

1                   A bill to be entitled  
2           An act relating to punishment of felons;  
3           amending s. 775.087, F.S., relating to felony  
4           reclassification and minimum sentence and other  
5           penalties for offenders who committed  
6           aggravated battery or committed certain acts  
7           involving a weapon, firearm, or destructive  
8           device during the commission of a felony;  
9           conforming terminology to changes made by the  
10          act; increasing from 3 to 10 years the minimum  
11          prison term for certain felonies or attempted  
12          felonies under specified circumstances when the  
13          offender possessed a firearm or destructive  
14          device during the commission of the offense or  
15          flight therefrom; providing exceptions;  
16          revising the category of such offenses to  
17          include murder, sexual battery, robbery,  
18          burglary, arson, aggravated assault or  
19          aggravated battery, kidnapping, escape,  
20          aircraft piracy, aggravated child abuse,  
21          aggravated abuse of an elderly person or  
22          disabled adult, unlawful throwing, placing, or  
23          discharging of a destructive device or bomb,  
24          carjacking, home-invasion robbery, aggravated  
25          stalking, and trafficking in cannabis,  
26          trafficking in cocaine, capital importation of  
27          cocaine, trafficking in illegal drugs, capital  
28          importation of illegal drugs, trafficking in  
29          phencyclidine, capital importation of  
30          phencyclidine, trafficking in methaqualone,  
31          capital importation of methaqualone,

1 trafficking in amphetamine, capital importation  
2 of amphetamine, trafficking in flunitrazepam,  
3 or other specified violation of s. 893.135(1),  
4 F.S.; providing for imposition of a 20-year  
5 minimum term of imprisonment when, in addition  
6 to such circumstances, the firearm or  
7 destructive device was discharged while the  
8 person was carrying, displaying, using, or  
9 threatening or attempting to use the firearm or  
10 destructive device; providing for imposition of  
11 a minimum term of imprisonment of not less than  
12 25 years and not more than a term of  
13 imprisonment of life in prison when, in further  
14 addition to such circumstances, the discharging  
15 of the firearm or destructive device resulted  
16 in infliction of death or great bodily harm  
17 upon any person; providing for construction;  
18 providing legislative intent with respect to  
19 punishment of offenders who possess, carry,  
20 display, use, or threaten or attempt to use  
21 firearms or destructive devices; providing  
22 imposition of the minimum term of imprisonment  
23 consecutive to any other term of imprisonment  
24 imposed; providing that the minimum term of  
25 imprisonment imposed is authorized by law  
26 regardless of the maximum sentence that may be  
27 imposed for the underlying felony; increasing  
28 from 8 to 15 years the minimum prison term for  
29 certain felonies or attempted felonies under  
30 specified circumstances when, during the  
31 commission of the offense, the offender

1 possessed a semiautomatic firearm and its  
2 high-capacity detachable box magazine or a  
3 machine gun; providing for the category of such  
4 offenses to include murder, sexual battery,  
5 robbery, burglary, arson, aggravated assault,  
6 aggravated battery, kidnapping, escape,  
7 aircraft piracy, aggravated child abuse,  
8 aggravated abuse of an elderly person or  
9 disabled adult, unlawful throwing, placing, or  
10 discharging of a destructive device or bomb,  
11 carjacking, home-invasion robbery, aggravated  
12 stalking, and trafficking in cannabis,  
13 trafficking in cocaine, capital importation of  
14 cocaine, trafficking in illegal drugs, capital  
15 importation of illegal drugs, trafficking in  
16 phencyclidine, capital importation of  
17 phencyclidine, trafficking in methaqualone,  
18 capital importation of methaqualone,  
19 trafficking in amphetamine, capital importation  
20 of amphetamine, trafficking in flunitrazepam,  
21 or other specified violation of s. 893.135(1);  
22 providing for imposition of a 20-year minimum  
23 term of imprisonment when, in addition to such  
24 circumstances, the semiautomatic firearm and  
25 its high-capacity detachable box magazine or a  
26 machine gun was discharged while the person was  
27 carrying, displaying, using, or threatening or  
28 attempting to use the semiautomatic firearm and  
29 its high-capacity detachable box magazine or a  
30 machine gun; providing for imposition of a  
31 minimum term of imprisonment of not less than

