

By the Committee on Corrections and Representatives Crist,
Fasano, Byrd, Trovillion, Ball and Posey

1 A bill to be entitled
2 An act relating to sentencing; creating the
3 "Three-Strike Violent Felony Offender Act";
4 amending s. 775.082, F.S.; redefining the term
5 "prison releasee reoffender"; revising
6 legislative intent; amending s. 775.084, F.S.,
7 relating to sentencing of habitual felony
8 offenders, habitual violent felony offenders,
9 and violent career criminals; redefining the
10 terms "habitual felony offender" and "habitual
11 violent felony offender"; revising the
12 alternative time periods within which the
13 habitual felony offender or habitual violent
14 felony offender could have committed the felony
15 to be sentenced; providing that the felony to
16 be sentenced could have been committed either
17 while the defendant was serving a prison
18 sentence or other sentence, or within 5 years
19 of the defendant's release from a prison
20 sentence, probation, community control, or
21 other sentence, under specified circumstances
22 when the sentence was imposed as a result of a
23 prior conviction for a felony, enumerated
24 felony, or other qualified offense; removing
25 certain references to "commitment" and
26 otherwise conforming terminology; revising
27 criteria for a prior conviction or a prior
28 felony for purposes of sentencing as a habitual
29 felony offender, habitual violent offender, or
30 violent career criminal; providing that the
31 placing of a person on probation without an

1 adjudication of guilt shall be treated as a
2 prior conviction regardless of when the
3 subsequent offense was committed; removing
4 certain requirements that, in order to be
5 counted as a prior felony, the felony must have
6 resulted in prior conviction sentenced
7 separately from any other felony conviction
8 counted as a prior felony; defining "three-time
9 violent felony offender"; providing a category
10 of enumerated felony offenses within the
11 definition, including arson, sexual battery,
12 robbery, kidnapping, aggravated child abuse,
13 aggravated abuse of an elderly person or
14 disabled adult, aggravated assault, murder,
15 manslaughter, aggravated manslaughter of an
16 elderly person or disabled adult, aggravated
17 manslaughter of a child, unlawful throwing,
18 placing, or discharging of a destructive device
19 or bomb, armed burglary, aggravated battery,
20 aggravated stalking, or certain qualified
21 offenses; requiring the court to sentence a
22 defendant as a three-time violent felony
23 offender and impose certain mandatory minimum
24 terms of imprisonment under specified
25 circumstances when the defendant is to be
26 sentenced for committing, or conspiring or
27 attempting to commit, any of the enumerated
28 felony offenses and the defendant has
29 previously been convicted of committing, or
30 conspiring or attempting to commit, any two of
31 the enumerated felony offenses; providing

1 penalties; providing procedures and criteria
2 for court determination if the defendant is a
3 three-time violent felony offender; providing
4 for sentencing as a three-time violent felony
5 offender; providing mandatory term of
6 imprisonment for life when the three-time
7 violent felony offense for which the defendant
8 is to be sentenced is a felony punishable by
9 life; providing mandatory prison term of 30
10 years when the three-time violent felony
11 offense is a first degree felony; providing
12 mandatory prison term of 15 years when the
13 three-time violent felony offense is a second
14 degree felony; providing mandatory prison term
15 of 5 years when the three-time violent felony
16 offense is a third degree felony; providing for
17 construction; providing that certain sentences
18 imposed before July 1, 1999, are not subject to
19 s. 921.002, F.S., relating to the Criminal
20 Punishment Code; requiring a three-time violent
21 felony offender to serve 100 percent of the
22 court-imposed sentence; providing for
23 ineligibility of a three-time violent felony
24 offender for parole, control release, or early
25 release; amending ss. 784.07 and 784.08, F.S.;
26 providing minimum terms of imprisonment for
27 persons convicted of aggravated assault or
28 aggravated battery of a law enforcement officer
29 or a person 65 years of age or older; amending
30 s. 790.235, F.S., relating to prohibitions
31 against, and penalties for, unlawful possession

