

Bill No. CS/HB 121, 2nd Eng.

Amendment No.

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Lee moved the following amendment:

Senate Amendment (with title amendment)
Delete everything after the enacting clause

and insert:

Section 1. This act may be cited as the "Three-Strike Violent Felony Offender Act."

Section 2. Paragraphs (a) and (d) of subsection (9) of section 775.082, Florida Statutes, 1998 Supplement, are amended to read.

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.--

(9)(a)1. "Prison releasee reoffender" means any defendant who commits, or attempts to commit:

- a. Treason;
- b. Murder;
- c. Manslaughter;
- d. Sexual battery;
- e. Carjacking;

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- 1 f. Home-invasion robbery;
- 2 g. Robbery;
- 3 h. Arson;
- 4 i. Kidnapping;
- 5 j. Aggravated assault with a deadly weapon;
- 6 k. Aggravated battery;
- 7 l. Aggravated stalking;
- 8 m. Aircraft piracy;
- 9 n. Unlawful throwing, placing, or discharging of a
- 10 destructive device or bomb;
- 11 o. Any felony that involves the use or threat of
- 12 physical force or violence against an individual;
- 13 p. Armed burglary;
- 14 q. Burglary of an occupied structure or dwelling; or
- 15 r. Any felony violation of s. 790.07, s. 800.04, s.
- 16 827.03, or s. 827.071;
- 17
- 18 within 3 years of being released from a state correctional
- 19 facility operated by the Department of Corrections or a
- 20 private vendor.
- 21 2. "Prison releasee reoffender" also means any
- 22 defendant who commits or attempts to commit any offense listed
- 23 in subparagraph (a)1.a.-r. while the defendant was serving a
- 24 prison sentence or on escape status from a state correctional
- 25 facility operated by the Department of Corrections or a
- 26 private vendor.
- 27 ~~3.2.~~ If the state attorney determines that a defendant
- 28 is a prison releasee reoffender as defined in subparagraph 1.,
- 29 the state attorney may seek to have the court sentence the
- 30 defendant as a prison releasee reoffender. Upon proof from the
- 31 state attorney that establishes by a preponderance of the

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1 evidence that a defendant is a prison releasee reoffender as
2 defined in this section, such defendant is not eligible for
3 sentencing under the sentencing guidelines and must be
4 sentenced as follows:

5 a. For a felony punishable by life, by a term of
6 imprisonment for life;

7 b. For a felony of the first degree, by a term of
8 imprisonment of 30 years;

9 c. For a felony of the second degree, by a term of
10 imprisonment of 15 years; and

11 d. For a felony of the third degree, by a term of
12 imprisonment of 5 years.

13 (d)1. It is the intent of the Legislature that
14 offenders previously released from prison who meet the
15 criteria in paragraph (a) be punished to the fullest extent of
16 the law and as provided in this subsection, unless the state
17 attorney determines that any of the following circumstances
18 exist:

19 a. ~~The prosecuting attorney does not have sufficient~~
20 ~~evidence to prove the highest charge available;~~

21 b. ~~The testimony of a material witness cannot be~~
22 ~~obtained;~~

23 c. ~~The victim does not want the offender to receive~~
24 ~~the mandatory prison sentence and provides a written statement~~
25 ~~to that effect; or~~

26 d. ~~other~~ extenuating circumstances exist which
27 preclude the just prosecution of the offender, including
28 whether the victim recommends that the offender be sentenced
29 as provided in this subsection.

30 2. For every case in which the offender meets the
31 criteria in paragraph (a) and does not receive the mandatory

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1 minimum prison sentence, the state attorney must explain the
2 sentencing deviation in writing and place such explanation in
3 the case file maintained by the state attorney. On a quarterly
4 basis, each state attorney shall submit copies of deviation
5 memoranda regarding offenses committed on or after the
6 effective date of this subsection, to the president of the
7 Florida Prosecuting Attorneys Association, Inc. The
8 association must maintain such information, and make such
9 information available to the public upon request, for at least
10 a 10-year period.

11 Section 3. Section 775.084, Florida Statutes, 1998
12 Supplement, is amended to read:

13 775.084 Violent career criminals; habitual felony
14 offenders and habitual violent felony offenders; three-time
15 violent felony offenders; definitions; procedure; enhanced
16 penalties or mandatory minimum prison terms.--

17 (1) As used in this act:

18 (a) "Habitual felony offender" means a defendant for
19 whom the court may impose an extended term of imprisonment, as
20 provided in paragraph (4)(a), if it finds that:

21 1. The defendant has previously been convicted of any
22 combination of two or more felonies in this state or other
23 qualified offenses.

24 2. The felony for which the defendant is to be
25 sentenced was committed:

26 a. While the defendant was serving a prison sentence
27 or other sentence, or court-ordered or lawfully imposed
28 supervision that is ~~commitment~~ imposed as a result of a prior
29 conviction for a felony or other qualified offense; or

30 b. Within 5 years of the date of the conviction of the
31 defendant's last prior felony or other qualified offense, or

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1 within 5 years of the defendant's release from a prison
2 sentence, probation, community control, control release,
3 conditional release, parole or court-ordered or lawfully
4 imposed supervision or other sentence that is ~~commitment~~
5 imposed as a result of a prior conviction for a felony or
6 other qualified offense, whichever is later.

7 3. The felony for which the defendant is to be
8 sentenced, and one of the two prior felony convictions, is not
9 a violation of s. 893.13 relating to the purchase or the
10 possession of a controlled substance.

11 4. The defendant has not received a pardon for any
12 felony or other qualified offense that is necessary for the
13 operation of this paragraph.

14 5. A conviction of a felony or other qualified offense
15 necessary to the operation of this paragraph has not been set
16 aside in any postconviction proceeding.

17 (b) "Habitual violent felony offender" means a
18 defendant for whom the court may impose an extended term of
19 imprisonment, as provided in paragraph (4)(b), if it finds
20 that:

21 1. The defendant has previously been convicted of a
22 felony or an attempt or conspiracy to commit a felony and one
23 or more of such convictions was for:

- 24 a. Arson;
- 25 b. Sexual battery;
- 26 c. Robbery;
- 27 d. Kidnapping;
- 28 e. Aggravated child abuse;
- 29 f. Aggravated abuse of an elderly person or disabled
- 30 adult;
- 31 g. Aggravated assault with a deadly weapon;

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- 1 h. Murder;
- 2 i. Manslaughter;
- 3 j. Aggravated manslaughter of an elderly person or
4 disabled adult;
- 5 k. Aggravated manslaughter of a child;
- 6 l. Unlawful throwing, placing, or discharging of a
7 destructive device or bomb;
- 8 m. Armed burglary;
- 9 n. Aggravated battery; or
- 10 o. Aggravated stalking.
- 11 2. The felony for which the defendant is to be
12 sentenced was committed:
- 13 a. While the defendant was serving a prison sentence
14 or other sentence, or court-ordered or lawfully imposed
15 supervision that is ~~commitment~~ imposed as a result of a prior
16 conviction for an enumerated felony; or
- 17 b. Within 5 years of the date of the conviction of the
18 last prior enumerated felony, or within 5 years of the
19 defendant's release from a prison sentence, probation,
20 community control, control release, conditional release,
21 parole, or court-ordered or lawfully imposed supervision or
22 other sentence that is ~~commitment~~ imposed as a result of a
23 prior conviction for an enumerated felony, whichever is later.
- 24 3. The defendant has not received a pardon on the
25 ground of innocence for any crime that is necessary for the
26 operation of this paragraph.
- 27 4. A conviction of a crime necessary to the operation
28 of this paragraph has not been set aside in any postconviction
29 proceeding.
- 30 (c) "Three-time violent felony offender" means a
31 defendant for whom the court must impose a mandatory minimum

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1 term of imprisonment, as provided in paragraph (4)(c), if it
2 finds that:
3 1. The defendant has previously been convicted as an
4 adult two or more times of a felony, or an attempt to commit a
5 felony, and two or more of such convictions were for
6 committing, or attempting to commit, any of the following
7 offenses or combination thereof:
8 a. Arson;
9 b. Sexual battery;
10 c. Robbery;
11 d. Kidnapping;
12 e. Aggravated child abuse;
13 f. Aggravated abuse of an elderly person or disabled
14 adult;
15 g. Aggravated assault with a deadly weapon;
16 h. Murder;
17 i. Manslaughter;
18 j. Aggravated manslaughter of an elderly person or
19 disabled adult;
20 k. Aggravated manslaughter of a child;
21 l. Unlawful throwing, placing, or discharging of a
22 destructive device or bomb;
23 m. Armed burglary;
24 n. Aggravated battery;
25 o. Aggravated stalking;
26 p. Home invasion/robbery;
27 q. Carjacking; or
28 r. An offense which is in violation of a law of any
29 other jurisdiction if the elements of the offense are
30 substantially similar to the elements of any felony offense
31 enumerated in sub-subparagraphs a.-q., or an attempt to commit

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1 any such felony offense.

2 2. The felony for which the defendant is to be
3 sentenced is one of the felonies enumerated in
4 sub-subparagraphs 1.a.-q. and was committed:

5 a. While the defendant was serving a prison sentence
6 or other sentence imposed as a result of a prior conviction
7 for any offense enumerated in sub-subparagraphs 1.a.-r.; or

8 b. Within 5 years after the date of the conviction of
9 the last prior offense enumerated in sub-subparagraphs
10 1.a.-r., or within 5 years after the defendant's release from
11 a prison sentence, probation, community control, or other
12 sentence imposed as a result of a prior conviction for any
13 offense enumerated in sub-subparagraphs 1.a.-r., whichever is
14 later.

15 3. The defendant has not received a pardon on the
16 ground of innocence for any crime that is necessary for the
17 operation of this paragraph.

18 4. A conviction of a crime necessary to the operation
19 of this paragraph has not been set aside in any postconviction
20 proceeding.

21 (d)(c) "Violent career criminal" means a defendant for
22 whom the court must impose imprisonment pursuant to paragraph
23 (4)(d)(c), if it finds that:

24 1. The defendant has previously been convicted as an
25 adult three or more times for an offense in this state or
26 other qualified offense that is:

27 a. Any forcible felony, as described in s. 776.08;

28 b. Aggravated stalking, as described in s. 784.048(3)
29 and (4);

30 c. Aggravated child abuse, as described in s.

31 827.03(2);

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1 d. Aggravated abuse of an elderly person or disabled
2 adult, as described in s. 825.102(2);

3 e. Lewd, lascivious, or indecent conduct, as described
4 in s. 800.04;

5 f. Escape, as described in s. 944.40; or

6 g. A felony violation of chapter 790 involving the use
7 or possession of a firearm.

8 2. The defendant has been incarcerated in a state
9 prison or a federal prison.

10 3. The primary felony offense for which the defendant
11 is to be sentenced is a felony enumerated in subparagraph 1.
12 and was committed on or after October 1, 1995, and:

13 a. While the defendant was serving a prison sentence
14 or other sentence, or court-ordered or lawfully imposed
15 supervision that is ~~commitment~~ imposed as a result of a prior
16 conviction for an enumerated felony; or

17 b. Within 5 years after the conviction of the last
18 prior enumerated felony, or within 5 years after the
19 defendant's release from a prison sentence, probation,
20 community control, control release, conditional release,
21 parole, or court-ordered or lawfully imposed supervision or
22 other sentence that is ~~commitment~~ imposed as a result of a
23 prior conviction for an enumerated felony, whichever is later.

24 4. The defendant has not received a pardon for any
25 felony or other qualified offense that is necessary for the
26 operation of this paragraph.

27 5. A conviction of a felony or other qualified offense
28 necessary to the operation of this paragraph has not been set
29 aside in any postconviction proceeding.

30 ~~(e)~~ "(d) "Qualified offense" means any offense,
31 substantially similar in elements and penalties to an offense

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1 in this state, which is in violation of a law of any other
2 jurisdiction, whether that of another state, the District of
3 Columbia, the United States or any possession or territory
4 thereof, or any foreign jurisdiction, that was punishable
5 under the law of such jurisdiction at the time of its
6 commission by the defendant by death or imprisonment exceeding
7 1 year.

8 (2) For the purposes of this section, the placing of a
9 person on probation or community control without an
10 adjudication of guilt shall be treated as a prior conviction
11 ~~if the subsequent offense for which the person is to be~~
12 ~~sentenced was committed during such period of probation or~~
13 ~~community control.~~

14 (3)(a) In a separate proceeding, the court shall
15 determine if the defendant is a habitual felony offender or a
16 habitual violent felony offender. The procedure shall be as
17 follows:

18 1. The court shall obtain and consider a presentence
19 investigation prior to the imposition of a sentence as a
20 habitual felony offender or a habitual violent felony
21 offender.

22 2. Written notice shall be served on the defendant and
23 the defendant's attorney a sufficient time prior to the entry
24 of a plea or prior to the imposition of sentence in order to
25 allow the preparation of a submission on behalf of the
26 defendant.

27 3. Except as provided in subparagraph 1., all evidence
28 presented shall be presented in open court with full rights of
29 confrontation, cross-examination, and representation by
30 counsel.

31 4. Each of the findings required as the basis for such

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1 sentence shall be found to exist by a preponderance of the
2 evidence and shall be appealable to the extent normally
3 applicable to similar findings.

4 5. For the purpose of identification of a habitual
5 felony offender or a habitual violent felony offender, the
6 court shall fingerprint the defendant pursuant to s. 921.241.

