 7 or level 8 offense, if the offender provides
17 substantial assistance as described in s. 893.135(4).

18

19 Law enforcement protection: If the primary offense is a
20 violation of the Law Enforcement Protection Act under s.
21 775.0823(2), the subtotal sentence points are multiplied by
22 2.5. If the primary offense is a violation of s. 775.0823(3),
23 (4), (5), (6), (7), or (8), the subtotal sentence points are
24 multiplied by 2.0. If the primary offense is a violation of s.
25 784.07(3) or s. 775.0875(1), or of the Law Enforcement
26 Protection Act under s. 775.0823(9) or (10), the subtotal
27 sentence points are multiplied by 1.5.

28

29 Grand theft of a motor vehicle: If the primary offense is
30 grand theft of the third degree involving a motor vehicle and
31 in the offender's prior record, there are three or more grand

1 thefts of the third degree involving a motor vehicle, the
2 subtotal sentence points are multiplied by 1.5.

3

4 Criminal street gang member: If the offender is convicted of
5 the primary offense and is found to have been a member of a
6 criminal street gang at the time of the commission of the
7 primary offense pursuant to s. 874.04, the subtotal sentence
8 points are multiplied by 1.5.

9 921.142 Sentence of death or life imprisonment for
10 capital drug trafficking felonies; further proceedings to
11 determine sentence.--

12 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon
13 conviction or adjudication of guilt of a defendant of a
14 capital felony under s. 893.135, the court shall conduct a
15 separate sentencing proceeding to determine whether the
16 defendant should be sentenced to death or life imprisonment as
17 authorized by s. 775.082. The proceeding shall be conducted
18 by the trial judge before the trial jury as soon as
19 practicable. If, through impossibility or inability, the
20 trial jury is unable to reconvene for a hearing on the issue
21 of penalty, having determined the guilt of the accused, the
22 trial judge may summon a special juror or jurors as provided
23 in chapter 913 to determine the issue of the imposition of the
24 penalty. If the trial jury has been waived, or if the
25 defendant pleaded guilty, the sentencing proceeding shall be
26 conducted before a jury impaneled for that purpose, unless
27 waived by the defendant. In the proceeding, evidence may be
28 presented as to any matter that the court deems relevant to
29 the nature of the crime and the character of the defendant and
30 shall include matters relating to any of the aggravating or
31 mitigating circumstances enumerated in subsections (6) and

1 (7). Any such evidence which the court deems to have
2 probative value may be received, regardless of its
3 admissibility under the exclusionary rules of evidence,
4 provided the defendant is accorded a fair opportunity to rebut
5 any hearsay statements. However, this subsection shall not be
6 construed to authorize the introduction of any evidence
7 secured in violation of the Constitution of the United States
8 or the Constitution of the State of Florida. The state and the
9 defendant or the defendant's counsel shall be permitted to
10 present argument for or against sentence of death.

11 943.0585 Court-ordered expunction of criminal history
12 records.--The courts of this state have jurisdiction over
13 their own procedures, including the maintenance, expunction,
14 and correction of judicial records containing criminal history
15 information to the extent such procedures are not inconsistent
16 with the conditions, responsibilities, and duties established
17 by this section. Any court of competent jurisdiction may
18 order a criminal justice agency to expunge the criminal
19 history record of a minor or an adult who complies with the
20 requirements of this section. The court shall not order a
21 criminal justice agency to expunge a criminal history record
22 until the person seeking to expunge a criminal history record
23 has applied for and received a certificate of eligibility for
24 expunction pursuant to subsection (2). A criminal history
25 record that relates to a violation of chapter 794, s. 800.04,
26 s. 817.034, s. 827.071, chapter 839, s. 893.135, or a
27 violation enumerated in s. 907.041 may not be expunged,
28 without regard to whether adjudication was withheld, if the
29 defendant was found guilty of or pled guilty or nolo
30 contendere to the offense, or if the defendant, as a minor,
31 was found to have committed, or pled guilty or nolo contendere