1 or other unlawful acts involving firearm,
2 electric weapon or device, or concealed weapon
3 by a violent career criminal; conforming cross
4 references to changes made by the act; creating
5 s. 794.0115, F.S.; defining "repeat sexual
6 batterer"; providing within the definition a
7 category of enumerated felony offenses in
8 violation of s. 794.011, F.S., relating to
9 sexual battery; requiring the court to sentence
10 a defendant as a repeat sexual batterer and
11 impose a 10-year mandatory minimum term of
12 imprisonment under specified circumstances when
13 the defendant is to be sentenced for
14 committing, or conspiring or attempting to
15 commit, any of the enumerated felony violations
16 of s. 794.011, F.S., and the defendant has
17 previously been convicted of committing, or
18 conspiring or attempting to commit, any one of
19 certain enumerated felony offenses involving
20 sexual battery; providing penalties; providing
21 procedures and criteria for court determination
22 if the defendant is a repeat sexual batterer;
23 providing for sentencing as a repeat sexual
24 batterer; providing for construction; amending
25 s. 794.011, F.S., to conform references to
26 changes made by the act; amending s. 893.135,
27 F.S.; redefining the offense of trafficking in
28 cannabis to include unlawful sale, purchase,
29 manufacture, delivery, bringing into the state,
30 or possession of cannabis in excess of 25
31 pounds or 300 cannabis plants; providing

1 mandatory minimum prison terms and mandatory
2 fine amounts for trafficking in specified
3 quantities of cannabis, cocaine, or illegal
4 drugs; providing for sentencing pursuant to the
5 Criminal Punishment Code of offenders convicted
6 of trafficking in specified quantities of
7 cannabis; providing that an offender who is
8 sentenced to a mandatory minimum term upon
9 conviction of trafficking in specified
10 quantities of cannabis, cocaine, illegal drugs,
11 phencyclidine, methaqualone, amphetamine, or
12 flunitrazepam is not eligible for statutory
13 gain-time or other form of early release prior
14 to serving the minimum sentence; providing
15 exceptions; providing penalties; reenacting s.
16 397.451(7), F.S., relating to the prohibition
17 against dissemination of state funds to service
18 providers convicted of certain offenses, s.
19 782.04(4)(a), F.S., relating to murder, s.
20 893.1351(1), F.S., relating to lease or rent
21 for the purpose of trafficking in a controlled
22 substance, s. 903.133, F.S., relating to the
23 prohibition against bail on appeal for certain
24 felony convictions, s. 907.041(4)(b), F.S.,
25 relating to pretrial detention and release, s.
26 921.0022(3)(g), (h), and (i), F.S., relating to
27 the Criminal Punishment Code offense severity
28 ranking chart, s. 921.0024(1)(b), F.S.,
29 relating to the Criminal Punishment Code
30 worksheet computations and scoresheets, s.
31 921.142(2), F.S., relating to sentencing for

1 capital drug trafficking felonies, s. 943.0585,
2 F.S., relating to court-ordered expunction of
3 criminal history records, and s. 943.059, F.S.,
4 relating to court-ordered sealing of criminal
5 history records, to incorporate said amendment
6 in references; amending s. 943.0535, F.S.,
7 relating to aliens and criminal records;
8 requiring clerk of the courts to furnish
9 criminal records to United States immigration
10 officers; requiring state attorney to assist
11 clerk of the courts in determining which
12 defendants are aliens; requiring the Governor
13 to place public service announcements
14 explaining the provisions of this act;
15 providing an effective date.

16
17 WHEREAS, in 1996, Florida had the highest violent crime
18 rate of any state in the nation, exceeding the national
19 average by 66 percent, and

20 WHEREAS, although this state possessed the highest
21 state violent crime rate in 1996 in the nation, the
22 incarceration rate in this state in 1996 was less than the
23 incarceration rate in at least eleven other states, all of
24 which had a lower violent crime rate than the rate in this
25 state, and

26 WHEREAS, since 1988, criminals in this state have
27 committed at least 1.6 million violent crimes against
28 Floridians and visitors to this state, and

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

31

1 WHEREAS, in fiscal year 1996-1997, over 16,000 violent
2 felons in this state were sentenced to probation, community
3 control, and other punishments that did not incarcerate the
4 violent felon for the maximum prison term authorized by law,
5 and

6 WHEREAS, during that same fiscal year, less than 9,900
7 violent felons were sentenced to prison, while during that
8 same period criminals committed approximately 150,000 violent
9 felonies, and

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

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

16 WHEREAS, the rate of incarcerated felons has declined
17 seven out of the last eight years, and

18 WHEREAS, since fiscal year 1993-1994, the per capita
19 prison population rate in this state has increased 10 percent
20 and the proportion of violent offenders incarcerated in state
21 prison has increased 5 percent, and

22 WHEREAS, since 1995, the Florida Legislature has
23 enacted stronger criminal punishment laws, including requiring
24 all prisoners to serve 85 percent of their court-imposed
25 sentences, and