7 6. For an offense committed on or after October 1,
8 1995, if the state attorney pursues a habitual felony offender
9 sanction or a habitual violent felony offender sanction
10 against the defendant and the court, in a separate proceeding
11 pursuant to this paragraph, determines that the defendant
12 meets the criteria under subsection (1) for imposing such
13 sanction, the court must sentence the defendant as a habitual
14 felony offender or a habitual violent felony offender, subject
15 to imprisonment pursuant to this section unless the court
16 finds that such sentence is not necessary for the protection
17 of the public. If the court finds that it is not necessary
18 for the protection of the public to sentence the defendant as
19 a habitual felony offender or a habitual violent felony
20 offender, the court shall provide written reasons; a written
21 transcript of orally stated reasons is permissible, if filed
22 by the court within 7 days after the date of sentencing. Each
23 month, the court shall submit to the Office of Economic and
24 Demographic Research of the Legislature the written reasons or
25 transcripts in each case in which the court determines not to
26 sentence a defendant as a habitual felony offender or a
27 habitual violent felony offender as provided in this
28 subparagraph.

29 (b) In a separate proceeding, the court shall
30 determine if the defendant is a three-time violent felony
31 offender. The procedure shall be as follows:

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1 1. The court shall obtain and consider a presentence
2 investigation prior to the imposition of a sentence as a
3 three-time violent felony offender.

4 2. Written notice shall be served on the defendant and
5 the defendant's attorney a sufficient time prior to the entry
6 of a plea or prior to the imposition of sentence in order to
7 allow the preparation of a submission on behalf of the
8 defendant.

9 3. Except as provided in subparagraph 1., all evidence
10 presented shall be presented in open court with full rights of
11 confrontation, cross-examination, and representation by
12 counsel.

13 4. Each of the findings required as the basis for such
14 sentence shall be found to exist by a preponderance of the
15 evidence and shall be appealable to the extent normally
16 applicable to similar findings.

17 5. For the purpose of identification of a three-time
18 violent felony offender, the court shall fingerprint the
19 defendant pursuant to s. 921.241.

20 6. For an offense committed on or after the effective
21 date of this act, if the state attorney pursues a three-time
22 violent felony offender sanction against the defendant and the
23 court, in a separate proceeding pursuant to this paragraph,
24 determines that the defendant meets the criteria under
25 subsection (1) for imposing such sanction, the court must
26 sentence the defendant as a three-time violent felony
27 offender, subject to imprisonment pursuant to this section as
28 provided in paragraph (4)(c).

29 ~~(c)(b)~~ In a separate proceeding, the court shall
30 determine whether the defendant is a violent career criminal
31 with respect to a primary offense committed on or after

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1 October 1, 1995. The procedure shall be as follows:

2 1. Written notice shall be served on the defendant and
3 the defendant's attorney a sufficient time prior to the entry
4 of a plea or prior to the imposition of sentence in order to
5 allow the preparation of a submission on behalf of the
6 defendant.

7 2. All evidence presented shall be presented in open
8 court with full rights of confrontation, cross-examination,
9 and representation by counsel.

10 3. Each of the findings required as the basis for such
11 sentence shall be found to exist by a preponderance of the
12 evidence and shall be appealable only as provided in paragraph
13 ~~(d)(c)~~.

14 4. For the purpose of identification, the court shall
15 fingerprint the defendant pursuant to s. 921.241.

16 5. For an offense committed on or after October 1,
17 1995, if the state attorney pursues a violent career criminal
18 sanction against the defendant and the court, in a separate
19 proceeding pursuant to this paragraph, determines that the
20 defendant meets the criteria under subsection (1) for imposing
21 such sanction, the court must sentence the defendant as a
22 violent career criminal, subject to imprisonment pursuant to
23 this section unless the court finds that such sentence is not
24 necessary for the protection of the public. If the court
25 finds that it is not necessary for the protection of the
26 public to sentence the defendant as a violent career criminal,
27 the court shall provide written reasons; a written transcript
28 of orally stated reasons is permissible, if filed by the court
29 within 7 days after the date of sentencing. Each month, the
30 court shall submit to the Office of Economic and Demographic
31 Research of the Legislature the written reasons or transcripts

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1 in each case in which the court determines not to sentence a
2 defendant as a violent career criminal as provided in this
3 subparagraph.

4 (d)~~(e)~~1. A person sentenced under paragraph (4)(d)~~(e)~~
5 as a violent career criminal has the right of direct appeal,
6 and either the state or the defendant may petition the trial
7 court to vacate an illegal sentence at any time. However, the
8 determination of the trial court to impose or not to impose a
9 violent career criminal sentence is presumed appropriate and
10 no petition or motion for collateral or other postconviction
11 relief may be considered based on an allegation either by the
12 state or the defendant that such sentence is inappropriate,
13 inadequate, or excessive.

14 2. It is the intent of the Legislature that, with
15 respect to both direct appeal and collateral review of violent
16 career criminal sentences, all claims of error or illegality
17 be raised at the first opportunity and that no claim should be
18 filed more than 2 years after the judgment and sentence became
19 final, unless it is established that the basis for the claim
20 could not have been ascertained at the time by the exercise of
21 due diligence. Technical violations and mistakes at trials and
22 sentencing proceedings involving violent career criminals that
23 do not affect due process or fundamental fairness are not
24 appealable by either the state or the defendant.

25 3. It is the intent of the Legislature that no funds,
26 resources, or employees of the state or its political
27 subdivisions be used, directly or indirectly, in appellate or
28 collateral proceedings based on violent career criminal
29 sentencing, except when such use is constitutionally or
30 statutorily mandated.

31 (4)(a) The court, in conformity with the procedure

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1 established in paragraph (3)(a), may sentence the habitual
2 felony offender as follows:

3 1. In the case of a life felony or a felony of the
4 first degree, for life.

5 2. In the case of a felony of the second degree, for a
6 term of years not exceeding 30.

7 3. In the case of a felony of the third degree, for a
8 term of years not exceeding 10.

9 (b) The court, in conformity with the procedure
10 established in paragraph (3)(a), may sentence the habitual
11 violent felony offender as follows:

12 1. In the case of a life felony or a felony of the
13 first degree, for life, and such offender shall not be
14 eligible for release for 15 years.

15 2. In the case of a felony of the second degree, for a
16 term of years not exceeding 30, and such offender shall not be
17 eligible for release for 10 years.

18 3. In the case of a felony of the third degree, for a
19 term of years not exceeding 10, and such offender shall not be
20 eligible for release for 5 years.

21 (c)1. The court, in conformity with the procedure
22 established in paragraph (3)(c), must sentence the three-time
23 violent felony offender to a mandatory minimum term of
24 imprisonment, as follows:

25 a. In the case of a felony punishable by life, to a
26 term of imprisonment for life;

27 b. In the case of a felony of the first degree, to a
28 term of imprisonment of 30 years;

29 c. In the case of a felony of the second degree, to a
30 term of imprisonment of 15 years; or

31 d. In the case of a felony of the third degree, to a

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1 term of imprisonment of 5 years.

2 2. Nothing in this subsection shall prevent a court
3 from imposing a greater sentence of incarceration as
4 authorized by law.

5 (d)(e) The court, in conformity with the procedure
6 established in paragraph (3)(c)(b), shall sentence the violent
7 career criminal as follows:

8 1. In the case of a life felony or a felony of the
9 first degree, for life.

10 2. In the case of a felony of the second degree, for a
11 term of years not exceeding 40, with a mandatory minimum term
12 of 30 years' imprisonment.

13 3. In the case of a felony of the third degree, for a
14 term of years not exceeding 15, with a mandatory minimum term
15 of 10 years' imprisonment.

16 (e)(d) If the court finds, pursuant to paragraph
17 (3)(a) or paragraph (3)(c)(b), that it is not necessary for
18 the protection of the public to sentence a defendant who meets
19 the criteria for sentencing as a habitual felony offender, a
20 habitual violent felony offender, or a violent career
21 criminal, with respect to an offense committed on or after
22 October 1, 1995, sentence shall be imposed without regard to
23 this section.

24 (f)(e) At any time when it appears to the court that
25 the defendant is eligible for sentencing under this section,
26 the court shall make that determination as provided in
27 paragraph (3)(a), or paragraph (3)(b), or paragraph (3)(c).

28 (g)(f) A sentence imposed under this section shall not
29 be increased after such imposition.

30 (h)(g) A sentence imposed under this section is not
31 subject to s. 921.002.

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1 ~~(i)(h)~~ The provisions of this section do not apply to
2 capital felonies, and a sentence authorized under this section
3 does not preclude the imposition of the death penalty for a
4 capital felony.

5 ~~(j)(i)~~ The provisions of s. 947.1405 shall apply to
6 persons sentenced as habitual felony offenders and persons
7 sentenced as habitual violent felony offenders.

8 ~~(k)(j)~~1. A defendant sentenced under this section as a
9 habitual felony offender, a habitual violent felony offender,
10 or a violent career criminal is eligible for gain-time granted
11 by the Department of Corrections as provided in s.
12 944.275(4)(b).

13 2. For an offense committed on or after October 1,
14 1995, a defendant sentenced under this section as a violent
15 career criminal is not eligible for any form of discretionary
16 early release, other than pardon or executive clemency, or
17 conditional medical release granted pursuant to s. 947.149.

18 3. For an offense committed on or after July 1, 1999,
19 a defendant sentenced under this section as a three-time
20 violent felony offender shall be released only be expiration
21 of sentence and shall not be eligible for parole, control
22 release, or any form of early release. Any person sentenced as
23 a three-time violent felony offender must serve 100 percent of
24 the court-imposed sentence.

25 (5) In order to be counted as a prior felony for
26 purposes of sentencing under this section, the felony must
27 have resulted in a conviction sentenced separately prior to
28 the current offense and sentenced separately from any other
29 felony conviction that is to be counted as a prior felony.

30 (6) The purpose of this section is to provide uniform
31 punishment for those crimes made punishable under this

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1 section, and to this end, a reference to this section
2 constitutes a general reference under the doctrine of
3 incorporation by reference.

4 Section 4. Paragraphs (c) and (d) of subsection (2) of
5 section 784.07, Florida Statutes, 1998 Supplement, are amended
6 to read:

7 784.07 Assault or battery of law enforcement officers,
8 firefighters, emergency medical care providers, public transit
9 employees or agents, or other specified officers;
10 reclassification of offenses; minimum sentences.--

11 (2) Whenever any person is charged with knowingly
12 committing an assault or battery upon a law enforcement
13 officer, a firefighter, an emergency medical care provider, a
14 traffic accident investigation officer as described in s.
15 316.640, a traffic infraction enforcement officer as described
16 in s. 318.141, a parking enforcement specialist as defined in
17 s. 316.640, or a security officer employed by the board of
18 trustees of a community college, while the officer,
19 firefighter, emergency medical care provider, intake officer,
20 traffic accident investigation officer, traffic infraction
21 enforcement officer, parking enforcement specialist, public
22 transit employee or agent, or security officer is engaged in
23 the lawful performance of his or her duties, the offense for
24 which the person is charged shall be reclassified as follows:

25 (c) In the case of aggravated assault, from a felony
26 of the third degree to a felony of the second degree.
27 Notwithstanding any other provision of law, any person
28 convicted of aggravated assault upon a law enforcement officer
29 shall be sentenced to a minimum term of imprisonment of 3
30 years.

31 (d) In the case of aggravated battery, from a felony

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1 of the second degree to a felony of the first degree.
2 Notwithstanding any other provision of law, any person
3 convicted of aggravated battery of a law enforcement officer
4 shall be sentenced to a minimum term of imprisonment of 5
5 years.

6 Section 5. Subsection (1) of section 784.08, Florida
7 Statutes, is amended to read:

8 784.08 Assault or battery on persons 65 years of age
9 or older; reclassification of offenses; minimum sentence.--

10 (1) A person who is convicted of an aggravated assault
11 or aggravated battery upon a person 65 years of age or older
12 shall be sentenced to a minimum term of imprisonment of 3
13 years pursuant to the Criminal Punishment Code and fined not
14 more than \$10,000 and shall also be ordered by the sentencing
15 judge to make restitution to the victim of such offense and to
16 perform up to 500 hours of community service work.
17 Restitution and community service work shall be in addition to
18 any fine or sentence which may be imposed and shall not be in
19 lieu thereof.

20 Section 6. Section 790.235, Florida Statutes, is
21 amended to read:

22 790.235 Possession of firearm by violent career
23 criminal unlawful; penalty.--

24 (1) Any person who meets the violent career criminal
25 criteria under s. 775.084(1)(d)~~(c)~~, regardless of whether such
26 person is or has previously been sentenced as a violent career
27 criminal, who owns or has in his or her care, custody,
28 possession, or control any firearm or electric weapon or
29 device, or carries a concealed weapon, including a tear gas
30 gun or chemical weapon or device, commits a felony of the
31 first degree, punishable as provided in s. 775.082, s.

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1 775.083, or s. 775.084. A person convicted of a violation of
2 this section shall be sentenced to a mandatory minimum of 15
3 years' imprisonment; however, if the person would be sentenced
4 to a longer term of imprisonment under s. 775.084(4)~~(d)(e)~~,
5 the person must be sentenced under that provision. A person
6 convicted of a violation of this section is not eligible for
7 any form of discretionary early release, other than pardon,
8 executive clemency, or conditional medical release under s.
9 947.149.