1 to committing, the offense as a delinquent act. The court may
2 only order expunction of a criminal history record pertaining
3 to one arrest or one incident of alleged criminal activity,
4 except as provided in this section. The court may, at its sole
5 discretion, order the expunction of a criminal history record
6 pertaining to more than one arrest if the additional arrests
7 directly relate to the original arrest. If the court intends
8 to order the expunction of records pertaining to such
9 additional arrests, such intent must be specified in the
10 order. A criminal justice agency may not expunge any record
11 pertaining to such additional arrests if the order to expunge
12 does not articulate the intention of the court to expunge a
13 record pertaining to more than one arrest. This section does
14 not prevent the court from ordering the expunction of only a
15 portion of a criminal history record pertaining to one arrest
16 or one incident of alleged criminal activity. Notwithstanding
17 any law to the contrary, a criminal justice agency may comply
18 with laws, court orders, and official requests of other
19 jurisdictions relating to expunction, correction, or
20 confidential handling of criminal history records or
21 information derived therefrom. This section does not confer
22 any right to the expunction of any criminal history record,
23 and any request for expunction of a criminal history record
24 may be denied at the sole discretion of the court.

25 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY
26 RECORD.--Each petition to a court to expunge a criminal
27 history record is complete only when accompanied by:

28 (a) A certificate of eligibility for expunction issued
29 by the department pursuant to subsection (2).

30 (b) The petitioner's sworn statement attesting that
31 the petitioner:

1 1. Has never previously been adjudicated guilty of a
2 criminal offense or comparable ordinance violation or
3 adjudicated delinquent for committing a felony or a
4 misdemeanor specified in s. 943.051(3)(b).

5 2. Has not been adjudicated guilty of, or adjudicated
6 delinquent for committing, any of the acts stemming from the
7 arrest or alleged criminal activity to which the petition
8 pertains.

9 3. Has never secured a prior sealing or expunction of
10 a criminal history record under this section, former s.
11 893.14, former s. 901.33, or former s. 943.058, or from any
12 jurisdiction outside the state.

13 4. Is eligible for such an expunction to the best of
14 his or her knowledge or belief and does not have any other
15 petition to expunge or any petition to seal pending before any
16 court.

17
18 Any person who knowingly provides false information on such
19 sworn statement to the court commits a felony of the third
20 degree, punishable as provided in s. 775.082, s. 775.083, or
21 s. 775.084.

22 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior
23 to petitioning the court to expunge a criminal history record,
24 a person seeking to expunge a criminal history record shall
25 apply to the department for a certificate of eligibility for
26 expunction. The department shall, by rule adopted pursuant to
27 chapter 120, establish procedures pertaining to the
28 application for and issuance of certificates of eligibility
29 for expunction. The department shall issue a certificate of
30 eligibility for expunction to a person who is the subject of a
31 criminal history record if that person:

1 (a) Has obtained, and submitted to the department, a
2 written, certified statement from the appropriate state
3 attorney or statewide prosecutor which indicates:

4 1. That an indictment, information, or other charging
5 document was not filed or issued in the case.

6 2. That an indictment, information, or other charging
7 document, if filed or issued in the case, was dismissed or
8 nolle prosequi by the state attorney or statewide prosecutor,
9 or was dismissed by a court of competent jurisdiction.

10 3. That the criminal history record does not relate to
11 a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071,
12 chapter 839, s. 893.135, or a violation enumerated in s.
13 907.041, where the defendant was found guilty of, or pled
14 guilty or nolo contendere to any such offense, or that the
15 defendant, as a minor, was found to have committed, or pled
16 guilty or nolo contendere to committing, such an offense as a
17 delinquent act, without regard to whether adjudication was
18 withheld.

19 (b) Remits a \$75 processing fee to the department for
20 placement in the Department of Law Enforcement Operating Trust
21 Fund, unless such fee is waived by the executive director.

22 (c) Has submitted to the department a certified copy
23 of the disposition of the charge to which the petition to
24 expunge pertains.

25 (d) Has never previously been adjudicated guilty of a
26 criminal offense or comparable ordinance violation or
27 adjudicated delinquent for committing a felony or a
28 misdemeanor specified in s. 943.051(3)(b).

29 (e) Has not been adjudicated guilty of, or adjudicated
30 delinquent for committing, any of the acts stemming from the
31

1 arrest or alleged criminal activity to which the petition to
2 expunge pertains.

3 (f) Has never secured a prior sealing or expunction of
4 a criminal history record under this section, former s.
5 893.14, former s. 901.33, or former s. 943.058.

6 (g) Is no longer under court supervision applicable to
7 the disposition of the arrest or alleged criminal activity to
8 which the petition to expunge pertains.