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

28 WHEREAS, the Legislature previously has found that a
29 substantial and disproportionate number of serious crimes are
30 committed in this state by a relatively small number of repeat
31 and violent felony offenders, that priority should be given to

1 the incarceration of career criminals for extended prison
2 terms, and that, in the case of violent career criminals, such
3 extended terms must include substantial minimum terms of
4 imprisonment, and

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

10 WHEREAS, to be sentenced as a "violent career
11 criminal," a felon must be convicted of at least four violent,
12 forcible, or serious felonies and must have served a prison
13 term, and

14 WHEREAS, current law does not require the courts to
15 impose mandatory prison terms on violent felons who commit
16 three violent felonies, and these three-time violent felony
17 offenders should be sentenced to mandatory maximum prison
18 terms to protect citizens of this state and visitors, and

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

23 WHEREAS, since California enacted "three strike"
24 legislation in 1994 that requires courts to impose mandatory
25 prison terms on repeat felony offenders convicted of three
26 serious crimes, that state has experienced significant
27 reductions in violent crime, and overall crime rates, and

28 WHEREAS, a study by the RAND Corporation estimates that
29 the enforcement of this California legislation will reduce
30 serious crime in California committed by adults between 22 and
31 34 percent, and

1 WHEREAS, the enactment and enforcement of legislation
2 in Florida that requires courts to impose mandatory prison
3 terms on three-time violent felony offenders will improve
4 public safety by incapacitating repeat offenders who are most
5 likely to murder, rape, rob, or assault innocent victims in
6 our communities, and

7 WHEREAS, imposing mandatory prison terms on three-time
8 violent felony offenders will prevent such offenders from
9 committing more crimes in our communities, and likely
10 accelerate recent declines in the violent crime rate in this
11 state, NOW, THEREFORE,

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

14
15 Section 1. This act may be cited as the "Three-Strike
16 Violent Felony Offender Act."

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

20 775.082 Penalties; applicability of sentencing
21 structures; mandatory minimum sentences for certain
22 reoffenders previously released from prison.--

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

- 25 a. Treason;
26 b. Murder;
27 c. Manslaughter;
28 d. Sexual battery;
29 e. Carjacking;
30 f. Home-invasion robbery;
31 g. Robbery;

- 1 h. Arson;
- 2 i. Kidnapping;
- 3 j. Aggravated assault;
- 4 k. Aggravated battery;
- 5 l. Aggravated stalking;
- 6 m. Aircraft piracy;
- 7 n. Unlawful throwing, placing, or discharging of a
8 destructive device or bomb;
- 9 o. Any felony that involves the use or threat of
10 physical force or violence against an individual;
- 11 p. Armed burglary;
- 12 q. Burglary of an occupied structure or dwelling; or
- 13 r. Any felony violation of s. 790.07, s. 800.04, s.
14 827.03, or s. 827.071;
- 15
- 16 within 3 years of being released from a state correctional
17 facility operated by the Department of Corrections or a
18 private vendor.
- 19 2. "Prison releasee reoffender" also means any
20 defendant who commits or attempts to commit any offense listed
21 in subparagraph (a)1.a.-r. while the defendant was serving a
22 prison sentence or on escape status from a state correctional
23 facility operated by the Department of Corrections or a
24 private vendor.
- 25 ~~3.2.~~ If the state attorney determines that a defendant
26 is a prison releasee reoffender as defined in subparagraph 1.,
27 the state attorney may seek to have the court sentence the
28 defendant as a prison releasee reoffender. Upon proof from the
29 state attorney that establishes by a preponderance of the
30 evidence that a defendant is a prison releasee reoffender as
31 defined in this section, such defendant is not eligible for

1 sentencing under the sentencing guidelines and must be
2 sentenced as follows:

3 a. For a felony punishable by life, by a term of
4 imprisonment for life;

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

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

9 d. For a felony of the third degree, by a term of
10 imprisonment of 5 years.