10 (2) For purposes of this section, the previous felony
11 convictions necessary to meet the violent career criminal
12 criteria under s. 775.084(1)~~(d)(e)~~ may be convictions for
13 felonies committed as an adult or adjudications of delinquency
14 for felonies committed as a juvenile. In order to be counted
15 as a prior felony for purposes of this section, the felony
16 must have resulted in a conviction sentenced separately, or an
17 adjudication of delinquency entered separately, prior to the
18 current offense, and sentenced or adjudicated separately from
19 any other felony that is to be counted as a prior felony.

20 (3) This section shall not apply to a person whose
21 civil rights and firearm authority have been restored.

22 Section 7. Section 794.0115, Florida Statutes, is
23 created to read:

24 794.0115 Repeat sexual batterers; definition;
25 procedure; enhanced penalties.--

26 (1) As used in this act, "repeat sexual batterer"
27 means a defendant for whom the court must impose a mandatory
28 minimum term of imprisonment, as provided in subsection (3),
29 if it finds that:

30 (a) The defendant has previously been convicted of a
31 felony or an attempt or conspiracy to commit a felony and one

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1 or more of such convictions was for:

2 1. Any felony offense in violation of s.
3 794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy
4 to commit the felony offense.

5 2. A qualified offense as defined in s. 775.084(1)(e),
6 if the elements of the qualified offense are substantially
7 similar to the elements of a felony offense in violation of s.
8 794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy
9 to commit the felony offense.

10 (b) The felony for which the defendant is to be
11 sentenced is one of the felonies enumerated in subparagraph
12 (a)1. or 2. and was committed:

13 1. While the defendant was serving a prison sentence
14 or other sentence imposed as a result of a prior conviction
15 for any offense enumerated in subparagraph (a)1. or 2.; or

16 2. Within 10 years after the date of the conviction of
17 the last prior offense enumerated in subparagraph (a)1. or 2.,
18 or within 10 years after the defendant's release from a prison
19 sentence, probation, community control, or other sentence
20 imposed as a result of a prior conviction for any offense
21 enumerated in subparagraph (a)1. or 2., whichever is later.

22 (c) The defendant has not received a pardon on the
23 ground of innocence for any crime that is necessary for the
24 operation of this subsection.

25 (d) A conviction of a crime necessary to the operation
26 of this subsection has not been set aside in any
27 postconviction proceeding.

28 (2) In a separate proceeding, the court shall
29 determine if the defendant is a repeat sexual batterer. The
30 procedure shall be as follows:

31 (a) The court shall obtain and consider a presentence

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1 investigation prior to the imposition of a sentence as a
2 repeat sexual batterer.

3 (b) Written notice shall be served on the defendant
4 and the defendant's attorney a sufficient time prior to the
5 entry of a plea or prior to the imposition of sentence in
6 order to allow the preparation of a submission on behalf of
7 the defendant.

8 (c) Except as provided in paragraph (a), all evidence
9 presented shall be presented in open court with full rights of
10 confrontation, cross-examination, and representation by
11 counsel.

12 (d) Each of the findings required as the basis for
13 such sentence shall be found to exist by a preponderance of
14 the evidence and shall be appealable to the extent normally
15 applicable to similar findings.

16 (e) For the purpose of identification of a repeat
17 sexual batterer, the court shall fingerprint the defendant
18 pursuant to s. 921.241.

19 (f) For an offense committed on or after the effective
20 date of this act, if the state attorney pursues a repeat
21 sexual batterer sanction against the defendant and the court,
22 in a separate proceeding pursuant to this subsection,
23 determines that the defendant meets the criteria under
24 subsection (1) for imposing such sanction, the court must
25 sentence the defendant as a repeat sexual batterer, subject to
26 imprisonment pursuant to this section as provided in
27 subsection (3).

28 (3)(a) The court, in conformity with the procedure
29 established in subsection (2), must sentence the repeat sexual
30 batterer to a mandatory minimum term of 10 years'
31 imprisonment.

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1 (b) Nothing in this subsection shall prevent a court
2 from imposing a greater sentence of incarceration as
3 authorized by law.

4 Section 8. Section 794.011, Florida Statutes, is
5 amended to read:

6 794.011 Sexual battery.--

7 (1) As used in this chapter:

8 (a) "Consent" means intelligent, knowing, and
9 voluntary consent and does not include coerced submission.
10 "Consent" shall not be deemed or construed to mean the failure
11 by the alleged victim to offer physical resistance to the
12 offender.

13 (b) "Mentally defective" means a mental disease or
14 defect which renders a person temporarily or permanently
15 incapable of appraising the nature of his or her conduct.

16 (c) "Mentally incapacitated" means temporarily
17 incapable of appraising or controlling a person's own conduct
18 due to the influence of a narcotic, anesthetic, or
19 intoxicating substance administered without his or her consent
20 or due to any other act committed upon that person without his
21 or her consent.

22 (d) "Offender" means a person accused of a sexual
23 offense in violation of a provision of this chapter.

24 (e) "Physically helpless" means unconscious, asleep,
25 or for any other reason physically unable to communicate
26 unwillingness to an act.

27 (f) "Retaliation" includes, but is not limited to,
28 threats of future physical punishment, kidnapping, false
29 imprisonment or forcible confinement, or extortion.

30 (g) "Serious personal injury" means great bodily harm
31 or pain, permanent disability, or permanent disfigurement.

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1 (h) "Sexual battery" means oral, anal, or vaginal
2 penetration by, or union with, the sexual organ of another or
3 the anal or vaginal penetration of another by any other
4 object; however, sexual battery does not include an act done
5 for a bona fide medical purpose.

6 (i) "Victim" means a person who has been the object of
7 a sexual offense.

8 (j) "Physically incapacitated" means bodily impaired
9 or handicapped and substantially limited in ability to resist
10 or flee.

11 (2)(a) A person 18 years of age or older who commits
12 sexual battery upon, or in an attempt to commit sexual battery
13 injures the sexual organs of, a person less than 12 years of
14 age commits a capital felony, punishable as provided in ss.
15 775.082 and 921.141.

16 (b) A person less than 18 years of age who commits
17 sexual battery upon, or in an attempt to commit sexual battery
18 injures the sexual organs of, a person less than 12 years of
19 age commits a life felony, punishable as provided in s.
20 775.082, s. 775.083, ~~or~~ s. 775.084, or s. 794.0115.

21 (3) A person who commits sexual battery upon a person
22 12 years of age or older, without that person's consent, and
23 in the process thereof uses or threatens to use a deadly
24 weapon or uses actual physical force likely to cause serious
25 personal injury commits a life felony, punishable as provided
26 in s. 775.082, s. 775.083, ~~or~~ s. 775.084, or s. 794.0115.

27 (4) A person who commits sexual battery upon a person
28 12 years of age or older without that person's consent, under
29 any of the following circumstances, commits a felony of the
30 first degree, punishable as provided in s. 775.082, s.
31 775.083, ~~or~~ s. 775.084, or s. 794.0115:

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1 (a) When the victim is physically helpless to resist.

2 (b) When the offender coerces the victim to submit by
3 threatening to use force or violence likely to cause serious
4 personal injury on the victim, and the victim reasonably
5 believes that the offender has the present ability to execute
6 the threat.

7 (c) When the offender coerces the victim to submit by
8 threatening to retaliate against the victim, or any other
9 person, and the victim reasonably believes that the offender
10 has the ability to execute the threat in the future.

11 (d) When the offender, without the prior knowledge or
12 consent of the victim, administers or has knowledge of someone
13 else administering to the victim any narcotic, anesthetic, or
14 other intoxicating substance which mentally or physically
15 incapacitates the victim.

16 (e) When the victim is mentally defective and the
17 offender has reason to believe this or has actual knowledge of
18 this fact.

19 (f) When the victim is physically incapacitated.

20 (g) When the offender is a law enforcement officer,
21 correctional officer, or correctional probation officer as
22 defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who
23 is certified under the provisions of s. 943.1395 or is an
24 elected official exempt from such certification by virtue of
25 s. 943.253, or any other person in a position of control or
26 authority in a probation, community control, controlled
27 release, detention, custodial, or similar setting, and such
28 officer, official, or person is acting in such a manner as to
29 lead the victim to reasonably believe that the offender is in
30 a position of control or authority as an agent or employee of
31 government.

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1 (5) A person who commits sexual battery upon a person
2 12 years of age or older, without that person's consent, and
3 in the process thereof does not use physical force and
4 violence likely to cause serious personal injury commits a
5 felony of the second degree, punishable as provided in s.
6 775.082, s. 775.083, ~~or~~ s. 775.084, or s. 794.0115.

7 (6) The offense described in subsection (5) is
8 included in any sexual battery offense charged under
9 subsection (3) or subsection (4).

10 (7) A person who is convicted of committing a sexual
11 battery on or after October 1, 1992, is not eligible for basic
12 gain-time under s. 944.275. This subsection may be cited as
13 the "Junny Rios-Martinez, Jr. Act of 1992."

14 (8) Without regard to the willingness or consent of
15 the victim, which is not a defense to prosecution under this
16 subsection, a person who is in a position of familial or
17 custodial authority to a person less than 18 years of age and
18 who:

19 (a) Solicits that person to engage in any act which
20 would constitute sexual battery under paragraph (1)(h) commits
21 a felony of the third degree, punishable as provided in s.
22 775.082, s. 775.083, or s. 775.084.

23 (b) Engages in any act with that person while the
24 person is 12 years of age or older but less than 18 years of
25 age which constitutes sexual battery under paragraph (1)(h)
26 commits a felony of the first degree, punishable as provided
27 in s. 775.082, s. 775.083, or s. 775.084.

28 (c) Engages in any act with that person while the
29 person is less than 12 years of age which constitutes sexual
30 battery under paragraph (1)(h), or in an attempt to commit
31 sexual battery injures the sexual organs of such person

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1 commits a capital or life felony, punishable pursuant to
2 subsection (2).

3 (9) For prosecution under paragraph (4)(g),
4 acquiescence to a person reasonably believed by the victim to
5 be in a position of authority or control does not constitute
6 consent, and it is not a defense that the perpetrator was not
7 actually in a position of control or authority if the
8 circumstances were such as to lead the victim to reasonably
9 believe that the person was in such a position.

10 (10) Any person who falsely accuses any person listed
11 in paragraph (4)(g) or other person in a position of control
12 or authority as an agent or employee of government of
13 violating paragraph (4)(g) is guilty of a felony of the third
14 degree, punishable as provided in s. 775.082, s. 775.083, or
15 s. 775.084.

16 Section 9. Section 893.135, Florida Statutes, as
17 amended by section 23 of chapter 97-194, Laws of Florida, is
18 amended to read:

19 893.135 Trafficking; mandatory sentences; suspension
20 or reduction of sentences; conspiracy to engage in
21 trafficking.--

22 (1) Except as authorized in this chapter or in chapter
23 499 and notwithstanding the provisions of s. 893.13:

24 (a) Any person who knowingly sells, purchases,
25 manufactures, delivers, or brings into this state, or who is
26 knowingly in actual or constructive possession of, in excess
27 of 25 ~~50~~ pounds of cannabis, or 300 or more cannabis plants,
28 commits a felony of the first degree, which felony shall be
29 known as "trafficking in cannabis." If the quantity of
30 cannabis involved:

31 1. Is in excess of 25 ~~50~~ pounds, but less than 2,000

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1 pounds, or is 300 or more cannabis plants, but not more than
2 2,000 cannabis plants, such person shall be sentenced pursuant
3 to the Criminal Punishment Code and such sentence shall
4 include a mandatory minimum term of imprisonment of 3 years,
5 and the defendant shall be ordered to pay a fine of \$25,000.

6 2. Is 2,000 pounds or more, but less than 10,000
7 pounds, or is 2,000 or more cannabis plants, but not more than
8 10,000 cannabis plants, such person shall be sentenced
9 pursuant to the Criminal Punishment Code and such sentence
10 shall include a mandatory minimum term of imprisonment of 7
11 years, and the defendant shall be ordered to pay a fine of
12 \$50,000.

13 3. Is 10,000 pounds or more, or is 10,000 or more
14 cannabis plants, such person shall be sentenced to a mandatory
15 minimum term of imprisonment of 15 calendar years and pay a
16 fine of \$200,000.

17
18 For the purpose of this paragraph, a plant, including, but not
19 limited to, a seedling or cutting, is a "cannabis plant" if it
20 has some readily observable evidence of root formation, such
21 as root hairs. To determine if a piece or part of a cannabis
22 plant severed from the cannabis plant is itself a cannabis
23 plant, the severed piece or part must have some readily
24 observable evidence of root formation, such as root hairs.
25 Callous tissue is not readily observable evidence of root
26 formation. The viability and sex of a plant and the fact that
27 the plant may or may not be a dead harvested plant are not
28 relevant in determining if the plant is a "cannabis plant" or
29 in the charging of an offense under this paragraph. Upon
30 conviction, the court shall impose the longest term of
31 imprisonment provided for in this paragraph.

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1 (b)1. Any person who knowingly sells, purchases,
2 manufactures, delivers, or brings into this state, or who is
3 knowingly in actual or constructive possession of, 28 grams or
4 more of cocaine, as described in s. 893.03(2)(a)4., or of any
5 mixture containing cocaine, but less than 150 kilograms of
6 cocaine or any such mixture, commits a felony of the first
7 degree, which felony shall be known as "trafficking in
8 cocaine." If the quantity involved:

9 a. Is 28 grams or more, but less than 200 grams, such
10 person shall be sentenced pursuant to the Criminal Punishment
11 Code and such sentence shall include a mandatory minimum term
12 of imprisonment of 3 years, and the defendant shall be ordered
13 to pay a fine of \$50,000.