9 (h) Is not required to wait a minimum of 10 years
10 prior to being eligible for an expunction of such records
11 because all charges related to the arrest or criminal activity
12 to which the petition to expunge pertains were dismissed prior
13 to trial, adjudication, or the withholding of adjudication.
14 Otherwise, such criminal history record must be sealed under
15 this section, former s. 893.14, former s. 901.33, or former s.
16 943.058 for at least 10 years before such record is eligible
17 for expunction.

18 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

19 (a) In judicial proceedings under this section, a copy
20 of the completed petition to expunge shall be served upon the
21 appropriate state attorney or the statewide prosecutor and
22 upon the arresting agency; however, it is not necessary to
23 make any agency other than the state a party. The appropriate
24 state attorney or the statewide prosecutor and the arresting
25 agency may respond to the court regarding the completed
26 petition to expunge.

27 (b) If relief is granted by the court, the clerk of
28 the court shall certify copies of the order to the appropriate
29 state attorney or the statewide prosecutor and the arresting
30 agency. The arresting agency is responsible for forwarding the
31 order to any other agency to which the arresting agency

1 disseminated the criminal history record information to which
2 the order pertains. The department shall forward the order to
3 expunge to the Federal Bureau of Investigation. The clerk of
4 the court shall certify a copy of the order to any other
5 agency which the records of the court reflect has received the
6 criminal history record from the court.

7 (c) For an order to expunge entered by a court prior
8 to July 1, 1992, the department shall notify the appropriate
9 state attorney or statewide prosecutor of an order to expunge
10 which is contrary to law because the person who is the subject
11 of the record has previously been convicted of a crime or
12 comparable ordinance violation or has had a prior criminal
13 history record sealed or expunged. Upon receipt of such
14 notice, the appropriate state attorney or statewide prosecutor
15 shall take action, within 60 days, to correct the record and
16 petition the court to void the order to expunge. The
17 department shall seal the record until such time as the order
18 is voided by the court.

19 (d) On or after July 1, 1992, the department or any
20 other criminal justice agency is not required to act on an
21 order to expunge entered by a court when such order does not
22 comply with the requirements of this section. Upon receipt of
23 such an order, the department must notify the issuing court,
24 the appropriate state attorney or statewide prosecutor, the
25 petitioner or the petitioner's attorney, and the arresting
26 agency of the reason for noncompliance. The appropriate state
27 attorney or statewide prosecutor shall take action within 60
28 days to correct the record and petition the court to void the
29 order. No cause of action, including contempt of court, shall
30 arise against any criminal justice agency for failure to
31 comply with an order to expunge when the petitioner for such

1 order failed to obtain the certificate of eligibility as
2 required by this section or such order does not otherwise
3 comply with the requirements of this section.

4 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
5 criminal history record of a minor or an adult which is
6 ordered expunged by a court of competent jurisdiction pursuant
7 to this section must be physically destroyed or obliterated by
8 any criminal justice agency having custody of such record;
9 except that any criminal history record in the custody of the
10 department must be retained in all cases. A criminal history
11 record ordered expunged that is retained by the department is
12 confidential and exempt from the provisions of s. 119.07(1)
13 and s. 24(a), Art. I of the State Constitution and not
14 available to any person or entity except upon order of a court
15 of competent jurisdiction. A criminal justice agency may
16 retain a notation indicating compliance with an order to
17 expunge.

18 (a) The person who is the subject of a criminal
19 history record that is expunged under this section or under
20 other provisions of law, including former s. 893.14, former s.
21 901.33, and former s. 943.058, may lawfully deny or fail to
22 acknowledge the arrests covered by the expunged record, except
23 when the subject of the record:

- 24 1. Is a candidate for employment with a criminal
25 justice agency;
- 26 2. Is a defendant in a criminal prosecution;
- 27 3. Concurrently or subsequently petitions for relief
28 under this section or s. 943.059;
- 29 4. Is a candidate for admission to The Florida Bar;
- 30 5. Is seeking to be employed or licensed by or to
31 contract with the Department of Health and Rehabilitative

1 Services or to be employed or used by such contractor or
2 licensee in a sensitive position having direct contact with
3 children, the developmentally disabled, the aged, or the
4 elderly as provided in s. 39.076, s. 110.1127(3), s.
5 393.063(14), s. 394.4572(1), s. 397.451, s. 402.302(8), s.
6 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.1075(4),
7 or chapter 400; or

8 6. Is seeking to be employed or licensed by the Office
9 of Teacher Education, Certification, Staff Development, and
10 Professional Practices of the Department of Education, any
11 district school board, or any local governmental entity that
12 licenses child care facilities.