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

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

19 b. ~~The testimony of a material witness cannot be~~
20 ~~obtained~~;

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

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

28 2. For every case in which the offender meets the
29 criteria in paragraph (a) and does not receive the mandatory
30 minimum prison sentence, the state attorney must explain the
31 sentencing deviation in writing and place such explanation in

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

9 Section 3. Section 775.084, Florida Statutes, 1998
10 Supplement, is amended to read:

11 775.084 Violent career criminals; habitual felony
12 offenders and habitual violent felony offenders; three-time
13 violent felony offenders; definitions; procedure; enhanced
14 penalties or mandatory minimum prison terms.--

15 (1) As used in this act:

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

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

22 2. The felony for which the defendant is to be
23 sentenced was committed:

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

28 b. Within 5 years of the date of the conviction of the
29 defendant's last prior felony or other qualified offense, or
30 within 5 years of the defendant's release from a prison
31 sentence, probation, community control, control release,

1 conditional release, parole or court-ordered or lawfully
2 imposed supervision or other sentence that is ~~commitment~~
3 imposed as a result of a prior conviction for a felony or
4 other qualified offense, whichever is later.

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

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

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

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

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

- 22 a. Arson;
- 23 b. Sexual battery;
- 24 c. Robbery;
- 25 d. Kidnapping;
- 26 e. Aggravated child abuse;
- 27 f. Aggravated abuse of an elderly person or disabled
28 adult;
- 29 g. Aggravated assault;
- 30 h. Murder;
- 31 i. Manslaughter;

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

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

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

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

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

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

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

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

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

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

29 c. Aggravated child abuse, as described in s.
30 827.03(2);

31

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

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.

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1 4. Each of the findings required as the basis for such
2 sentence shall be found to exist by a preponderance of the
3 evidence and shall be appealable to the extent normally
4 applicable to similar findings.

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

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

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

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

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

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

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

20 5. For the purpose of identification of a three-time
21 violent felony offender, the court shall fingerprint the
22 defendant pursuant to s. 921.241.

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

1 (c)~~(b)~~ In a separate proceeding, the court shall
2 determine whether the defendant is a violent career criminal
3 with respect to a primary offense committed on or after
4 October 1, 1995. The procedure shall be as follows:

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

10 2. All evidence presented shall be presented in open
11 court with full rights of confrontation, cross-examination,
12 and representation by counsel.

13 3. 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 only as provided in paragraph
16 (d)~~(e)~~.

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

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

1 within 7 days after the date of sentencing. Each month, the
2 court shall submit to the Office of Economic and Demographic
3 Research of the Legislature the written reasons or transcripts
4 in each case in which the court determines not to sentence a
5 defendant as a violent career criminal as provided in this
6 subparagraph.

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

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

28 3. It is the intent of the Legislature that no funds,
29 resources, or employees of the state or its political
30 subdivisions be used, directly or indirectly, in appellate or
31 collateral proceedings based on violent career criminal

1 sentencing, except when such use is constitutionally or
2 statutorily mandated.

3 (4)(a) The court, in conformity with the procedure
4 established in paragraph (3)(a), may sentence the habitual
5 felony offender as follows:

6 1. In the case of a life felony or a felony of the
7 first degree, for life.

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

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

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

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

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

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

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

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

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

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

3 d. In the case of a felony of the third degree, to a
4 term of imprisonment of 5 years.

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

8 ~~(d)(c)~~ The court, in conformity with the procedure
9 established in paragraph (3)~~(c)(b)~~, shall sentence the violent
10 career criminal as follows:

11 1. In the case of a life felony or a felony of the
12 first degree, for life.

13 2. In the case of a felony of the second degree, for a
14 term of years not exceeding 40, with a mandatory minimum term
15 of 30 years' imprisonment.

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

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

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

31

1 ~~(g)(f)~~ A sentence imposed under this section shall not
2 be increased after such imposition.

3 ~~(h)(g)~~ A sentence imposed under this section for an
4 offense committed before July 1, 1999, is not subject to s.
5 921.002.

6 ~~(i)(h)~~ The provisions of this section do not apply to
7 capital felonies, and a sentence authorized under this section
8 does not preclude the imposition of the death penalty for a
9 capital felony.

10 ~~(j)(i)~~ The provisions of s. 947.1405 shall apply to
11 persons sentenced as habitual felony offenders and persons
12 sentenced as habitual violent felony offenders.

13 ~~(k)(j)~~1. A defendant sentenced under this section as a
14 habitual felony offender, a habitual violent felony offender,
15 or a violent career criminal is eligible for gain-time granted
16 by the Department of Corrections as provided in s.
17 944.275(4)(b).

18 2. For an offense committed on or after October 1,
19 1995, a defendant sentenced under this section as a violent
20 career criminal is not eligible for any form of discretionary
21 early release, other than pardon or executive clemency, or
22 conditional medical release granted pursuant to s. 947.149.

