

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

Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Lee moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
14	Delete everything after the enacting clause		
15			
16	and insert:		
17	Section 1. <u>This act may be cited as the "Three-Strike</u>		
18	<u>Violent Felony Offender Act."</u>		
19	Section 2. Paragraphs (a) and (d) of subsection (9) of		
20	section 775.082, Florida Statutes, 1998 Supplement, are		
21	amended to read.		
22	775.082 Penalties; applicability of sentencing		
23	structures; mandatory minimum sentences for certain		
24	reoffenders previously released from prison.--		
25	(9)(a)1. "Prison releasee reoffender" means any		
26	defendant who commits, or attempts to commit:		
27	a. Treason;		
28	b. Murder;		
29	c. Manslaughter;		
30	d. Sexual battery;		
31	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 not be  
29 sentenced 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)(b), 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