13 (b) Subject to the exceptions in paragraph (a), a
14 person who has been granted an expunction under this section,
15 former s. 893.14, former s. 901.33, or former s. 943.058 may
16 not be held under any provision of law of this state to commit
17 perjury or to be otherwise liable for giving a false statement
18 by reason of such person's failure to recite or acknowledge an
19 expunged criminal history record.

20 (c) Information relating to the existence of an
21 expunged criminal history record which is provided in
22 accordance with paragraph (a) is confidential and exempt from
23 the provisions of s. 119.07(1) and s. 24(a), Art. I of the
24 State Constitution, except that the department shall disclose
25 the existence of a criminal history record ordered expunged to
26 the entities set forth in subparagraphs (a)1., 4., 5., and 6.
27 for their respective licensing and employment purposes, and to
28 criminal justice agencies for their respective criminal
29 justice purposes. It is unlawful for any employee of an
30 entity set forth in subparagraph (a)1., subparagraph (a)4.,
31 subparagraph (a)5., or subparagraph (a)6. to disclose

1 information relating to the existence of an expunged criminal
2 history record of a person seeking employment or licensure
3 with such entity or contractor, except to the person to whom
4 the criminal history record relates or to persons having
5 direct responsibility for employment or licensure decisions.
6 Any person who violates this paragraph commits a misdemeanor
7 of the first degree, punishable as provided in s. 775.082 or
8 s. 775.083.

9 943.059 Court-ordered sealing of criminal history
10 records.--The courts of this state shall continue to have
11 jurisdiction over their own procedures, including the
12 maintenance, sealing, and correction of judicial records
13 containing criminal history information to the extent such
14 procedures are not inconsistent with the conditions,
15 responsibilities, and duties established by this section. Any
16 court of competent jurisdiction may order a criminal justice
17 agency to seal the criminal history record of a minor or an
18 adult who complies with the requirements of this section. The
19 court shall not order a criminal justice agency to seal a
20 criminal history record until the person seeking to seal a
21 criminal history record has applied for and received a
22 certificate of eligibility for sealing pursuant to subsection
23 (2). A criminal history record that relates to a violation of
24 chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839,
25 s. 893.135, or a violation enumerated in s. 907.041 may not be
26 sealed, without regard to whether adjudication was withheld,
27 if the defendant was found guilty of or pled guilty or nolo
28 contendere to the offense, or if the defendant, as a minor,
29 was found to have committed or pled guilty or nolo contendere
30 to committing the offense as a delinquent act. The court may
31 only order sealing of a criminal history record pertaining to

1 one arrest or one incident of alleged criminal activity,
2 except as provided in this section. The court may, at its sole
3 discretion, order the sealing of a criminal history record
4 pertaining to more than one arrest if the additional arrests
5 directly relate to the original arrest. If the court intends
6 to order the sealing of records pertaining to such additional
7 arrests, such intent must be specified in the order. A
8 criminal justice agency may not seal any record pertaining to
9 such additional arrests if the order to seal does not
10 articulate the intention of the court to seal records
11 pertaining to more than one arrest. This section does not
12 prevent the court from ordering the sealing of only a portion
13 of a criminal history record pertaining to one arrest or one
14 incident of alleged criminal activity. Notwithstanding any law
15 to the contrary, a criminal justice agency may comply with
16 laws, court orders, and official requests of other
17 jurisdictions relating to sealing, correction, or confidential
18 handling of criminal history records or information derived
19 therefrom. This section does not confer any right to the
20 sealing of any criminal history record, and any request for
21 sealing a criminal history record may be denied at the sole
22 discretion of the court.

23 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each
24 petition to a court to seal a criminal history record is
25 complete only when accompanied by:

26 (a) A certificate of eligibility for sealing issued by
27 the department pursuant to subsection (2).

28 (b) The petitioner's sworn statement attesting that
29 the petitioner:

30 1. Has never previously been adjudicated guilty of a
31 criminal offense or comparable ordinance violation or

1 adjudicated delinquent for committing a felony or a
2 misdemeanor specified in s. 943.051(3)(b).