1 25 years and not more than a term of  
2 imprisonment of life in prison when, in further  
3 addition to such circumstances, the discharging  
4 of the semiautomatic firearm and its  
5 high-capacity detachable box magazine or a  
6 machine gun resulted in infliction of death or  
7 great bodily harm upon any person; providing  
8 for construction; providing legislative intent  
9 with respect to punishment of offenders who  
10 possess, carry, display, use, or threaten or  
11 attempt to use a semiautomatic firearm and its  
12 high-capacity detachable box magazine or a  
13 machine gun; providing for imposition of the  
14 minimum term of imprisonment consecutive to any  
15 other term of imprisonment imposed; providing  
16 that the minimum term of imprisonment imposed  
17 is authorized by law regardless of the maximum  
18 sentence that may be imposed for the underlying  
19 felony; providing for legislative policy and  
20 intent; providing for a report; requiring the  
21 state attorney to explain mandatory sentence  
22 deviations in writing; requiring state  
23 attorneys to submit such writings to its  
24 association where it must remain available to  
25 the public for at least 10 years; reenacting s.  
26 921.0022(2), F.S., relating to the Criminal  
27 Punishment Code offense severity ranking chart,  
28 s. 921.0024(1)(b), F.S., relating to Florida  
29 Criminal Punishment Code worksheet computations  
30 and key, and s. 947.146(3)(b), F.S., relating  
31 to Control Release Authority, to incorporate

1           said amendment in references; providing for  
2           public service announcements with respect to  
3           the penalties provided in the act; providing an  
4           effective date.

5  
6           WHEREAS, Florida ranks among the most violent states in  
7           the nation, and

8           WHEREAS, in 1975 the Florida Legislature enacted  
9           legislation requiring a minimum mandatory sentence of three  
10          years in prison for possessing a gun during the commission or  
11          attempted commission of a violent felony, and

12          WHEREAS, the Legislature enacted this mandatory penalty  
13          in order to protect citizens from criminals who are known to  
14          use guns during the commission of violent crimes, and

15          WHEREAS, the FBI reports that among persons identified  
16          in the felonious killings of law enforcement officers in 1997,  
17          71% had prior criminal convictions, and one of every four were  
18          on probation or parole for other crimes when they killed the  
19          officers, and

20          WHEREAS, criminals who use guns during the commission  
21          of violent crimes pose an increased danger to the lives,  
22          health, and safety of Florida's citizens and to Florida's law  
23          enforcement officers who daily put their lives on the line to  
24          protect citizens from violent criminals, and

25          WHEREAS, the Legislature intends to hold criminals more  
26          accountable for their crimes, and intends for criminals who  
27          use guns to commit violent crimes to receive greater criminal  
28          penalties than they do today, and

29          WHEREAS, the Legislature intends that when law  
30          enforcement officers put themselves in harm's way to apprehend  
31          and arrest these gun-wielding criminals who terrorize the

1 streets and neighborhoods of Florida, that these criminals be  
2 sentenced to longer mandatory prison terms than provided in  
3 current law, so that these offenders cannot again endanger law  
4 enforcement officers and the public, and

5 WHEREAS, there is a critical need for effective  
6 criminal justice measures that will ensure that violent  
7 criminals are sentenced to prison terms that will effectively  
8 incapacitate the offender, prevent future crimes, and reduce  
9 violent crime rates, and

10 WHEREAS, it is the intent of the Legislature that  
11 criminals who use guns to commit violent crimes be vigorously  
12 prosecuted and that the state demand that minimum mandatory  
13 terms of imprisonment be imposed pursuant to this act, NOW,  
14 THEREFORE,

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. Section 775.087, Florida Statutes, is  
19 amended to read:

20 775.087 Possession or use of weapon; aggravated  
21 battery; felony reclassification; minimum sentence.--

22 (1) Unless otherwise provided by law, whenever a  
23 person is charged with a felony, except a felony in which the  
24 use of a weapon or firearm is an essential element, and during  
25 the commission of such felony the defendant carries, displays,  
26 uses, threatens to use, or attempts to use any weapon or  
27 firearm, or during the commission of such felony the defendant  
28 commits an aggravated battery, the felony for which the person  
29 is charged shall be reclassified as follows:

30 (a) In the case of a felony of the first degree, to a  
31 life felony.