14 b. Is 200 grams or more, but less than 400 grams, such
15 person shall be sentenced pursuant to the Criminal Punishment
16 Code and such sentence shall include a mandatory minimum term
17 of imprisonment of 7 years, and the defendant shall be ordered
18 to pay a fine of \$100,000.

19 c. Is 400 grams or more, but less than 150 kilograms,
20 such person shall be sentenced to a mandatory minimum term of
21 imprisonment of 15 calendar years and pay a fine of \$250,000.

22 2. Any person who knowingly sells, purchases,
23 manufactures, delivers, or brings into this state, or who is
24 knowingly in actual or constructive possession of, 150
25 kilograms or more, ~~but less than 300 kilograms,~~ of cocaine, as
26 described in s. 893.03(2)(a)4., commits the first degree
27 felony of trafficking in cocaine. A person who has been
28 convicted of the first degree felony of trafficking in cocaine
29 under this subparagraph shall be punished by life imprisonment
30 and is not eligible for any form of gain time under s. 944.275
31 or ineligible for any form of discretionary early release

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1 except pardon or executive clemency or conditional medical
2 release under s. 947.149. However, if the court determines
3 that, in addition to committing any act specified in this
4 paragraph:

5 a. The person intentionally killed an individual or
6 counseled, commanded, induced, procured, or caused the
7 intentional killing of an individual and such killing was the
8 result; or

9 b. The person's conduct in committing that act led to
10 a natural, though not inevitable, lethal result,

11
12 such person commits the capital felony of trafficking in
13 cocaine, punishable as provided in ss. 775.082 and 921.142.
14 Any person sentenced for a capital felony under this paragraph
15 shall also be sentenced to pay the maximum fine provided under
16 subparagraph 1.

17 3. Any person who knowingly brings into this state 300
18 kilograms or more of cocaine, as described in s.
19 893.03(2)(a)4., and who knows that the probable result of such
20 importation would be the death of any person, commits capital
21 importation of cocaine, a capital felony punishable as
22 provided in ss. 775.082 and 921.142. Any person sentenced for
23 a capital felony under this paragraph shall also be sentenced
24 to pay the maximum fine provided under subparagraph 1.

25 (c)1. Any person who knowingly sells, purchases,
26 manufactures, delivers, or brings into this state, or who is
27 knowingly in actual or constructive possession of, 4 grams or
28 more of any morphine, opium, oxycodone, hydrocodone,
29 hydromorphone, or any salt, derivative, isomer, or salt of an
30 isomer thereof, including heroin, as described in s.
31 893.03(1)(b) or (2)(a), or 4 grams or more of any mixture

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1 containing any such substance, but less than 30 kilograms of
2 such substance or mixture, commits a felony of the first
3 degree, which felony shall be known as "trafficking in illegal
4 drugs." If the quantity involved:

5 a. Is 4 grams or more, but less than 14 grams, such
6 person shall be sentenced pursuant to the Criminal Punishment
7 Code and such sentence shall include a mandatory minimum term
8 of imprisonment of 3 years, and the defendant shall be ordered
9 to pay a fine of \$50,000.

10 b. Is 14 grams or more, but less than 28 grams, such
11 person shall be sentenced pursuant to the Criminal Punishment
12 Code and such sentence shall include a mandatory minimum term
13 of imprisonment of 15 years, and the defendant shall be
14 ordered to pay a fine of \$100,000.

15 c. Is 28 grams or more, but less than 30 kilograms,
16 such person shall be sentenced to a mandatory minimum term of
17 imprisonment of 25 calendar years and pay a fine of \$500,000.

18 2. Any person who knowingly sells, purchases,
19 manufactures, delivers, or brings into this state, or who is
20 knowingly in actual or constructive possession of, 30
21 kilograms or more, ~~but less than 60 kilograms,~~ of any
22 morphine, opium, oxycodone, hydrocodone, hydromorphone, or any
23 salt, derivative, isomer, or salt of an isomer thereof,
24 including heroin, as described in s. 893.03(1)(b) or (2)(a),
25 or 30 kilograms or more, ~~but less than 60 kilograms,~~ of any
26 mixture containing any such substance, commits the first
27 degree felony of trafficking in illegal drugs. A person who
28 has been convicted of the first degree felony of trafficking
29 in illegal drugs under this subparagraph shall be punished by
30 life imprisonment and is not eligible for any form of gain
31 time under s. 944.275 or ineligible for any form of

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1 discretionary early release except pardon or executive
2 clemency or conditional medical release under s. 947.149.
3 However, if the court determines that, in addition to
4 committing any act specified in this paragraph:
5 a. The person intentionally killed an individual or
6 counseled, commanded, induced, procured, or caused the
7 intentional killing of an individual and such killing was the
8 result; or
9 b. The person's conduct in committing that act led to
10 a natural, though not inevitable, lethal result,
11
12 such person commits the capital felony of trafficking in
13 illegal drugs, punishable as provided in ss. 775.082 and
14 921.142. Any person sentenced for a capital felony under this
15 paragraph shall also be sentenced to pay the maximum fine
16 provided under subparagraph 1.
17 3. Any person who knowingly brings into this state 60
18 kilograms or more of any morphine, opium, oxycodone,
19 hydrocodone, hydromorphone, or any salt, derivative, isomer,
20 or salt of an isomer thereof, including heroin, as described
21 in s. 893.03(1)(b) or (2)(a), or 60 kilograms or more of any
22 mixture containing any such substance, and who knows that the
23 probable result of such importation would be the death of any
24 person, commits capital importation of illegal drugs, a
25 capital felony punishable as provided in ss. 775.082 and
26 921.142. Any person sentenced for a capital felony under this
27 paragraph shall also be sentenced to pay the maximum fine
28 provided under subparagraph 1.
29 (d)1. Any person who knowingly sells, purchases,
30 manufactures, delivers, or brings into this state, or who is
31 knowingly in actual or constructive possession of, 28 grams or

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1 more of phencyclidine or of any mixture containing
2 phencyclidine, as described in s. 893.03(2)(b), commits a
3 felony of the first degree, which felony shall be known as
4 "trafficking in phencyclidine." If the quantity involved:

5 a. Is 28 grams or more, but less than 200 grams, such
6 person shall be sentenced pursuant to the Criminal Punishment
7 Code and such sentence shall include a mandatory minimum term
8 of imprisonment of 3 years, and the defendant shall be ordered
9 to pay a fine of \$50,000.

10 b. Is 200 grams or more, but less than 400 grams, such
11 person shall be sentenced pursuant to the Criminal Punishment
12 Code and such sentence shall include a mandatory minimum term
13 of imprisonment of 7 years, and the defendant shall be ordered
14 to pay a fine of \$100,000.

15 c. Is 400 grams or more, ~~but less than 800 grams~~, such
16 person shall be sentenced to a mandatory minimum term of
17 imprisonment of 15 calendar years and pay a fine of \$250,000.

18 2. Any person who knowingly brings into this state 800
19 grams or more of phencyclidine or of any mixture containing
20 phencyclidine, as described in s. 893.03(2)(b), and who knows
21 that the probable result of such importation would be the
22 death of any person commits capital importation of
23 phencyclidine, a capital felony punishable as provided in ss.
24 775.082 and 921.142. Any person sentenced for a capital felony
25 under this paragraph shall also be sentenced to pay the
26 maximum fine provided under subparagraph 1.

27 (e)1. Any person who knowingly sells, purchases,
28 manufactures, delivers, or brings into this state, or who is
29 knowingly in actual or constructive possession of, 200 grams
30 or more of methaqualone or of any mixture containing
31 methaqualone, as described in s. 893.03(1)(d), commits a

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1 felony of the first degree, which felony shall be known as
2 "trafficking in methaqualone." If the quantity involved:

3 a. Is 200 grams or more, but less than 5 kilograms,
4 such person shall be sentenced pursuant to the Criminal
5 Punishment Code and such sentence shall include a mandatory
6 minimum term of imprisonment of 3 years, and the defendant
7 shall be ordered to pay a fine of \$50,000.

8 b. Is 5 kilograms or more, but less than 25 kilograms,
9 such person shall be sentenced pursuant to the Criminal
10 Punishment Code and such sentence shall include a mandatory
11 minimum term of imprisonment of 7 years, and the defendant
12 shall be ordered to pay a fine of \$100,000.

13 c. Is 25 kilograms or more, ~~but less than 50~~
14 ~~kilograms~~, such person shall be sentenced to a mandatory
15 minimum term of imprisonment of 15 calendar years and pay a
16 fine of \$250,000.

17 2. Any person who knowingly brings into this state 50
18 kilograms or more of methaqualone or of any mixture containing
19 methaqualone, as described in s. 893.03(1)(d), and who knows
20 that the probable result of such importation would be the
21 death of any person commits capital importation of
22 methaqualone, a capital felony punishable as provided in ss.
23 775.082 and 921.142. Any person sentenced for a capital felony
24 under this paragraph shall also be sentenced to pay the
25 maximum fine provided under subparagraph 1.

26 (f)1. Any person who knowingly sells, purchases,
27 manufactures, delivers, or brings into this state, or who is
28 knowingly in actual or constructive possession of, 14 grams or
29 more of amphetamine, as described in s. 893.03(2)(c)2., or
30 methamphetamine, as described in s. 893.03(2)(c)4., or of any
31 mixture containing amphetamine or methamphetamine, or

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1 phenylacetone, phenylacetic acid, or ephedrine in conjunction
2 with other chemicals and equipment utilized in the manufacture
3 of amphetamine or methamphetamine, commits a felony of the
4 first degree, which felony shall be known as "trafficking in
5 amphetamine." If the quantity involved:

6 a. Is 14 grams or more, but less than 28 grams, such
7 person shall be sentenced pursuant to the Criminal Punishment
8 Code and such sentence shall include a mandatory minimum term
9 of imprisonment of 3 years, and the defendant shall be ordered
10 to pay a fine of \$50,000.

11 b. Is 28 grams or more, but less than 200 grams, such
12 person shall be sentenced pursuant to the Criminal Punishment
13 Code and such sentence shall include a mandatory minimum term
14 of imprisonment of 7 years and the defendant shall be ordered
15 to pay a fine of \$100,000.

16 c. Is 200 grams or more, ~~but less than 400 grams~~, such
17 person shall be sentenced to a mandatory minimum term of
18 imprisonment of 15 calendar years and pay a fine of \$250,000.

19 2. Any person who knowingly brings into this state 400
20 grams or more of amphetamine, as described in s.
21 893.03(2)(c)2., or methamphetamine, as described in s.
22 893.03(2)(c)4., or of any mixture containing amphetamine or
23 methamphetamine, or phenylacetone, phenylacetic acid, or
24 ephedrine in conjunction with other chemicals and equipment
25 utilized in the manufacture of amphetamine or methamphetamine,
26 and who knows that the probable result of such importation
27 would be the death of any person commits capital importation
28 of amphetamine, a capital felony punishable as provided in ss.
29 775.082 and 921.142. Any person sentenced for a capital felony
30 under this paragraph shall also be sentenced to pay the
31 maximum fine provided under subparagraph 1.

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1 (g)1. Any person who knowingly sells, purchases,
2 manufactures, delivers, or brings into this state, or who is
3 knowingly in actual or constructive possession of, 4 grams or
4 more of flunitrazepam or any mixture containing flunitrazepam
5 as described in s. 893.03(1)(a) commits a felony of the first
6 degree, which felony shall be known as "trafficking in
7 flunitrazepam." If the quantity involved:

8 a. Is 4 grams or more but less than 14 grams, such
9 person shall be sentenced pursuant to the Criminal Punishment
10 Code and such sentence shall include a mandatory minimum term
11 of imprisonment of 3 years and the defendant shall be ordered
12 to sentencing guidelines and pay a fine of \$50,000.

13 b. Is 14 grams or more but less than 28 grams, such
14 person shall be sentenced pursuant to the Criminal Punishment
15 Code and such sentence shall include a mandatory minimum term
16 of imprisonment of 7 years, and the defendant shall be ordered
17 to sentencing guidelines and pay a fine of \$100,000.

18 c. Is 28 grams or more but less than 30 kilograms,
19 such person shall be sentenced to a mandatory minimum term of
20 imprisonment of 25 calendar years and pay a fine of \$500,000.

21 2. Any person who knowingly sells, purchases,
22 manufactures, delivers, or brings into this state or who is
23 knowingly in actual or constructive possession of 30 kilograms
24 or more of flunitrazepam or any mixture containing
25 flunitrazepam as described in s. 893.03(1)(a) commits the
26 first degree felony of trafficking in flunitrazepam. A person
27 who has been convicted of the first degree felony of
28 trafficking in flunitrazepam under this subparagraph shall be
29 punished by life imprisonment and is not eligible for any form
30 of gain time under s. 944.275 or ineligible for any form of
31 discretionary early release except pardon or executive

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1 clemency or conditional medical release under s. 947.149.

2 However, if the court determines that, in addition to

3 committing any act specified in this paragraph:

4 a. The person intentionally killed an individual or
5 counseled, commanded, induced, procured, or caused the
6 intentional killing of an individual and such killing was the
7 result; or

8 b. The person's conduct in committing that act led to
9 a natural, though not inevitable, lethal result,

10

11 such person commits the capital felony of trafficking in
12 flunitrazepam, punishable as provided in ss. 775.082 and
13 921.142. Any person sentenced for a capital felony under this
14 paragraph shall also be sentenced to pay the maximum fine
15 provided under subparagraph 1.