3 2. Has not been adjudicated guilty of or adjudicated
4 delinquent for committing any of the acts stemming from the
5 arrest or alleged criminal activity to which the petition to
6 seal pertains.

7 3. Has never secured a prior sealing or expunction of
8 a criminal history record under this section, former s.
9 893.14, former s. 901.33, former s. 943.058, or from any
10 jurisdiction outside the state.

11 4. Is eligible for such a sealing to the best of his
12 or her knowledge or belief and does not have any other
13 petition to seal or any petition to expunge pending before any
14 court.

15
16 Any person who knowingly provides false information on such
17 sworn statement to the court commits a felony of the third
18 degree, punishable as provided in s. 775.082, s. 775.083, or
19 s. 775.084.

20 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
21 petitioning the court to seal a criminal history record, a
22 person seeking to seal a criminal history record shall apply
23 to the department for a certificate of eligibility for
24 sealing. The department shall, by rule adopted pursuant to
25 chapter 120, establish procedures pertaining to the
26 application for and issuance of certificates of eligibility
27 for sealing. The department shall issue a certificate of
28 eligibility for sealing to a person who is the subject of a
29 criminal history record provided that such person:

30
31

1 (a) Has submitted to the department a certified copy
2 of the disposition of the charge to which the petition to seal
3 pertains.

4 (b) Remits a \$75 processing fee to the department for
5 placement in the Department of Law Enforcement Operating Trust
6 Fund, unless such fee is waived by the executive director.

7 (c) Has never previously been adjudicated guilty of a
8 criminal offense or comparable ordinance violation or
9 adjudicated delinquent for committing a felony or a
10 misdemeanor specified in s. 943.051(3)(b).

11 (d) Has not been adjudicated guilty of or adjudicated
12 delinquent for committing any of the acts stemming from the
13 arrest or alleged criminal activity to which the petition to
14 seal pertains.

15 (e) Has never secured a prior sealing or expunction of
16 a criminal history record under this section, former s.
17 893.14, former s. 901.33, or former s. 943.058.

18 (f) Is no longer under court supervision applicable to
19 the disposition of the arrest or alleged criminal activity to
20 which the petition to seal pertains.

21 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.--

22 (a) In judicial proceedings under this section, a copy
23 of the completed petition to seal shall be served upon the
24 appropriate state attorney or the statewide prosecutor and
25 upon the arresting agency; however, it is not necessary to
26 make any agency other than the state a party. The appropriate
27 state attorney or the statewide prosecutor and the arresting
28 agency may respond to the court regarding the completed
29 petition to seal.

30 (b) If relief is granted by the court, the clerk of
31 the court shall certify copies of the order to the appropriate

1 state attorney or the statewide prosecutor and to the
2 arresting agency. The arresting agency is responsible for
3 forwarding the order to any other agency to which the
4 arresting agency disseminated the criminal history record
5 information to which the order pertains. The department shall
6 forward the order to seal to the Federal Bureau of
7 Investigation. The clerk of the court shall certify a copy of
8 the order to any other agency which the records of the court
9 reflect has received the criminal history record from the
10 court.

11 (c) For an order to seal entered by a court prior to
12 July 1, 1992, the department shall notify the appropriate
13 state attorney or statewide prosecutor of any order to seal
14 which is contrary to law because the person who is the subject
15 of the record has previously been convicted of a crime or
16 comparable ordinance violation or has had a prior criminal
17 history record sealed or expunged. Upon receipt of such
18 notice, the appropriate state attorney or statewide prosecutor
19 shall take action, within 60 days, to correct the record and
20 petition the court to void the order to seal. The department
21 shall seal the record until such time as the order is voided
22 by the court.

23 (d) On or after July 1, 1992, the department or any
24 other criminal justice agency is not required to act on an
25 order to seal entered by a court when such order does not
26 comply with the requirements of this section. Upon receipt of
27 such an order, the department must notify the issuing court,
28 the appropriate state attorney or statewide prosecutor, the
29 petitioner or the petitioner's attorney, and the arresting
30 agency of the reason for noncompliance. The appropriate state
31 attorney or statewide prosecutor shall take action within 60

1 days to correct the record and petition the court to void the
2 order. No cause of action, including contempt of court, shall
3 arise against any criminal justice agency for failure to
4 comply with an order to seal when the petitioner for such
5 order failed to obtain the certificate of eligibility as
6 required by this section or when such order does not comply
7 with the requirements of this section.