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

30 (5) In order to be counted as a prior felony for
31 purposes of sentencing under this section, the felony must

1 have resulted in a conviction sentenced ~~separately~~ prior to
2 the current offense ~~and sentenced separately from any other~~
3 ~~felony conviction that is to be counted as a prior felony.~~

4 (6) The purpose of this section is to provide uniform
5 punishment for those crimes made punishable under this
6 section, and to this end, a reference to this section
7 constitutes a general reference under the doctrine of
8 incorporation by reference.

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

12 784.07 Assault or battery of law enforcement officers,
13 firefighters, emergency medical care providers, public transit
14 employees or agents, or other specified officers;
15 reclassification of offenses; minimum sentences.--

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

30 (c) In the case of aggravated assault, from a felony
31 of the third degree to a felony of the second degree.

1 Notwithstanding any other provision of law, any person
2 convicted of aggravated assault upon a law enforcement officer
3 shall be sentenced to a minimum term of imprisonment of 3
4 years.

5 (d) In the case of aggravated battery, from a felony
6 of the second degree to a felony of the first degree.

7 Notwithstanding any other provision of law, any person
8 convicted of aggravated battery of a law enforcement officer
9 shall be sentenced to a minimum term of imprisonment of 5
10 years.

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

13 784.08 Assault or battery on persons 65 years of age
14 or older; reclassification of offenses; minimum sentence.--

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

25 Section 6. Section 790.235, Florida Statutes, is
26 amended to read:

27 790.235 Possession of firearm by violent career
28 criminal unlawful; penalty.--

29 (1) Any person who meets the violent career criminal
30 criteria under s. 775.084(1)(~~c~~)d), regardless of whether such
31 person is or has previously been sentenced as a violent career

1 criminal, who owns or has in his or her care, custody,
2 possession, or control any firearm or electric weapon or
3 device, or carries a concealed weapon, including a tear gas
4 gun or chemical weapon or device, commits a felony of the
5 first degree, punishable as provided in s. 775.082, s.
6 775.083, or s. 775.084. A person convicted of a violation of
7 this section shall be sentenced to a mandatory minimum of 15
8 years' imprisonment; however, if the person would be sentenced
9 to a longer term of imprisonment under s. 775.084(4)~~(d)(c)~~,
10 the person must be sentenced under that provision. A person
11 convicted of a violation of this section is not eligible for
12 any form of discretionary early release, other than pardon,
13 executive clemency, or conditional medical release under s.
14 947.149.

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

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

27 Section 7. Section 794.0115, Florida Statutes, is
28 created to read:

29 794.0115 Repeat sexual batterers; definition;
30 procedure; enhanced penalties.--

31

1 (1) As used in this act, "repeat sexual batterer"
2 means a defendant for whom the court must impose a mandatory
3 minimum term of imprisonment, as provided in subsection (3),
4 if it finds that:
5 (a) The defendant has previously been convicted of a
6 felony or an attempt or conspiracy to commit a felony and one
7 or more of such convictions was for:
8 1. Any felony offense in violation of s.
9 794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy
10 to commit the felony offense.
11 2. A qualified offense as defined in s. 775.084(1)(e),
12 if the elements of the qualified offense are substantially
13 similar to the elements of a felony offense in violation of s.
14 794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy
15 to commit the felony offense.
16 (b) The felony for which the defendant is to be
17 sentenced is one of the felonies enumerated in subparagraph
18 (a)1. or 2. and was committed:
19 1. While the defendant was serving a prison sentence
20 or other sentence imposed as a result of a prior conviction
21 for any offense enumerated in subparagraph (a)1. or 2.; or
22 2. Within 10 years after the date of the conviction of
23 the last prior offense enumerated in subparagraph (a)1. or 2.,
24 or within 10 years after the defendant's release from a prison
25 sentence, probation, community control, or other sentence
26 imposed as a result of a prior conviction for any offense
27 enumerated in subparagraph (a)1. or 2., whichever is later.
28 (c) The defendant has not received a pardon on the
29 ground of innocence for any crime that is necessary for the
30 operation of this subsection.
31

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

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

7 (a) The court shall obtain and consider a presentence
8 investigation prior to the imposition of a sentence as a
9 repeat sexual batterer.

10 (b) Written notice shall be served on the defendant
11 and the defendant's attorney a sufficient time prior to the
12 entry of a plea or prior to the imposition of sentence in
13 order to allow the preparation of a submission on behalf of
14 the defendant.