1 (b) In the case of a felony of the second degree, to a  
2 felony of the first degree.

3 (c) In the case of a felony of the third degree, to a  
4 felony of the second degree.

5  
6 For purposes of sentencing under chapter 921 and determining  
7 incentive gain-time eligibility under chapter 944, a felony  
8 offense which is reclassified under this section is ranked one  
9 level above the ranking under s. 921.0022 or s. 921.0023 of  
10 the felony offense committed.

11 (2)(a)1. Any person who is convicted of a felony or an  
12 attempt to commit a felony regardless of whether the use of a  
13 weapon is an element of the felony and the conviction was for:

14 a.(a) Murder;

15 b.(b) Sexual battery;

16 c.(c) Robbery;

17 d.(d) Burglary;

18 e.(e) Arson;

19 f.(f) Aggravated assault;

20 g.(g) Aggravated battery;

21 h.(h) Kidnapping;

22 i.(i) Escape;

23 j.(j) Aircraft piracy;

24 k.(k) Aggravated child abuse;

25 l.(l) Aggravated abuse of an elderly person or  
26 disabled adult;

27 m.(m) Unlawful throwing, placing, or discharging of a  
28 destructive device or bomb;

29 n.(n) Carjacking;

30 o.(o) Home-invasion robbery; ~~or~~

31 p.(p) Aggravated stalking;

1           q. Trafficking in cannabis, trafficking in cocaine,  
2 capital importation of cocaine, trafficking in illegal drugs,  
3 capital importation of illegal drugs, trafficking in  
4 phencyclidine, capital importation of phencyclidine,  
5 trafficking in methaqualone, capital importation of  
6 methaqualone, trafficking in amphetamine, capital importation  
7 of amphetamine, trafficking in flunitrazepam, or other  
8 violation of s. 893.135(1); or

9           r. Possession of a firearm by a felon

10  
11 and during the commission of the offense, such person actually  
12 possessed a "firearm" or "destructive device" as those terms  
13 are defined in s. 790.001, shall be sentenced to a minimum  
14 term of imprisonment of 10 3 years, except that a person who  
15 is convicted for aggravated assault, possession of a firearm  
16 by a felon, or burglary of a conveyance shall be sentenced to  
17 a minimum term of imprisonment of 3 years if such person  
18 possessed a "firearm" or "destructive device" during the  
19 commission of the offense.

20           2. Any person who is convicted of a felony or an  
21 attempt to commit a felony listed in sub-subparagraphs  
22 (a)1.a.-q., regardless of whether the use of a weapon is an  
23 element of the felony, and during the course of the commission  
24 of the felony such person discharged a "firearm" or  
25 "destructive device" as defined in s. 790.001 shall be  
26 sentenced to a minimum term of imprisonment of 20 years.

27           3. Any person who is convicted of a felony or an  
28 attempt to commit a felony listed in sub-subparagraphs  
29 (a)1.a.-q., regardless of whether the use of a weapon is an  
30 element of the felony, and during the course of the commission  
31 of the felony such person discharged a "firearm" or



1 "destructive device" as defined in s. 790.001 and, as the  
2 result of the discharge, death or great bodily harm was  
3 inflicted upon any person, the convicted person shall be  
4 sentenced to a minimum term of imprisonment of not less than  
5 25 years and not more than a term of imprisonment of life in  
6 prison.