16 (2) A person acts knowingly under subsection (1) if
17 that person intends to sell, purchase, manufacture, deliver,
18 or bring into this state, or to actually or constructively
19 possess, any of the controlled substances listed in subsection
20 (1), regardless of which controlled substance listed in
21 subsection (1) is in fact sold, purchased, manufactured,
22 delivered, or brought into this state, or actually or
23 constructively possessed.

24 (3) Notwithstanding the provisions of s. 948.01, with
25 respect to any person who is found to have violated this
26 section, adjudication of guilt or imposition of sentence shall
27 not be suspended, deferred, or withheld, nor shall such person
28 be eligible for parole prior to serving the mandatory minimum
29 term of imprisonment prescribed by this section. A person
30 sentenced to a mandatory minimum term of imprisonment under
31 this section is not eligible for any form of gain time under

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1 s. 944.275 or any form of discretionary early release, except
2 pardon or executive clemency or conditional medical release
3 under s. 947.149, prior to serving the mandatory minimum term
4 of imprisonment.

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

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

25 Section 10. For the purpose of incorporating the
26 amendment to section 893.135, Florida Statutes, in references
27 thereto, the following sections or subdivisions of Florida
28 Statutes, or Florida Statutes, 1998 Supplement, are reenacted
29 to read:

30 397.451 Background checks of service provider
31 personnel who have direct contact with unmarried minor clients

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1 or clients who are developmentally disabled.--

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

14 782.04 Murder.--

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

19 (a) Trafficking offense prohibited by s. 893.135(1),
20
21 is murder in the third degree and constitutes a felony of the
22 second degree, punishable as provided in s. 775.082, s.
23 775.083, or s. 775.084.

24 893.1351 Lease or rent for the purpose of trafficking
25 in a controlled substance.--

26 (1) A person may not lease or rent any place,
27 structure, or part thereof, trailer, or other conveyance, with
28 the knowledge that such place, structure, trailer, or
29 conveyance will be used for the purpose of trafficking in a
30 controlled substance, as provided in s. 893.135, or the sale
31 of a controlled substance, as provided in s. 893.13.

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1 903.133 Bail on appeal; prohibited for certain felony
2 convictions.--Notwithstanding the provisions of s. 903.132, no
3 person adjudged guilty of a felony of the first degree for a
4 violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s.
5 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a
6 violation of s. 794.011(2) or (3), shall be admitted to bail
7 pending review either by posttrial motion or appeal.

8 907.041 Pretrial detention and release.--

9 (4) PRETRIAL DETENTION.--

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

14 1. The defendant has previously violated conditions of
15 release and that no further conditions of release are
16 reasonably likely to assure the defendant's appearance at
17 subsequent proceedings;

18 2. The defendant, with the intent to obstruct the
19 judicial process, has threatened, intimidated, or injured any
20 victim, potential witness, juror, or judicial officer, or has
21 attempted or conspired to do so, and that no condition of
22 release will reasonably prevent the obstruction of the
23 judicial process;

24 3. The defendant is charged with trafficking in
25 controlled substances as defined by s. 893.135, that there is
26 a substantial probability that the defendant has committed the
27 offense, and that no conditions of release will reasonably
28 assure the defendant's appearance at subsequent criminal
29 proceedings; or

30 4. The defendant poses the threat of harm to the
31 community. The court may so conclude if it finds that the

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1 defendant is presently charged with a dangerous crime, that
 2 there is a substantial probability that the defendant
 3 committed such crime, that the factual circumstances of the
 4 crime indicate a disregard for the safety of the community,
 5 and that there are no conditions of release reasonably
 6 sufficient to protect the community from the risk of physical
 7 harm to persons. In addition, the court must find that at
 8 least one of the following conditions is present:

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

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

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

17 921.0022 Criminal Punishment Code; offense severity
 18 ranking chart.--

19 (3) OFFENSE SEVERITY RANKING CHART

20

21 Florida	Felony	
22 Statute	Degree	Description
		(g) LEVEL 7
25 316.193(3)(c)2.	3rd	DUI resulting in serious bodily 26 injury.
27 327.35(3)(c)2.	3rd	Vessel BUI resulting in serious 28 bodily injury.
29 409.920(2)	3rd	Medicaid provider fraud.
30 494.0018(2)	1st	Conviction of any violation of 31 ss. 494.001-494.0077 in which the

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1			total money and property
2			unlawfully obtained exceeded
3			\$50,000 and there were five or
4			more victims.
5	782.051(3)	2nd	Attempted felony murder of a
6			person by a person other than the
7			perpetrator or the perpetrator of
8			an attempted felony.
9	782.07(1)	2nd	Killing of a human being by the
10			act, procurement, or culpable
11			negligence of another
12			(manslaughter).
13	782.071	3rd	Killing of human being or viable
14			fetus by the operation of a motor
15			vehicle in a reckless manner
16			(vehicular homicide).
17	782.072	3rd	Killing of a human being by the
18			operation of a vessel in a
19			reckless manner (vessel
20			homicide).
21	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
22			causing great bodily harm or
23			disfigurement.
24	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
25			weapon.
26	784.045(1)(b)	2nd	Aggravated battery; perpetrator
27			aware victim pregnant.
28	784.048(4)	3rd	Aggravated stalking; violation of
29			injunction or court order.
30	784.07(2)(d)	1st	Aggravated battery on law
31			enforcement officer.

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1	784.08(2)(a)	1st	Aggravated battery on a person 65
2			years of age or older.
3	784.081(1)	1st	Aggravated battery on specified
4			official or employee.
5	784.082(1)	1st	Aggravated battery by detained
6			person on visitor or other
7			detainee.
8	784.083(1)	1st	Aggravated battery on code
9			inspector.
10	790.07(4)	1st	Specified weapons violation
11			subsequent to previous conviction
12			of s. 790.07(1) or (2).
13	790.16(1)	1st	Discharge of a machine gun under
14			specified circumstances.
15	796.03	2nd	Procuring any person under 16
16			years for prostitution.
17	800.04	2nd	Handle, fondle, or assault child
18			under 16 years in lewd,
19			lascivious, or indecent manner.
20	806.01(2)	2nd	Maliciously damage structure by
21			fire or explosive.
22	810.02(3)(a)	2nd	Burglary of occupied dwelling;
23			unarmed; no assault or battery.
24	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
25			unarmed; no assault or battery.
26	810.02(3)(d)	2nd	Burglary of occupied conveyance;
27			unarmed; no assault or battery.
28	812.014(2)(a)	1st	Property stolen, valued at
29			\$100,000 or more; property stolen
30			while causing other property
31			damage; 1st degree grand theft.

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1	812.019(2)	1st	Stolen property; initiates,
2			organizes, plans, etc., the theft
3			of property and traffics in
4			stolen property.
5	812.133(2)(b)	1st	Carjacking; no firearm, deadly
6			weapon, or other weapon.
7	825.102(3)(b)	2nd	Neglecting an elderly person or
8			disabled adult causing great
9			bodily harm, disability, or
10			disfigurement.
11	825.1025(2)	2nd	Lewd or lascivious battery upon
12			an elderly person or disabled
13			adult.
14	825.103(2)(b)	2nd	Exploiting an elderly person or
15			disabled adult and property is
16			valued at \$20,000 or more, but
17			less than \$100,000.
18	827.03(3)(b)	2nd	Neglect of a child causing great
19			bodily harm, disability, or
20			disfigurement.
21	827.04(4)	3rd	Impregnation of a child under 16
22			years of age by person 21 years
23			of age or older.
24	837.05(2)	3rd	Giving false information about
25			alleged capital felony to a law
26			enforcement officer.
27	872.06	2nd	Abuse of a dead human body.
28	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
29			cocaine (or other drug prohibited
30			under s. 893.03(1)(a), (1)(b),
31			(1)(d), (2)(a), or (2)(b)) within

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1			1,000 feet of a child care
2			facility or school.
3	893.13(1)(e)	1st	Sell, manufacture, or deliver
4			cocaine or other drug prohibited
5			under s. 893.03(1)(a), (1)(b),
6			(1)(d), (2)(a), or (2)(b), within
7			1,000 feet of property used for
8			religious services or a specified
9			business site.
10	893.13(4)(a)	1st	Deliver to minor cocaine (or
11			other s. 893.03(1)(a), (1)(b),
12			(1)(d), (2)(a), or (2)(b) drugs).
13	893.135(1)(a)1.	1st	Trafficking in cannabis, more
14			than 50 lbs., less than 2,000
15			lbs.
16	893.135		
17	(1)(b)1.a.	1st	Trafficking in cocaine, more than
18			28 grams, less than 200 grams.
19	893.135		
20	(1)(c)1.a.	1st	Trafficking in illegal drugs,
21			more than 4 grams, less than 14
22			grams.
23	893.135		
24	(1)(d)1.	1st	Trafficking in phencyclidine,
25			more than 28 grams, less than 200
26			grams.
27	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
28			than 200 grams, less than 5
29			kilograms.
30	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
31			than 14 grams, less than 28

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1			grams.
2	893.135		
3	(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4
4			grams or more, less than 14
5			grams.
6			(h) LEVEL 8
7	316.193		
8	(3)(c)3.a.	2nd	DUI manslaughter.
9	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
10	777.03(2)(a)	1st	Accessory after the fact, capital
11			felony.
12	782.04(4)	2nd	Killing of human without design
13			when engaged in act or attempt of
14			any felony other than arson,
15			sexual battery, robbery,
16			burglary, kidnapping, aircraft
17			piracy, or unlawfully discharging
18			bomb.
19	782.051(2)	1st	Attempted felony murder while
20			perpetrating or attempting to
21			perpetrate a felony not
22			enumerated in s. 782.04(3).
23	782.071(2)	2nd	Committing vehicular homicide and
24			failing to render aid or give
25			information.
26	782.072(2)	2nd	Committing vessel homicide and
27			failing to render aid or give
28			information.
29	790.161(3)	1st	Discharging a destructive device
30			which results in bodily harm or
31			property damage.

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1	794.011(5)	2nd	Sexual battery, victim 12 years
2			or over, offender does not use
3			physical force likely to cause
4			serious injury.
5	806.01(1)	1st	Maliciously damage dwelling or
6			structure by fire or explosive,
7			believing person in structure.
8	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
9	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
10			or dangerous weapon.
11	810.02(2)(c)	1st	Burglary of a dwelling or
12			structure causing structural
13			damage or \$1,000 or more property
14			damage.
15	812.13(2)(b)	1st	Robbery with a weapon.
16	812.135(2)	1st	Home-invasion robbery.
17	825.102(2)	2nd	Aggravated abuse of an elderly
18			person or disabled adult.
19	825.103(2)(a)	1st	Exploiting an elderly person or
20			disabled adult and property is
21			valued at \$100,000 or more.
22	827.03(2)	2nd	Aggravated child abuse.
23	837.02(2)	2nd	Perjury in official proceedings
24			relating to prosecution of a
25			capital felony.
26	837.021(2)	2nd	Making contradictory statements
27			in official proceedings relating
28			to prosecution of a capital
29			felony.
30	860.121(2)(c)	1st	Shooting at or throwing any
31			object in path of railroad

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1			vehicle resulting in great bodily
2			harm.
3	860.16	1st	Aircraft piracy.
4	893.13(1)(b)	1st	Sell or deliver in excess of 10
5			grams of any substance specified
6			in s. 893.03(1)(a) or (b).
7	893.13(2)(b)	1st	Purchase in excess of 10 grams of
8			any substance specified in s.
9			893.03(1)(a) or (b).
10	893.13(6)(c)	1st	Possess in excess of 10 grams of
11			any substance specified in s.
12			893.03(1)(a) or (b).
13	893.135(1)(a)2.	1st	Trafficking in cannabis, more
14			than 2,000 lbs., less than 10,000
15			lbs.
16	893.135		
17	(1)(b)1.b.	1st	Trafficking in cocaine, more than
18			200 grams, less than 400 grams.
19	893.135		
20	(1)(c)1.b.	1st	Trafficking in illegal drugs,
21			more than 14 grams, less than 28
22			grams.
23	893.135		
24	(1)(d)1.b.	1st	Trafficking in phencyclidine,
25			more than 200 grams, less than
26			400 grams.
27	893.135		
28	(1)(e)1.b.	1st	Trafficking in methaqualone, more
29			than 5 kilograms, less than 25
30			kilograms.
31			

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1	893.135		
2	(1)(f)1.b.	1st	Trafficking in amphetamine, more
3			than 28 grams, less than 200
4			grams.
5	893.135		
6	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
7			grams or more, less than 28
8			grams.
9	895.03(1)	1st	Use or invest proceeds derived
10			from pattern of racketeering
11			activity.
12	895.03(2)	1st	Acquire or maintain through
13			racketeering activity any
14			interest in or control of any
15			enterprise or real property.
16	895.03(3)	1st	Conduct or participate in any
17			enterprise through pattern of
18			racketeering activity.
19			(i) LEVEL 9
20	316.193		
21	(3)(c)3.b.	1st	DUI manslaughter; failing to
22			render aid or give information.
23	782.04(1)	1st	Attempt, conspire, or solicit to
24			commit premeditated murder.
25	782.04(3)	1st,PBL	Accomplice to murder in
26			connection with arson, sexual
27			battery, robbery, burglary, and
28			other specified felonies.
29	782.051(1)	1st	Attempted felony murder while
30			perpetrating or attempting to
31			perpetrate a felony enumerated in