15 (c) Except as provided in paragraph (a), all evidence
16 presented shall be presented in open court with full rights of
17 confrontation, cross-examination, and representation by
18 counsel.

19 (d) Each of the findings required as the basis for
20 such sentence shall be found to exist by a preponderance of
21 the evidence and shall be appealable to the extent normally
22 applicable to similar findings.

23 (e) For the purpose of identification of a repeat
24 sexual batterer, the court shall fingerprint the defendant
25 pursuant to s. 921.241.

26 (f) For an offense committed on or after the effective
27 date of this act, if the state attorney pursues a repeat
28 sexual batterer sanction against the defendant and the court,
29 in a separate proceeding pursuant to this subsection,
30 determines that the defendant meets the criteria under
31 subsection (1) for imposing such sanction, the court must

1 sentence the defendant as a repeat sexual batterer, subject to
2 imprisonment pursuant to this section as provided in
3 subsection (3).

4 (3)(a) The court, in conformity with the procedure
5 established in subsection (2), must sentence the repeat sexual
6 batterer to a mandatory minimum term of 10 years'
7 imprisonment.

8 (b) Nothing in this subsection shall prevent a court
9 from imposing a greater sentence of incarceration as
10 authorized by law.

11 Section 8. Section 794.011, Florida Statutes, is
12 amended to read:

13 794.011 Sexual battery.--

14 (1) As used in this chapter:

15 (a) "Consent" means intelligent, knowing, and
16 voluntary consent and does not include coerced submission.
17 "Consent" shall not be deemed or construed to mean the failure
18 by the alleged victim to offer physical resistance to the
19 offender.

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

23 (c) "Mentally incapacitated" means temporarily
24 incapable of appraising or controlling a person's own conduct
25 due to the influence of a narcotic, anesthetic, or
26 intoxicating substance administered without his or her consent
27 or due to any other act committed upon that person without his
28 or her consent.

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

31

1 (e) "Physically helpless" means unconscious, asleep,
2 or for any other reason physically unable to communicate
3 unwillingness to an act.

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

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

9 (h) "Sexual battery" means oral, anal, or vaginal
10 penetration by, or union with, the sexual organ of another or
11 the anal or vaginal penetration of another by any other
12 object; however, sexual battery does not include an act done
13 for a bona fide medical purpose.

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

16 (j) "Physically incapacitated" means bodily impaired
17 or handicapped and substantially limited in ability to resist
18 or flee.

19 (2)(a) A person 18 years of age or older who commits
20 sexual battery upon, or in an attempt to commit sexual battery
21 injures the sexual organs of, a person less than 12 years of
22 age commits a capital felony, punishable as provided in ss.
23 775.082 and 921.141.

24 (b) A person less than 18 years of age who commits
25 sexual battery upon, or in an attempt to commit sexual battery
26 injures the sexual organs of, a person less than 12 years of
27 age commits a life felony, punishable as provided in s.
28 775.082, s. 775.083, ~~or~~ s. 775.084, or s. 794.0115.

29 (3) A person who commits sexual battery upon a person
30 12 years of age or older, without that person's consent, and
31 in the process thereof uses or threatens to use a deadly

1 weapon or uses actual physical force likely to cause serious
2 personal injury commits a life felony, punishable as provided
3 in s. 775.082, s. 775.083, ~~or~~ s. 775.084, or s. 794.0115.

4 (4) A person who commits sexual battery upon a person
5 12 years of age or older without that person's consent, under
6 any of the following circumstances, commits a felony of the
7 first degree, punishable as provided in s. 775.082, s.
8 775.083, ~~or~~ s. 775.084, or s. 794.0115:

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

10 (b) When the offender coerces the victim to submit by
11 threatening to use force or violence likely to cause serious
12 personal injury on the victim, and the victim reasonably
13 believes that the offender has the present ability to execute
14 the threat.

15 (c) When the offender coerces the victim to submit by
16 threatening to retaliate against the victim, or any other
17 person, and the victim reasonably believes that the offender
18 has the ability to execute the threat in the future.

19 (d) When the offender, without the prior knowledge or
20 consent of the victim, administers or has knowledge of someone
21 else administering to the victim any narcotic, anesthetic, or
22 other intoxicating substance which mentally or physically
23 incapacitates the victim.

24 (e) When the victim is mentally defective and the
25 offender has reason to believe this or has actual knowledge of
26 this fact.

27 (f) When the victim is physically incapacitated.