7 (b) Subparagraph (a)1., subparagraph (a)2., or  
8 subparagraph (a)3. does not prevent a court from imposing a  
9 longer sentence of incarceration as authorized by law in  
10 addition to the minimum mandatory sentence, or from imposing a  
11 sentence of death pursuant to other applicable law.

12 Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3.  
13 does not authorize a court to impose a lesser sentence than  
14 otherwise required by law.

15  
16 Notwithstanding s. 948.01, adjudication of guilt or imposition  
17 of sentence shall not be suspended, deferred, or withheld, and  
18 the defendant is not eligible for statutory gain-time under s.  
19 944.275 or any form of discretionary early release, other than  
20 pardon or executive clemency, or conditional medical release  
21 under s. 947.149, prior to serving the minimum sentence.

22 (c) If the minimum mandatory terms of imprisonment  
23 imposed pursuant to this section exceed the maximum sentences  
24 authorized by s. 775.082, s. 775.084, or the Criminal  
25 Punishment Code under chapter 921, then the mandatory minimum  
26 sentence must be imposed. If the mandatory minimum terms of  
27 imprisonment pursuant to this section are less than the  
28 sentences that could be imposed as authorized by s. 775.082,  
29 s. 775.084, or the Criminal Punishment Code under chapter 921,  
30 then the sentence imposed by the court must include the

31

1 mandatory minimum term of imprisonment as required in this  
2 section.

3 (d) It is the intent of the Legislature that offenders  
4 who actually possess, carry, display, use, threaten to use, or  
5 attempt to use firearms or destructive devices be punished to  
6 the fullest extent of the law, and the minimum terms of  
7 imprisonment imposed pursuant to this subsection shall be  
8 imposed for each qualifying felony count for which the person  
9 is convicted. The court shall impose any term of imprisonment  
10 provided for in this subsection consecutively to any other  
11 term of imprisonment imposed for any other felony offense.

12 (3)(a)1. Any person who is convicted of a felony or an  
13 attempt to commit a felony, regardless of whether the use of a  
14 firearm is an element of the felony, and the conviction was  
15 for:

- 16 a.1. Murder;
- 17 b.2. Sexual battery;
- 18 c.3. Robbery;
- 19 d.4. Burglary;
- 20 e.5. Arson;
- 21 f.6. Aggravated assault;
- 22 g.7. Aggravated battery;
- 23 h.8. Kidnapping;
- 24 i.9. Escape;
- 25 j.10. Sale, manufacture, delivery, or intent to sell,  
26 manufacture, or deliver any controlled substance;
- 27 k.11. Aircraft piracy;
- 28 l.12. Aggravated child abuse;
- 29 m.13. Aggravated abuse of an elderly person or  
30 disabled adult;

1           ~~n.14.~~ Unlawful throwing, placing, or discharging of a  
2 destructive device or bomb;

3           ~~o.15.~~ Carjacking;

4           ~~p.16.~~ Home-invasion robbery; ~~or~~

5           ~~q.17.~~ Aggravated stalking; ~~or~~

6           r. Trafficking in cannabis, trafficking in cocaine,  
7 capital importation of cocaine, trafficking in illegal drugs,  
8 capital importation of illegal drugs, trafficking in  
9 phencyclidine, capital importation of phencyclidine,  
10 trafficking in methaqualone, capital importation of  
11 methaqualone, trafficking in amphetamine, capital importation  
12 of amphetamine, trafficking in flunitrazepam, or other  
13 violation of s. 893.135(1);

14  
15 and during the commission of the offense, such person  
16 possessed a semiautomatic firearm and its high-capacity  
17 detachable box magazine or a machine gun as defined in s.  
18 790.001, shall be sentenced to a minimum term of imprisonment  
19 of 15 & years.

20           2. Any person who is convicted of a felony or an  
21 attempt to commit a felony listed in subparagraph (a)1.,  
22 regardless of whether the use of a weapon is an element of the  
23 felony, and during the course of the commission of the felony  
24 such person discharged a semiautomatic firearm and its  
25 high-capacity box magazine or a "machine gun" as defined in s.  
26 790.001 shall be sentenced to a minimum term of imprisonment  
27 of 20 years.