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1			s. 782.04(3).
2	782.07(2)	1st	Aggravated manslaughter of an
3			elderly person or disabled adult.
4	782.07(3)	1st	Aggravated manslaughter of a
5			child.
6	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
7			reward or as a shield or hostage.
8	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
9			or facilitate commission of any
10			felony.
11	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
12			interfere with performance of any
13			governmental or political
14			function.
15	787.02(3)(a)	1st	False imprisonment; child under
16			age 13; perpetrator also commits
17			child abuse, sexual battery,
18			lewd, or lascivious act, etc.
19	790.161	1st	Attempted capital destructive
20			device offense.
21	794.011(2)	1st	Attempted sexual battery; victim
22			less than 12 years of age.
23	794.011(2)	Life	Sexual battery; offender younger
24			than 18 years and commits sexual
25			battery on a person less than 12
26			years.
27	794.011(4)	1st	Sexual battery; victim 12 years
28			or older, certain circumstances.
29	794.011(8)(b)	1st	Sexual battery; engage in sexual
30			conduct with minor 12 to 18 years
31			by person in familial or

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1			custodial authority.
2	812.13(2)(a)	1st,PBL	Robbery with firearm or other
3			deadly weapon.
4	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
5			deadly weapon.
6	847.0145(1)	1st	Selling, or otherwise
7			transferring custody or control,
8			of a minor.
9	847.0145(2)	1st	Purchasing, or otherwise
10			obtaining custody or control, of
11			a minor.
12	859.01	1st	Poisoning food, drink, medicine,
13			or water with intent to kill or
14			injure another person.
15	893.135	1st	Attempted capital trafficking
16			offense.
17	893.135(1)(a)3.	1st	Trafficking in cannabis, more
18			than 10,000 lbs.
19	893.135		
20	(1)(b)1.c.	1st	Trafficking in cocaine, more than
21			400 grams, less than 150
22			kilograms.
23	893.135		
24	(1)(c)1.c.	1st	Trafficking in illegal drugs,
25			more than 28 grams, less than 30
26			kilograms.
27	893.135		
28	(1)(d)1.c.	1st	Trafficking in phencyclidine,
29			more than 400 grams.
30	893.135		
31	(1)(e)1.c.	1st	Trafficking in methaqualone, more

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1 than 25 kilograms.
 2 893.135
 3 (1)(f)1.c. 1st Trafficking in amphetamine, more
 4 than 200 grams.
 5 (j) LEVEL 10
 6 782.04(2) 1st,PBL Unlawful killing of human; act is
 7 homicide, unpremeditated.
 8 787.01(1)(a)3. 1st,PBL Kidnapping; inflict bodily harm
 9 upon or terrorize victim.
 10 787.01(3)(a) Life Kidnapping; child under age 13,
 11 perpetrator also commits child
 12 abuse, sexual battery, lewd, or
 13 lascivious act, etc.
 14 794.011(3) Life Sexual battery; victim 12 years
 15 or older, offender uses or
 16 threatens to use deadly weapon or
 17 physical force to cause serious
 18 injury.
 19 876.32 1st Treason against the state.
 20 921.0024 Criminal Punishment Code; worksheet
 21 computations; scoresheets.--
 22 (1)
 23 (b) WORKSHEET KEY:
 24
 25 Legal status points are assessed when any form of legal status
 26 existed at the time the offender committed an offense before
 27 the court for sentencing. Four (4) sentence points are
 28 assessed for an offender's legal status.
 29
 30 Community sanction violation points are assessed when a
 31 community sanction violation is before the court for

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1 sentencing. Six (6) sentence points are assessed for each
2 community sanction violation, and each successive community
3 sanction violation; however, if the community sanction
4 violation includes a new felony conviction before the
5 sentencing court, twelve (12) community sanction violation
6 points are assessed for such violation, and for each
7 successive community sanction violation involving a new felony
8 conviction. Multiple counts of community sanction violations
9 before the sentencing court shall not be a basis for
10 multiplying the assessment of community sanction violation
11 points.

12

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

25

26 Prior capital felony points: If the offender has one or more
27 prior capital felonies in the offender's criminal record,
28 points shall be added to the subtotal sentence points of the
29 offender equal to twice the number of points the offender
30 receives for the primary offense and any additional offense.
31 A prior capital felony in the offender's criminal record is a

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1 previous capital felony offense for which the offender has
2 entered a plea of nolo contendere or guilty or has been found
3 guilty; or a felony in another jurisdiction which is a capital
4 felony in that jurisdiction, or would be a capital felony if
5 the offense were committed in this state.

6
7 Possession of a firearm, semiautomatic firearm, or machine
8 gun: If the offender is convicted of committing or attempting
9 to commit any felony other than those enumerated in s.
10 775.087(2) while having in his possession: a firearm as
11 defined in s. 790.001(6), an additional 18 sentence points are
12 assessed; or if the offender is convicted of committing or
13 attempting to commit any felony other than those enumerated in
14 s. 775.087(3) while having in his possession a semiautomatic
15 firearm as defined in s. 775.087(3) or a machine gun as
16 defined in s. 790.001(9), an additional 25 sentence points are
17 assessed.

18
19 Sentencing multipliers:

20
21 Drug trafficking: If the primary offense is drug trafficking
22 under s. 893.135, the subtotal sentence points are multiplied,
23 at the discretion of the court, for a level 7 or level 8
24 offense, by 1.5. The state attorney may move the sentencing
25 court to reduce or suspend the sentence of a person convicted
26 of a level 7 or level 8 offense, if the offender provides
27 substantial assistance as described in s. 893.135(4).

28
29 Law enforcement protection: If the primary offense is a
30 violation of the Law Enforcement Protection Act under s.
31 775.0823(2), the subtotal sentence points are multiplied by

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1 2.5. If the primary offense is a violation of s. 775.0823(3),
2 (4), (5), (6), (7), or (8), the subtotal sentence points are
3 multiplied by 2.0. If the primary offense is a violation of s.
4 784.07(3) or s. 775.0875(1), or of the Law Enforcement
5 Protection Act under s. 775.0823(9) or (10), the subtotal
6 sentence points are multiplied by 1.5.

7
8 Grand theft of a motor vehicle: If the primary offense is
9 grand theft of the third degree involving a motor vehicle and
10 in the offender's prior record, there are three or more grand
11 thefts of the third degree involving a motor vehicle, the
12 subtotal sentence points are multiplied by 1.5.

13
14 Criminal street gang member: If the offender is convicted of
15 the primary offense and is found to have been a member of a
16 criminal street gang at the time of the commission of the
17 primary offense pursuant to s. 874.04, the subtotal sentence
18 points are multiplied by 1.5.

19
20 Domestic violence in the presence of a child: If the offender
21 is convicted of the primary offense and the primary offense is
22 a crime of domestic violence, as defined in s. 741.28, which
23 was committed in the presence of a child under 16 years of age
24 who is a family household member as defined in s. 741.28(2)
25 with the victim or perpetrator, the subtotal sentence points
26 are multiplied, at the discretion of the court, by 1.5.

27 921.142 Sentence of death or life imprisonment for
28 capital drug trafficking felonies; further proceedings to
29 determine sentence.--

30 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon
31 conviction or adjudication of guilt of a defendant of a

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1 capital felony under s. 893.135, the court shall conduct a
2 separate sentencing proceeding to determine whether the
3 defendant should be sentenced to death or life imprisonment as
4 authorized by s. 775.082. The proceeding shall be conducted
5 by the trial judge before the trial jury as soon as
6 practicable. If, through impossibility or inability, the
7 trial jury is unable to reconvene for a hearing on the issue
8 of penalty, having determined the guilt of the accused, the
9 trial judge may summon a special juror or jurors as provided
10 in chapter 913 to determine the issue of the imposition of the
11 penalty. If the trial jury has been waived, or if the
12 defendant pleaded guilty, the sentencing proceeding shall be
13 conducted before a jury impaneled for that purpose, unless
14 waived by the defendant. In the proceeding, evidence may be
15 presented as to any matter that the court deems relevant to
16 the nature of the crime and the character of the defendant and
17 shall include matters relating to any of the aggravating or
18 mitigating circumstances enumerated in subsections (6) and
19 (7). Any such evidence which the court deems to have
20 probative value may be received, regardless of its
21 admissibility under the exclusionary rules of evidence,
22 provided the defendant is accorded a fair opportunity to rebut
23 any hearsay statements. However, this subsection shall not be
24 construed to authorize the introduction of any evidence
25 secured in violation of the Constitution of the United States
26 or the Constitution of the State of Florida. The state and the
27 defendant or the defendant's counsel shall be permitted to
28 present argument for or against sentence of death.

29 943.0585 Court-ordered expunction of criminal history
30 records.--The courts of this state have jurisdiction over
31 their own procedures, including the maintenance, expunction,

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1 and correction of judicial records containing criminal history
2 information to the extent such procedures are not inconsistent
3 with the conditions, responsibilities, and duties established
4 by this section. Any court of competent jurisdiction may
5 order a criminal justice agency to expunge the criminal
6 history record of a minor or an adult who complies with the
7 requirements of this section. The court shall not order a
8 criminal justice agency to expunge a criminal history record
9 until the person seeking to expunge a criminal history record
10 has applied for and received a certificate of eligibility for
11 expunction pursuant to subsection (2). A criminal history
12 record that relates to a violation of chapter 794, s. 800.04,
13 s. 817.034, s. 827.071, chapter 839, s. 893.135, or a
14 violation enumerated in s. 907.041 may not be expunged,
15 without regard to whether adjudication was withheld, if the
16 defendant was found guilty of or pled guilty or nolo
17 contendere to the offense, or if the defendant, as a minor,
18 was found to have committed, or pled guilty or nolo contendere
19 to committing, the offense as a delinquent act. The court may
20 only order expunction of a criminal history record pertaining
21 to one arrest or one incident of alleged criminal activity,
22 except as provided in this section. The court may, at its sole
23 discretion, order the expunction of a criminal history record
24 pertaining to more than one arrest if the additional arrests
25 directly relate to the original arrest. If the court intends
26 to order the expunction of records pertaining to such
27 additional arrests, such intent must be specified in the
28 order. A criminal justice agency may not expunge any record
29 pertaining to such additional arrests if the order to expunge
30 does not articulate the intention of the court to expunge a
31 record pertaining to more than one arrest. This section does

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1 not prevent the court from ordering the expunction of only a
2 portion of a criminal history record pertaining to one arrest
3 or one incident of alleged criminal activity. Notwithstanding
4 any law to the contrary, a criminal justice agency may comply
5 with laws, court orders, and official requests of other
6 jurisdictions relating to expunction, correction, or
7 confidential handling of criminal history records or
8 information derived therefrom. This section does not confer
9 any right to the expunction of any criminal history record,
10 and any request for expunction of a criminal history record
11 may be denied at the sole discretion of the court.

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

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

17 (b) The petitioner's sworn statement attesting that
18 the petitioner:

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

23 2. Has not been adjudicated guilty of, or adjudicated
24 delinquent for committing, any of the acts stemming from the
25 arrest or alleged criminal activity to which the petition
26 pertains.

27 3. Has never secured a prior sealing or expunction of
28 a criminal history record under this section, former s.
29 893.14, former s. 901.33, or former s. 943.058, or from any
30 jurisdiction outside the state.

31 4. Is eligible for such an expunction to the best of

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1 his or her knowledge or belief and does not have any other
2 petition to expunge or any petition to seal pending before any
3 court.

4
5 Any person who knowingly provides false information on such
6 sworn statement to the court commits a felony of the third
7 degree, punishable as provided in s. 775.082, s. 775.083, or
8 s. 775.084.

9 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior
10 to petitioning the court to expunge a criminal history record,
11 a person seeking to expunge a criminal history record shall
12 apply to the department for a certificate of eligibility for
13 expunction. The department shall, by rule adopted pursuant to
14 chapter 120, establish procedures pertaining to the
15 application for and issuance of certificates of eligibility
16 for expunction. The department shall issue a certificate of
17 eligibility for expunction to a person who is the subject of a
18 criminal history record if that person:

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

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

24 2. That an indictment, information, or other charging
25 document, if filed or issued in the case, was dismissed or
26 nolle prosequi by the state attorney or statewide prosecutor,
27 or was dismissed by a court of competent jurisdiction.

28 3. That the criminal history record does not relate to
29 a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071,
30 chapter 839, s. 893.135, or a violation enumerated in s.
31 907.041, where the defendant was found guilty of, or pled

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1 guilty or nolo contendere to any such offense, or that the
2 defendant, as a minor, was found to have committed, or pled
3 guilty or nolo contendere to committing, such an offense as a
4 delinquent act, without regard to whether adjudication was
5 withheld.

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

9 (c) Has submitted to the department a certified copy
10 of the disposition of the charge to which the petition to
11 expunge pertains.

12 (d) Has never previously been adjudicated guilty of a
13 criminal offense or comparable ordinance violation or
14 adjudicated delinquent for committing a felony or a
15 misdemeanor specified in s. 943.051(3)(b).

16 (e) Has not been adjudicated guilty of, or adjudicated
17 delinquent for committing, any of the acts stemming from the
18 arrest or alleged criminal activity to which the petition to
19 expunge pertains.

20 (f) Has never secured a prior sealing or expunction of
21 a criminal history record under this section, former s.
22 893.14, former s. 901.33, or former s. 943.058.

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

26 (h) Is not required to wait a minimum of 10 years
27 prior to being eligible for an expunction of such records
28 because all charges related to the arrest or criminal activity
29 to which the petition to expunge pertains were dismissed prior
30 to trial, adjudication, or the withholding of adjudication.
31 Otherwise, such criminal history record must be sealed under

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1 this section, former s. 893.14, former s. 901.33, or former s.
2 943.058 for at least 10 years before such record is eligible
3 for expunction.