28 (g) When the offender is a law enforcement officer,
29 correctional officer, or correctional probation officer as
30 defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who
31 is certified under the provisions of s. 943.1395 or is an

1 | elected official exempt from such certification by virtue of
2 | s. 943.253, or any other person in a position of control or
3 | authority in a probation, community control, controlled
4 | release, detention, custodial, or similar setting, and such
5 | officer, official, or person is acting in such a manner as to
6 | lead the victim to reasonably believe that the offender is in
7 | a position of control or authority as an agent or employee of
8 | government.

9 | (5) A person who commits sexual battery upon a person
10 | 12 years of age or older, without that person's consent, and
11 | in the process thereof does not use physical force and
12 | violence likely to cause serious personal injury commits a
13 | felony of the second degree, punishable as provided in s.
14 | 775.082, s. 775.083, ~~or~~ s. 775.084, or s. 794.0115.

15 | (6) The offense described in subsection (5) is
16 | included in any sexual battery offense charged under
17 | subsection (3) or subsection (4).

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

22 | (8) Without regard to the willingness or consent of
23 | the victim, which is not a defense to prosecution under this
24 | subsection, a person who is in a position of familial or
25 | custodial authority to a person less than 18 years of age and
26 | who:

27 | (a) Solicits that person to engage in any act which
28 | would constitute sexual battery under paragraph (1)(h) commits
29 | a felony of the third degree, punishable as provided in s.
30 | 775.082, s. 775.083, or s. 775.084.

31 |

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

6 (c) Engages in any act with that person while the
7 person is less than 12 years of age which constitutes sexual
8 battery under paragraph (1)(h), or in an attempt to commit
9 sexual battery injures the sexual organs of such person
10 commits a capital or life felony, punishable pursuant to
11 subsection (2).

12 (9) For prosecution under paragraph (4)(g),
13 acquiescence to a person reasonably believed by the victim to
14 be in a position of authority or control does not constitute
15 consent, and it is not a defense that the perpetrator was not
16 actually in a position of control or authority if the
17 circumstances were such as to lead the victim to reasonably
18 believe that the person was in such a position.

19 (10) Any person who falsely accuses any person listed
20 in paragraph (4)(g) or other person in a position of control
21 or authority as an agent or employee of government of
22 violating paragraph (4)(g) is guilty of a felony of the third
23 degree, punishable as provided in s. 775.082, s. 775.083, or
24 s. 775.084.

25 Section 9. Section 893.135, Florida Statutes, is
26 amended to read:

27 893.135 Trafficking; mandatory sentences; suspension
28 or reduction of sentences; conspiracy to engage in
29 trafficking.--

30 (1) Except as authorized in this chapter or in chapter
31 499 and notwithstanding the provisions of s. 893.13:

1 (a) 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, in excess
4 of 25 ~~50~~ pounds of cannabis, or in excess of 300 cannabis
5 plants, commits a felony of the first degree, which felony
6 shall be known as "trafficking in cannabis." If the quantity
7 of cannabis involved:
8 1. Is in excess of 25 ~~50~~ pounds, but less than 2,000
9 pounds, or is in excess of 300 cannabis plants, but not more
10 than 2,000 cannabis plants, such person shall be sentenced
11 pursuant to the Criminal Punishment Code and such sentence
12 shall include a mandatory minimum term of imprisonment of 3
13 years, and the defendant shall be ordered to pay a fine of
14 \$25,000.
15 2. Is 2,000 pounds or more, but less than 10,000
16 pounds, or is in excess of 2,000 cannabis plants, but not more
17 than 10,000 cannabis plants, such person shall be sentenced
18 pursuant to the Criminal Punishment Code and such sentence
19 shall include a mandatory minimum term of imprisonment of 7
20 years, and the defendant shall be ordered to pay a fine of
21 \$50,000.
22 3. Is 10,000 pounds or more, or is in excess of 10,000
23 cannabis plants, such person shall be sentenced to a mandatory
24 minimum term of imprisonment of 15 calendar years and pay a
25 fine of \$200,000.
26 (b)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, 28 grams or
29 more of cocaine, as described in s. 893.03(2)(a)4., or of any
30 mixture containing cocaine, but less than 150 kilograms of
31 cocaine or any such mixture, commits a felony of the first