28           3. Any person who is convicted of a felony or an  
29 attempt to commit a felony listed in subparagraphs (a)1.,  
30 regardless of whether the use of a weapon is an element of the  
31 felony, and during the course of the commission of the felony

1 such person discharged a semiautomatic firearm and its  
2 high-capacity box magazine or a "machine gun" as defined in s.  
3 790.001 and, as the result of the discharge, death or great  
4 bodily harm was inflicted upon any person, the convicted  
5 person shall be sentenced to a minimum term of imprisonment of  
6 not less than 25 years and not more than a term of  
7 imprisonment of life in prison.

8 (b) Subparagraph (a)1., subparagraph (a)2., or  
9 subparagraph (a)3. does not prevent a court from imposing a  
10 longer sentence of incarceration as authorized by law in  
11 addition to the minimum mandatory sentence, or from imposing a  
12 sentence of death pursuant to other applicable law.  
13 Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3.  
14 does not authorize a court to impose a lesser sentence than  
15 otherwise required by law.

16  
17 Notwithstanding s. 948.01, adjudication of guilt or imposition  
18 of sentence shall not be suspended, deferred, or withheld, and  
19 the defendant is not eligible for statutory gain-time under s.  
20 944.275 or any form of discretionary early release, other than  
21 pardon or executive clemency, or conditional medical release  
22 under s. 947.149, prior to serving the minimum sentence.

23 (c) If the minimum mandatory terms of imprisonment  
24 imposed pursuant to this section exceed the maximum sentences  
25 authorized by s. 775.082, s. 775.084, or the Criminal  
26 Punishment Code under chapter 921, then the mandatory minimum  
27 sentence must be imposed. If the mandatory minimum terms of  
28 imprisonment pursuant to this section are less than the  
29 sentences that could be imposed as authorized by s. 775.082,  
30 s. 775.084, or the Criminal Punishment Code under chapter 921,  
31 then the sentence imposed by the court must include the

1 mandatory minimum term of imprisonment as required in this  
2 section.

3 (d) It is the intent of the Legislature that offenders  
4 who possess, carry, display, use, threaten to use, or attempt  
5 to use a semiautomatic firearm and its high-capacity  
6 detachable box magazine or a machine gun as defined in s.  
7 790.001 be punished to the fullest extent of the law, and the  
8 minimum terms of imprisonment imposed pursuant to this  
9 subsection shall be imposed for each qualifying felony count  
10 for which the person is convicted. The court shall impose any  
11 term of imprisonment provided for in this subsection  
12 consecutively to any other term of imprisonment imposed for  
13 any other felony offense.

14 (e)(b) As used in this subsection, the term:

15 1. "High-capacity detachable box magazine" means any  
16 detachable box magazine, for use in a semiautomatic firearm,  
17 which is capable of being loaded with more than 20 centerfire  
18 cartridges.

19 2. "Semiautomatic firearm" means a firearm which is  
20 capable of firing a series of rounds by separate successive  
21 depressions of the trigger and which uses the energy of  
22 discharge to perform a portion of the operating cycle.

23 Section 2. Legislative intent and policy; report.--

24 (1) It is the intent of the Legislature that convicted  
25 criminal offenders who meet the criteria in s. 775.087(2) and  
26 (3), Florida Statutes, be sentenced to the minimum mandatory  
27 prison terms provided herein. It is the intent of the  
28 Legislature to establish zero tolerance of criminals who use,  
29 threaten to use, or avail themselves of firearms in order to  
30 commit crimes and thereby demonstrate their lack of value for  
31 human life. It is also the intent of the Legislature that

1 prosecutors should appropriately exercise their discretion in  
2 those cases in which the offenders' possession of the firearm  
3 is incidental to the commission of a crime and not used in  
4 furtherance of the crime, used in order to commit the crime,  
5 or used in preparation to commit the crime. For every case in  
6 which the offender meets the criteria in this act and does not  
7 receive the mandatory minimum prison sentence, the state  
8 attorney must explain the sentencing deviation in writing and  
9 place such explanation in the case file maintained by the  
10 state attorney. On a quarterly basis, each state attorney  
11 shall submit copies of deviation memoranda regarding offenses  
12 committed on or after the effective date of this act to the  
13 President of the Florida Prosecuting Attorneys Association,  
14 Inc. The association must maintain such information and make  
15 such information available to the public upon request for at  
16 least a 10-year period.