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

5 (a) In judicial proceedings under this section, a copy
6 of the completed petition to expunge shall be served upon the
7 appropriate state attorney or the statewide prosecutor and
8 upon the arresting agency; however, it is not necessary to
9 make any agency other than the state a party. The appropriate
10 state attorney or the statewide prosecutor and the arresting
11 agency may respond to the court regarding the completed
12 petition to expunge.

13 (b) If relief is granted by the court, the clerk of
14 the court shall certify copies of the order to the appropriate
15 state attorney or the statewide prosecutor and the arresting
16 agency. The arresting agency is responsible for forwarding the
17 order to any other agency to which the arresting agency
18 disseminated the criminal history record information to which
19 the order pertains. The department shall forward the order to
20 expunge to the Federal Bureau of Investigation. The clerk of
21 the court shall certify a copy of the order to any other
22 agency which the records of the court reflect has received the
23 criminal history record from the court.

24 (c) For an order to expunge entered by a court prior
25 to July 1, 1992, the department shall notify the appropriate
26 state attorney or statewide prosecutor of an order to expunge
27 which is contrary to law because the person who is the subject
28 of the record has previously been convicted of a crime or
29 comparable ordinance violation or has had a prior criminal
30 history record sealed or expunged. Upon receipt of such
31 notice, the appropriate state attorney or statewide prosecutor

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1 shall take action, within 60 days, to correct the record and
2 petition the court to void the order to expunge. The
3 department shall seal the record until such time as the order
4 is voided by the court.

5 (d) On or after July 1, 1992, the department or any
6 other criminal justice agency is not required to act on an
7 order to expunge entered by a court when such order does not
8 comply with the requirements of this section. Upon receipt of
9 such an order, the department must notify the issuing court,
10 the appropriate state attorney or statewide prosecutor, the
11 petitioner or the petitioner's attorney, and the arresting
12 agency of the reason for noncompliance. The appropriate state
13 attorney or statewide prosecutor shall take action within 60
14 days to correct the record and petition the court to void the
15 order. No cause of action, including contempt of court, shall
16 arise against any criminal justice agency for failure to
17 comply with an order to expunge when the petitioner for such
18 order failed to obtain the certificate of eligibility as
19 required by this section or such order does not otherwise
20 comply with the requirements of this section.

21 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
22 criminal history record of a minor or an adult which is
23 ordered expunged by a court of competent jurisdiction pursuant
24 to this section must be physically destroyed or obliterated by
25 any criminal justice agency having custody of such record;
26 except that any criminal history record in the custody of the
27 department must be retained in all cases. A criminal history
28 record ordered expunged that is retained by the department is
29 confidential and exempt from the provisions of s. 119.07(1)
30 and s. 24(a), Art. I of the State Constitution and not
31 available to any person or entity except upon order of a court

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1 of competent jurisdiction. A criminal justice agency may
2 retain a notation indicating compliance with an order to
3 expunge.

4 (a) The person who is the subject of a criminal
5 history record that is expunged under this section or under
6 other provisions of law, including former s. 893.14, former s.
7 901.33, and former s. 943.058, may lawfully deny or fail to
8 acknowledge the arrests covered by the expunged record, except
9 when the subject of the record:

- 10 1. Is a candidate for employment with a criminal
11 justice agency;
 - 12 2. Is a defendant in a criminal prosecution;
 - 13 3. Concurrently or subsequently petitions for relief
14 under this section or s. 943.059;
 - 15 4. Is a candidate for admission to The Florida Bar;
 - 16 5. Is seeking to be employed or licensed by or to
17 contract with the Department of Children and Family Services
18 or the Department of Juvenile Justice or to be employed or
19 used by such contractor or licensee in a sensitive position
20 having direct contact with children, the developmentally
21 disabled, the aged, or the elderly as provided in s.
22 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
23 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
24 415.1075(4), s. 985.407, or chapter 400; or
 - 25 6. Is seeking to be employed or licensed by the Office
26 of Teacher Education, Certification, Staff Development, and
27 Professional Practices of the Department of Education, any
28 district school board, or any local governmental entity that
29 licenses child care facilities.
- 30 (b) Subject to the exceptions in paragraph (a), a
31 person who has been granted an expunction under this section,

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1 former s. 893.14, former s. 901.33, or former s. 943.058 may
2 not be held under any provision of law of this state to commit
3 perjury or to be otherwise liable for giving a false statement
4 by reason of such person's failure to recite or acknowledge an
5 expunged criminal history record.

6 (c) Information relating to the existence of an
7 expunged criminal history record which is provided in
8 accordance with paragraph (a) is confidential and exempt from
9 the provisions of s. 119.07(1) and s. 24(a), Art. I of the
10 State Constitution, except that the department shall disclose
11 the existence of a criminal history record ordered expunged to
12 the entities set forth in subparagraphs (a)1., 4., 5., and 6.
13 for their respective licensing and employment purposes, and to
14 criminal justice agencies for their respective criminal
15 justice purposes. It is unlawful for any employee of an
16 entity set forth in subparagraph (a)1., subparagraph (a)4.,
17 subparagraph (a)5., or subparagraph (a)6. to disclose
18 information relating to the existence of an expunged criminal
19 history record of a person seeking employment or licensure
20 with such entity or contractor, except to the person to whom
21 the criminal history record relates or to persons having
22 direct responsibility for employment or licensure decisions.
23 Any person who violates this paragraph commits a misdemeanor
24 of the first degree, punishable as provided in s. 775.082 or
25 s. 775.083.

26 943.059 Court-ordered sealing of criminal history
27 records.--The courts of this state shall continue to have
28 jurisdiction over their own procedures, including the
29 maintenance, sealing, and correction of judicial records
30 containing criminal history information to the extent such
31 procedures are not inconsistent with the conditions,

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1 responsibilities, and duties established by this section. Any
2 court of competent jurisdiction may order a criminal justice
3 agency to seal the criminal history record of a minor or an
4 adult who complies with the requirements of this section. The
5 court shall not order a criminal justice agency to seal a
6 criminal history record until the person seeking to seal a
7 criminal history record has applied for and received a
8 certificate of eligibility for sealing pursuant to subsection
9 (2). A criminal history record that relates to a violation of
10 chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839,
11 s. 893.135, or a violation enumerated in s. 907.041 may not be
12 sealed, without regard to whether adjudication was withheld,
13 if the defendant was found guilty of or pled guilty or nolo
14 contendere to the offense, or if the defendant, as a minor,
15 was found to have committed or pled guilty or nolo contendere
16 to committing the offense as a delinquent act. The court may
17 only order sealing of a criminal history record pertaining to
18 one arrest or one incident of alleged criminal activity,
19 except as provided in this section. The court may, at its sole
20 discretion, order the sealing of a criminal history record
21 pertaining to more than one arrest if the additional arrests
22 directly relate to the original arrest. If the court intends
23 to order the sealing of records pertaining to such additional
24 arrests, such intent must be specified in the order. A
25 criminal justice agency may not seal any record pertaining to
26 such additional arrests if the order to seal does not
27 articulate the intention of the court to seal records
28 pertaining to more than one arrest. This section does not
29 prevent the court from ordering the sealing of only a portion
30 of a criminal history record pertaining to one arrest or one
31 incident of alleged criminal activity. Notwithstanding any law

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1 to the contrary, a criminal justice agency may comply with
2 laws, court orders, and official requests of other
3 jurisdictions relating to sealing, correction, or confidential
4 handling of criminal history records or information derived
5 therefrom. This section does not confer any right to the
6 sealing of any criminal history record, and any request for
7 sealing a criminal history record may be denied at the sole
8 discretion of the court.

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

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

14 (b) The petitioner's sworn statement attesting that
15 the petitioner:

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

20 2. Has not been adjudicated guilty of or adjudicated
21 delinquent for committing any of the acts stemming from the
22 arrest or alleged criminal activity to which the petition to
23 seal pertains.

24 3. Has never secured a prior sealing or expunction of
25 a criminal history record under this section, former s.
26 893.14, former s. 901.33, former s. 943.058, or from any
27 jurisdiction outside the state.

28 4. Is eligible for such a sealing to the best of his
29 or her knowledge or belief and does not have any other
30 petition to seal or any petition to expunge pending before any
31 court.

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1

2 Any person who knowingly provides false information on such
3 sworn statement to the court commits a felony of the third
4 degree, punishable as provided in s. 775.082, s. 775.083, or
5 s. 775.084.

6 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
7 petitioning the court to seal a criminal history record, a
8 person seeking to seal a criminal history record shall apply
9 to the department for a certificate of eligibility for
10 sealing. The department shall, by rule adopted pursuant to
11 chapter 120, establish procedures pertaining to the
12 application for and issuance of certificates of eligibility
13 for sealing. The department shall issue a certificate of
14 eligibility for sealing to a person who is the subject of a
15 criminal history record provided that such person:

16 (a) Has submitted to the department a certified copy
17 of the disposition of the charge to which the petition to seal
18 pertains.

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

26 (d) Has not been adjudicated guilty of or adjudicated
27 delinquent for committing any of the acts stemming from the
28 arrest or alleged criminal activity to which the petition to
29 seal pertains.

30 (e) Has never secured a prior sealing or expunction of
31 a criminal history record under this section, former s.

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1 893.14, former s. 901.33, or former s. 943.058.

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

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

6 (a) In judicial proceedings under this section, a copy
7 of the completed petition to seal shall be served upon the
8 appropriate state attorney or the statewide prosecutor and
9 upon the arresting agency; however, it is not necessary to
10 make any agency other than the state a party. The appropriate
11 state attorney or the statewide prosecutor and the arresting
12 agency may respond to the court regarding the completed
13 petition to seal.

14 (b) If relief is granted by the court, the clerk of
15 the court shall certify copies of the order to the appropriate
16 state attorney or the statewide prosecutor and to the
17 arresting agency. The arresting agency is responsible for
18 forwarding the order to any other agency to which the
19 arresting agency disseminated the criminal history record
20 information to which the order pertains. The department shall
21 forward the order to seal to the Federal Bureau of
22 Investigation. The clerk of the court shall certify a copy of
23 the order to any other agency which the records of the court
24 reflect has received the criminal history record from the
25 court.

26 (c) For an order to seal entered by a court prior to
27 July 1, 1992, the department shall notify the appropriate
28 state attorney or statewide prosecutor of any order to seal
29 which is contrary to law because the person who is the subject
30 of the record has previously been convicted of a crime or
31 comparable ordinance violation or has had a prior criminal

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1 history record sealed or expunged. Upon receipt of such
2 notice, the appropriate state attorney or statewide prosecutor
3 shall take action, within 60 days, to correct the record and
4 petition the court to void the order to seal. The department
5 shall seal the record until such time as the order is voided
6 by the court.

7 (d) On or after July 1, 1992, the department or any
8 other criminal justice agency is not required to act on an
9 order to seal entered by a court when such order does not
10 comply with the requirements of this section. Upon receipt of
11 such an order, the department must notify the issuing court,
12 the appropriate state attorney or statewide prosecutor, the
13 petitioner or the petitioner's attorney, and the arresting
14 agency of the reason for noncompliance. The appropriate state
15 attorney or statewide prosecutor shall take action within 60
16 days to correct the record and petition the court to void the
17 order. No cause of action, including contempt of court, shall
18 arise against any criminal justice agency for failure to
19 comply with an order to seal when the petitioner for such
20 order failed to obtain the certificate of eligibility as
21 required by this section or when such order does not comply
22 with the requirements of this section.

23 (e) An order sealing a criminal history record
24 pursuant to this section does not require that such record be
25 surrendered to the court, and such record shall continue to be
26 maintained by the department and other criminal justice
27 agencies.

28 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
29 criminal history record of a minor or an adult which is
30 ordered sealed by a court of competent jurisdiction pursuant
31 to this section is confidential and exempt from the provisions

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1 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
2 and is available only to the person who is the subject of the
3 record, to the subject's attorney, to criminal justice
4 agencies for their respective criminal justice purposes, or to
5 those entities set forth in subparagraphs (a)1., 4., 5., and
6 6. for their respective licensing and employment purposes.

7 (a) The subject of a criminal history record sealed
8 under this section or under other provisions of law, including
9 former s. 893.14, former s. 901.33, and former s. 943.058, may
10 lawfully deny or fail to acknowledge the arrests covered by
11 the sealed record, except when the subject of the record:

- 12 1. Is a candidate for employment with a criminal
13 justice agency;
- 14 2. Is a defendant in a criminal prosecution;
- 15 3. Concurrently or subsequently petitions for relief
16 under this section or s. 943.0585;
- 17 4. Is a candidate for admission to The Florida Bar;
- 18 5. Is seeking to be employed or licensed by or to
19 contract with the Department of Children and Family Services
20 or the Department of Juvenile Justice or to be employed or
21 used by such contractor or licensee in a sensitive position
22 having direct contact with children, the developmentally
23 disabled, the aged, or the elderly as provided in s.
24 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
25 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
26 415.103, s. 985.407, or chapter 400; or
- 27 6. Is seeking to be employed or licensed by the Office
28 of Teacher Education, Certification, Staff Development, and
29 Professional Practices of the Department of Education, any
30 district school board, or any local governmental entity which
31 licenses child care facilities.

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1 (b) Subject to the exceptions in paragraph (a), a
2 person who has been granted a sealing under this section,
3 former s. 893.14, former s. 901.33, or former s. 943.058 may
4 not be held under any provision of law of this state to commit
5 perjury or to be otherwise liable for giving a false statement
6 by reason of such person's failure to recite or acknowledge a
7 sealed criminal history record.