8 (e) An order sealing a criminal history record
9 pursuant to this section does not require that such record be
10 surrendered to the court, and such record shall continue to be
11 maintained by the department and other criminal justice
12 agencies.

13 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
14 criminal history record of a minor or an adult which is
15 ordered sealed by a court of competent jurisdiction pursuant
16 to this section is confidential and exempt from the provisions
17 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
18 and is available only to the person who is the subject of the
19 record, to the subject's attorney, to criminal justice
20 agencies for their respective criminal justice purposes, or to
21 those entities set forth in subparagraphs (a)1., 4., 5., and
22 6. for their respective licensing and employment purposes.

23 (a) The subject of a criminal history record sealed
24 under this section or under other provisions of law, including
25 former s. 893.14, former s. 901.33, and former s. 943.058, may
26 lawfully deny or fail to acknowledge the arrests covered by
27 the sealed record, except when the subject of the record:

- 28 1. Is a candidate for employment with a criminal
29 justice agency;
30 2. Is a defendant in a criminal prosecution;

31

1 3. Concurrently or subsequently petitions for relief
2 under this section or s. 943.0585;
3 4. Is a candidate for admission to The Florida Bar;
4 5. Is seeking to be employed or licensed by or to
5 contract with the Department of Health and Rehabilitative
6 Services or the Department of Juvenile Justice or to be
7 employed or used by such contractor or licensee in a sensitive
8 position having direct contact with children, the
9 developmentally disabled, the aged, or the elderly as provided
10 in s. 39.076, s. 110.1127(3), s. 393.063(14), s. 394.4572(1),
11 s. 397.451, s. 402.302(8), s. 402.313(3), s. 409.175(2)(i), s.
12 415.102(4), s. 415.103, or chapter 400; or
13 6. Is seeking to be employed or licensed by the Office
14 of Teacher Education, Certification, Staff Development, and
15 Professional Practices of the Department of Education, any
16 district school board, or any local governmental entity which
17 licenses child care facilities.
18 (b) Subject to the exceptions in paragraph (a), a
19 person who has been granted a sealing under this section,
20 former s. 893.14, former s. 901.33, or former s. 943.058 may
21 not be held under any provision of law of this state to commit
22 perjury or to be otherwise liable for giving a false statement
23 by reason of such person's failure to recite or acknowledge a
24 sealed criminal history record.
25 (c) Information relating to the existence of a sealed
26 criminal record provided in accordance with the provisions of
27 paragraph (a) is confidential and exempt from the provisions
28 of s. 119.07(1) and s. 24(a), Art. I of the State
29 Constitution, except that the department shall disclose the
30 sealed criminal history record to the entities set forth in
31 subparagraphs (a)1., 4., 5., and 6. for their respective

1 licensing and employment purposes. It is unlawful for any
2 employee of an entity set forth in subparagraph (a)1.,
3 subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6.
4 to disclose information relating to the existence of a sealed
5 criminal history record of a person seeking employment or
6 licensure with such entity or contractor, except to the person
7 to whom the criminal history record relates or to persons
8 having direct responsibility for employment or licensure
9 decisions. Any person who violates the provisions of this
10 paragraph commits a misdemeanor of the first degree,
11 punishable as provided in s. 775.082 or s. 775.083.

12 Section 8. This act shall take effect October 1 of the
13 year in which enacted.

14 *****

15 HOUSE SUMMARY

16 Provides that a person commits the offense of driving
17 under the influence when any amount of a harmful chemical
18 substance specified under s. 877.111, F.S., or a
19 controlled substance under chapter 893, F.S., is present
20 in the person's blood or urine, regardless of the
21 presence of alcohol in the person's breath or blood.
Provides penalties. Provides a defense.

22 Provides for inclusion in the Schedule I list of
23 controlled substances of all mushroom species in the
genera psilocybe and conocybe.

24 Provides that proof of possession by a person of
25 specified quantities of crack cocaine or powder cocaine,
26 cannabis, heroin, amphetamine, or methamphetamine gives
27 rise to an inference that the person was possessing with
intent to sell or deliver the respective substance.

28 Provides that knowing sale, purchase, manufacture,
29 delivery, or bringing into the state, or actual or
constructive possession, of 10 pounds or more of cannabis
30 constitutes the first degree felony offense of
trafficking in cannabis. Provides penalties. Provides for
31 applicability of the Criminal Punishment Code.