17 (2) Effective July 1, 2000, each state attorney shall  
18 annually report to the Speaker of the House, the President of  
19 the Senate, and the Executive Office of the Governor regarding  
20 the prosecution and sentencing of offenders who met the  
21 criteria in s. 775.087(2)(a)3. and (3)(a)3., Florida Statutes.  
22 The report shall include the number of charges received in  
23 each circuit during the previous fiscal year by law  
24 enforcement agencies which based a criminal charge on facts  
25 demonstrating that the defendant met the criteria in s.  
26 775.087(2)(a)3. and (3)(a)3., Florida Statutes, the case  
27 number of the state attorney's office involving such criminal  
28 charges, the final disposition, if any, of such cases, whether  
29 the minimum mandatory prison terms authorized herein were  
30 imposed in such cases, and a copy of each deviation memorandum  
31 that state a written basis in those cases in which the state

1 attorney's office did not seek that the minimum mandatory  
2 prison term be imposed. Cases in which a final disposition has  
3 not yet been reached shall be reported in a subsequent annual  
4 report. Copies of each report shall be maintained by the  
5 Florida Prosecuting Attorneys Association or each elected  
6 state attorney. By July 1, 2001, each elected state attorney  
7 shall make each annual report available to the public on the  
8 Internet.

9 (3) In every case in which a law enforcement agency  
10 based a criminal charge on facts demonstrating that the  
11 defendant met the criteria in s.775.087(2)(a)1., 2. and 3. or  
12 s.775.087(3)(a)1., 2., and 3. and in which the defendant did  
13 not receive the mandatory penalty, the state attorney must  
14 place in the court file a memorandum explaining why the  
15 minimum mandatory penalty was not imposed.

16 Section 3. For the purpose of incorporating the  
17 amendment to section 775.087, Florida Statutes, in references  
18 thereto, the following sections or subdivisions of Florida  
19 Statutes, or Florida Statutes, 1998 Supplement, are reenacted  
20 to read:

21 921.0022 Criminal Punishment Code; offense severity  
22 ranking chart.--

23 (2) The offense severity ranking chart has 10 offense  
24 levels, ranked from least severe, which are level 1 offenses,  
25 to most severe, which are level 10 offenses, and each felony  
26 offense is assigned to a level according to the severity of  
27 the offense. For purposes of determining which felony offenses  
28 are specifically listed in the offense severity ranking chart  
29 and which severity level has been assigned to each of these  
30 offenses, the numerical statutory references in the left  
31 column of the chart and the felony degree designations in the

1 middle column of the chart are controlling; the language in  
2 the right column of the chart is provided solely for  
3 descriptive purposes. Reclassification of the degree of the  
4 felony through the application of s. 775.0845, s. 775.087, s.  
5 775.0875, s. 794.023, or any other law that provides an  
6 enhanced penalty for a felony offense, to any offense listed  
7 in the offense severity ranking chart in this section shall  
8 not cause the offense to become unlisted and is not subject to  
9 the provisions of s. 921.0023.

10 921.0024 Criminal Punishment Code; worksheet  
11 computations; scoresheets.--

12 (1)

13  
14 (b) WORKSHEET KEY:

15  
16 Legal status points are assessed when any form of legal status  
17 existed at the time the offender committed an offense before  
18 the court for sentencing. Four (4) sentence points are  
19 assessed for an offender's legal status.