8 (c) Information relating to the existence of a sealed
9 criminal record provided in accordance with the provisions of
10 paragraph (a) is confidential and exempt from the provisions
11 of s. 119.07(1) and s. 24(a), Art. I of the State
12 Constitution, except that the department shall disclose the
13 sealed criminal history record to the entities set forth in
14 subparagraphs (a)1., 4., 5., and 6. for their respective
15 licensing and employment purposes. It is unlawful for any
16 employee of an entity set forth in subparagraph (a)1.,
17 subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6.
18 to disclose information relating to the existence of a sealed
19 criminal history record of a person seeking employment or
20 licensure with such entity or contractor, except to the person
21 to whom the criminal history record relates or to persons
22 having direct responsibility for employment or licensure
23 decisions. Any person who violates the provisions of this
24 paragraph commits a misdemeanor of the first degree,
25 punishable as provided in s. 775.082 or s. 775.083.

26 Section 11. Section 943.0535, Florida Statutes, is
27 amended to read:

28 943.0535 Aliens, criminal records.--~~Upon the official~~
29 ~~request of the United States immigration officer in charge of~~
30 ~~the territory or district in which is located any court~~
31 ~~committing an alien, for the conviction of a felony or a~~

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1 ~~misdemeanor, to any state or county institution which is~~
2 ~~supported, wholly or in part, by public funds,~~It shall be the
3 duty of the clerk of ~~such~~ court to furnish without charge a
4 certified copy of the complaint, information, or indictment
5 and the judgment and sentence and any other record pertaining
6 to the case of any the convicted alien to the United States
7 immigration officer in charge of the territory or district in
8 which the court is located in every case in which an alien is
9 convicted of a felony or misdemeanor or enters a plea of
10 guilty or nolo contendere to any felony or misdemeanor charge.
11 The state attorney shall assist the clerk of the court in
12 determining if a defendant entering a plea or is convicted is
13 an alien.

14 Section 12. In order to inform the public and to deter
15 and prevent crime in the state, the Executive Office of the
16 Governor shall place public service announcements in visible
17 local media throughout the state explaining the penalties
18 provided in this act.

19 Section 13. Subsection (3) of section 810.011, Florida
20 Statutes, is amended to read:

21 810.011 Definitions.--As used in this chapter:

22 (3) "Conveyance" means any motor vehicle, ship,
23 vessel, railroad vehicle or car, trailer, aircraft, or
24 sleeping car; and "to enter a conveyance" includes taking
25 apart any portion of the conveyance. However, during the time
26 of a state of emergency declared by executive order or
27 proclamation of the Governor under chapter 252 and within the
28 area covered by such executive order or proclamation and for
29 purposes of ss. 810.02 and 810.08 only, the term "conveyance"
30 means a motor vehicle, ship, vessel, railroad vehicle or car,
31 trailer, aircraft, or sleeping car or such portions thereof as

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1 exist.

2 Section 14. This act shall take effect July 1, 1999.

3

4

5 ===== T I T L E A M E N D M E N T =====

6 And the title is amended as follows:

7 Delete everything before the enacting clause

8

9 and insert:

10

A bill to be entitled

11

An act relating to sentencing; creating the

12

"Three-Strike Violent Felony Offender Act";

13

amending s. 775.082, F.S.; redefining the term

14

"prison releasee reoffender"; revising

15

legislative intent; amending s. 775.084, F.S.,

16

relating to sentencing of habitual felony

17

offenders, habitual violent felony offenders,

18

and violent career criminals; redefining the

19

terms "habitual felony offender," "habitual

20

violent felony offender" and "violent career

21

criminal"; revising the alternative time

22

periods within which the habitual felony

23

offender, habitual violent felony offender, or

24

violent career criminal could have committed

25

the felony to be sentenced; providing that the

26

felony to be sentenced could have been

27

committed either while the defendant was

28

serving a prison sentence or other sentence or

29

supervision, or within 5 years of the

30

defendant's release from a prison sentence,

31

probation, community control, or supervision or

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1 other sentence, under specified circumstances
2 when the sentence was imposed as a result of a
3 prior conviction for a felony, enumerated
4 felony, or other qualified offense; removing
5 certain references to "commitment" and
6 otherwise conforming terminology; providing
7 that the placing of a person on probation
8 without an adjudication of guilt shall be
9 treated as a prior conviction regardless of
10 when the subsequent offense was committed;
11 defining "three-time violent felony offender";
12 providing a category of enumerated felony
13 offenses within the definition; requiring the
14 court to sentence a defendant as a three-time
15 violent felony offender and impose certain
16 mandatory minimum terms of imprisonment under
17 specified circumstances when the defendant is
18 to be sentenced for committing or attempting to
19 commit, any of the enumerated felony offenses
20 and the defendant has previously been convicted
21 of committing or attempting to commit, any two
22 of the enumerated felony offenses; providing
23 penalties; providing procedures and criteria
24 for court determination if the defendant is a
25 three-time violent felony offender; providing
26 for sentencing as a three-time violent felony
27 offender; providing mandatory term of
28 imprisonment for life when the three-time
29 violent felony offense for which the defendant
30 is to be sentenced is a felony punishable by
31 life; providing mandatory prison term of 30

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1 years when the three-time violent felony
2 offense is a first degree felony; providing
3 mandatory prison term of 15 years when the
4 three-time violent felony offense is a second
5 degree felony; providing mandatory prison term
6 of 5 years when the three-time violent felony
7 offense is a third degree felony; providing for
8 construction; requiring a three-time violent
9 felony offender to serve 100 percent of the
10 court-imposed sentence; providing for
11 ineligibility of a three-time violent felony
12 offender for parole, control release, or early
13 release; amending ss. 784.07 and 784.08, F.S.;
14 providing minimum terms of imprisonment for
15 persons convicted of aggravated assault or
16 aggravated battery of a law enforcement officer
17 or a person 65 years of age or older; amending
18 s. 790.235, F.S., relating to prohibitions
19 against, and penalties for, unlawful possession
20 or other unlawful acts involving firearm,
21 electric weapon or device, or concealed weapon
22 by a violent career criminal; conforming cross
23 references to changes made by the act; creating
24 s. 794.0115, F.S.; defining "repeat sexual
25 batterer"; providing within the definition a
26 category of enumerated felony offenses in
27 violation of s. 794.011, F.S., relating to
28 sexual battery; requiring the court to sentence
29 a defendant as a repeat sexual batterer and
30 impose a 10-year mandatory minimum term of
31 imprisonment under specified circumstances when

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1 the defendant is to be sentenced for committing
2 or attempting to commit, any of the enumerated
3 felony violations of s. 794.011, F.S., and the
4 defendant has previously been convicted of
5 committing or attempting to commit, any one of
6 certain enumerated felony offenses involving
7 sexual battery; providing penalties; providing
8 procedures and criteria for court determination
9 if the defendant is a repeat sexual batterer;
10 providing for sentencing as a repeat sexual
11 batterer; providing for construction; amending
12 s. 794.011, F.S., to conform references to
13 changes made by the act; amending s. 893.135,
14 F.S.; defining the term "cannabis plant";
15 providing mandatory minimum prison terms and
16 mandatory fine amounts for trafficking in
17 cannabis, cocaine, illegal drugs,
18 phencyclidine, methaqualone, amphetamine, or
19 flunitrazepam; providing for sentencing
20 pursuant to the Criminal Punishment Code of
21 offenders convicted of trafficking in specified
22 quantities of cannabis; removing weight caps
23 for various trafficking offenses; providing
24 that an offender who is sentenced to a
25 mandatory minimum term upon conviction of
26 trafficking in specified quantities of
27 cannabis, cocaine, illegal drugs,
28 phencyclidine, methaqualone, amphetamine, or
29 flunitrazepam is not eligible for gain time or
30 certain discretionary early-release mechanisms
31 prior to serving the mandatory minimum

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1 sentence; providing exceptions; providing
2 penalties; reenacting s. 397.451(7), F.S.,
3 relating to the prohibition against
4 dissemination of state funds to service
5 providers convicted of certain offenses, s.
6 782.04(4)(a), F.S., relating to murder, s.
7 893.1351(1), F.S., relating to lease or rent
8 for the purpose of trafficking in a controlled
9 substance, s. 903.133, F.S., relating to the
10 prohibition against bail on appeal for certain
11 felony convictions, s. 907.041(4)(b), F.S.,
12 relating to pretrial detention and release, s.
13 921.0022(3)(g), (h), and (i), F.S., relating to
14 the Criminal Punishment Code offense severity
15 ranking chart, s. 921.0024(1)(b), F.S.,
16 relating to the Criminal Punishment Code
17 worksheet computations and scoresheets, s.
18 921.142(2), F.S., relating to sentencing for
19 capital drug trafficking felonies, s. 943.0585,
20 F.S., relating to court-ordered expunction of
21 criminal history records, and s. 943.059, F.S.,
22 relating to court-ordered sealing of criminal
23 history records, to incorporate said amendment
24 in references; amending s. 943.0535, F.S.,
25 relating to aliens and criminal records;
26 requiring clerk of the courts to furnish
27 criminal records to United States immigration
28 officers; requiring state attorney to assist
29 clerk of the courts in determining which
30 defendants are aliens; requiring the Governor
31 to place public service announcements

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1 explaining the provisions of this act; amending
2 s. 810, F.S.; redefining the term "conveyance"
3 for purposes of ch. 810, F.S., to include a
4 railroad vehicle; providing an effective date.

5
6 WHEREAS, in 1996, Florida had the highest violent crime
7 rate of any state in the nation, exceeding the national
8 average by 66 percent, and

9 WHEREAS, although this state possessed the highest
10 state violent crime rate in 1996 in the nation, the
11 incarceration rate in this state in 1996 was less than the
12 incarceration rate in at least eleven other states, all of
13 which had a lower violent crime rate than the rate in this
14 state, and

15 WHEREAS, since 1988, criminals in this state have
16 committed at least 1.6 million violent crimes against
17 Floridians and visitors to this state, and

18 WHEREAS, the per capita violent crime rate has
19 increased 86 percent in this state in the last 25 years, and

20 WHEREAS, in fiscal year 1996-1997, over 16,000 violent
21 felons in this state were sentenced to probation, community
22 control, and other punishments that did not incarcerate the
23 violent felon for the maximum prison term authorized by law,
24 and

25 WHEREAS, during that same fiscal year, less than 9,900
26 violent felons were sentenced to prison, while during that
27 same period criminals committed approximately 150,000 violent
28 felonies, and

29 WHEREAS, in this state, as of June 30, 1997, more
30 violent felons were on probation, community control, control
31 release, or parole, than were in state prison, and

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1 WHEREAS, in 1997, only 15.6 percent of all persons
2 convicted of a felony were sentenced to state prison, the
3 second lowest rate of incarcerated felons since 1984, and

4 WHEREAS, the rate of incarcerated felons has declined
5 seven out of the last eight years, and

6 WHEREAS, since fiscal year 1993-1994, the per capita
7 prison population rate in this state has increased 10 percent
8 and the proportion of violent offenders incarcerated in state
9 prison has increased 5 percent, and

10 WHEREAS, since 1995, the Florida Legislature has
11 enacted stronger criminal punishment laws, including requiring
12 all prisoners to serve 85 percent of their court-imposed
13 sentences, and

14 WHEREAS, since 1994, the violent crime rate in this
15 state has decreased 9.8 percent, and

16 WHEREAS, the Legislature previously has found that a
17 substantial and disproportionate number of serious crimes are
18 committed in this state by a relatively small number of repeat
19 and violent felony offenders, that priority should be given to
20 the incarceration of career criminals for extended prison
21 terms, and that, in the case of violent career criminals, such
22 extended terms must include substantial minimum terms of
23 imprisonment, and

24 WHEREAS, as of June 30, 1997, only 71 designated
25 "violent career criminals" have been sentenced to mandatory
26 prison terms, out of a prison population of over 65,000 state
27 inmates; and this number does not approach the true number of
28 repeat violent felony offenders in this state, and

29 WHEREAS, to be sentenced as a "violent career
30 criminal," a felon must be convicted of at least four violent,
31 forcible, or serious felonies and must have served a prison

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1 term, and

2 WHEREAS, current law does not require the courts to
3 impose mandatory prison terms on violent felons who commit
4 three violent felonies, and these three-time violent felony
5 offenders should be sentenced to mandatory maximum prison
6 terms to protect citizens of this state and visitors, and

7 WHEREAS, studies such as the recent report issued by
8 the National Center for Policy Analysis, "Does punishment
9 deter?", indicate that recent crime rates have declined
10 because of the increasing number of incarcerated felons, and

11 WHEREAS, since California enacted "three strike"
12 legislation in 1994 that requires courts to impose mandatory
13 prison terms on repeat felony offenders convicted of three
14 serious crimes, that state has experienced significant
15 reductions in violent crime, and overall crime rates, and

16 WHEREAS, a study by the RAND Corporation estimates that
17 the enforcement of this California legislation will reduce
18 serious crime in California committed by adults between 22 and
19 34 percent, and

20 WHEREAS, the enactment and enforcement of legislation
21 in Florida that requires courts to impose mandatory prison
22 terms on three-time violent felony offenders will improve
23 public safety by incapacitating repeat offenders who are most
24 likely to murder, rape, rob, or assault innocent victims in
25 our communities, and

26 WHEREAS, imposing mandatory prison terms on three-time
27 violent felony offenders will prevent such offenders from
28 committing more crimes in our communities, and likely
29 accelerate recent declines in the violent crime rate in this
30 state, NOW, THEREFORE,

31