20  
21 Community sanction violation points are assessed when a  
22 community sanction violation is before the court for  
23 sentencing. Six (6) sentence points are assessed for each  
24 community sanction violation, and each successive community  
25 sanction violation; however, if the community sanction  
26 violation includes a new felony conviction before the  
27 sentencing court, twelve (12) community sanction violation  
28 points are assessed for such violation, and for each  
29 successive community sanction violation involving a new felony  
30 conviction. Multiple counts of community sanction violations  
31 before the sentencing court shall not be a basis for



1 multiplying the assessment of community sanction violation  
2 points.

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

16  
17 Prior capital felony points: If the offender has one or more  
18 prior capital felonies in the offender's criminal record,  
19 points shall be added to the subtotal sentence points of the  
20 offender equal to twice the number of points the offender  
21 receives for the primary offense and any additional offense.  
22 A prior capital felony in the offender's criminal record is a  
23 previous capital felony offense for which the offender has  
24 entered a plea of nolo contendere or guilty or has been found  
25 guilty; or a felony in another jurisdiction which is a capital  
26 felony in that jurisdiction, or would be a capital felony if  
27 the offense were committed in this state.

28  
29 Possession of a firearm, semiautomatic firearm, or machine  
30 gun: If the offender is convicted of committing or attempting  
31 to commit any felony other than those enumerated in s.

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

9  
10 Sentencing multipliers:

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

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

29  
30 Grand theft of a motor vehicle: If the primary offense is  
31 grand theft of the third degree involving a motor vehicle and

1 in the offender's prior record, there are three or more grand  
2 thefts of the third degree involving a motor vehicle, the  
3 subtotal sentence points are multiplied by 1.5.

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

10  
11 Domestic violence in the presence of a child: If the offender  
12 is convicted of the primary offense and the primary offense is  
13 a crime of domestic violence, as defined in s. 741.28, which  
14 was committed in the presence of a child under 16 years of age  
15 who is a family household member as defined in s. 741.28(2)  
16 with the victim or perpetrator, the subtotal sentence points  
17 are multiplied, at the discretion of the court, by 1.5.

18 947.146 Control Release Authority.--

19 (3) Within 120 days prior to the date the state  
20 correctional system is projected pursuant to s. 216.136 to  
21 exceed 99 percent of total capacity, the authority shall  
22 determine eligibility for and establish a control release date  
23 for an appropriate number of parole ineligible inmates  
24 committed to the department and incarcerated within the state  
25 who have been determined by the authority to be eligible for  
26 discretionary early release pursuant to this section. In  
27 establishing control release dates, it is the intent of the  
28 Legislature that the authority prioritize consideration of  
29 eligible inmates closest to their tentative release date. The  
30 authority shall rely upon commitment data on the offender  
31 information system maintained by the department to initially

1 identify inmates who are to be reviewed for control release  
2 consideration. The authority may use a method of objective  
3 risk assessment in determining if an eligible inmate should be  
4 released. Such assessment shall be a part of the department's  
5 management information system. However, the authority shall  
6 have sole responsibility for determining control release  
7 eligibility, establishing a control release date, and  
8 effectuating the release of a sufficient number of inmates to  
9 maintain the inmate population between 99 percent and 100  
10 percent of total capacity. Inmates who are ineligible for  
11 control release are inmates who are parole eligible or inmates  
12 who:

13 (b) Are serving the mandatory minimum portion of a  
14 sentence enhanced under s. 775.087(2) or (3), or s. 784.07(3);  
15

16 In making control release eligibility determinations under  
17 this subsection, the authority may rely on any document  
18 leading to or generated during the course of the criminal  
19 proceedings, including, but not limited to, any presentence or  
20 postsentence investigation or any information contained in  
21 arrest reports relating to circumstances of the offense.

22 Section 4. In order to inform the public and to deter  
23 and prevent crime, the Office of the Governor shall place  
24 public service announcements in areas having the highest  
25 representation in the correctional system explaining the  
26 penalties provided in this act.

27 Section 5. This act shall take effect July 1, 1999,  
28 except that Section 4 shall take effect upon becoming a law.  
29  
30  
31