1 degree, which felony shall be known as "trafficking in
2 cocaine." If the quantity involved:
3 a. Is 28 grams or more, but less than 200 grams, such
4 person shall be sentenced pursuant to the Criminal Punishment
5 Code and such sentence shall include a mandatory minimum term
6 of imprisonment of 3 years, and the defendant shall be ordered
7 to pay a fine of \$50,000.
8 b. Is 200 grams or more, but less than 400 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 7 years, and the defendant shall be ordered
12 to pay a fine of \$100,000.
13 c. Is 400 grams or more, but less than 150 kilograms,
14 such person shall be sentenced to a mandatory minimum term of
15 imprisonment of 15 calendar years and pay a fine of \$250,000.
16 2. Any person who knowingly sells, purchases,
17 manufactures, delivers, or brings into this state, or who is
18 knowingly in actual or constructive possession of, 150
19 kilograms or more, but less than 300 kilograms, of cocaine, as
20 described in s. 893.03(2)(a)4., commits the first degree
21 felony of trafficking in cocaine. A person who has been
22 convicted of the first degree felony of trafficking in cocaine
23 under this subparagraph shall be punished by life imprisonment
24 and is not eligible for statutory gain-time under s. 944.275
25 or other form of early release, other than ~~ineligible for any~~
26 ~~form of discretionary early release except~~ pardon or executive
27 clemency or conditional medical release under s. 947.149.
28 However, if the court determines that, in addition to
29 committing any act specified in this paragraph:
30 a. The person intentionally killed an individual or
31 counseled, commanded, induced, procured, or caused the

1 intentional killing of an individual and such killing was the
2 result; or
3 b. The person's conduct in committing that act led to
4 a natural, though not inevitable, lethal result,
5
6 such person commits the capital felony of trafficking in
7 cocaine, punishable as provided in ss. 775.082 and 921.142.
8 Any person sentenced for a capital felony under this paragraph
9 shall also be sentenced to pay the maximum fine provided under
10 subparagraph 1.
11 3. Any person who knowingly brings into this state 300
12 kilograms or more of cocaine, as described in s.
13 893.03(2)(a)4., and who knows that the probable result of such
14 importation would be the death of any person, commits capital
15 importation of cocaine, a capital felony punishable as
16 provided in ss. 775.082 and 921.142. Any person sentenced for
17 a capital felony under this paragraph shall also be sentenced
18 to pay the maximum fine provided under subparagraph 1.
19 (c)1. Any person who knowingly sells, purchases,
20 manufactures, delivers, or brings into this state, or who is
21 knowingly in actual or constructive possession of, 4 grams or
22 more of any morphine, opium, oxycodone, hydrocodone,
23 hydromorphone, or any salt, derivative, isomer, or salt of an
24 isomer thereof, including heroin, as described in s.
25 893.03(1)(b) or (2)(a), or 4 grams or more of any mixture
26 containing any such substance, but less than 30 kilograms of
27 such substance or mixture, commits a felony of the first
28 degree, which felony shall be known as "trafficking in illegal
29 drugs." If the quantity involved:
30 a. Is 4 grams or more, but less than 14 grams, such
31 person shall be sentenced pursuant to the Criminal Punishment

1 Code and such sentence shall include a minimum prison term of
2 3 years, and the defendant shall be ordered to pay a fine of
3 \$50,000.

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

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

12 2. Any person who knowingly sells, purchases,
13 manufactures, delivers, or brings into this state, or who is
14 knowingly in actual or constructive possession of, 30
15 kilograms or more, but less than 60 kilograms, of any
16 morphine, opium, oxycodone, hydrocodone, hydromorphone, or any
17 salt, derivative, isomer, or salt of an isomer thereof,
18 including heroin, as described in s. 893.03(1)(b) or (2)(a),
19 or 30 kilograms or more, but less than 60 kilograms, of any
20 mixture containing any such substance, commits the first
21 degree felony of trafficking in illegal drugs. A person who
22 has been convicted of the first degree felony of trafficking
23 in illegal drugs under this subparagraph shall be punished by
24 life imprisonment and is not eligible for statutory gain-time
25 under s. 944.275 or other form of early release, other than
26 ~~ineligible for any form of discretionary early release except~~
27 pardon or executive clemency or conditional medical release
28 under s. 947.149. However, if the court determines that, in
29 addition to committing any act specified in this paragraph:
30 a. The person intentionally killed an individual or
31 counseled, commanded, induced, procured, or caused the

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

- 1 a. Is 28 grams or more, but less than 200 grams, such
2 person shall be sentenced pursuant to the Criminal Punishment
3 Code and pay a fine of \$50,000.
- 4 b. Is 200 grams or more, but less than 400 grams, such
5 person shall be sentenced pursuant to the Criminal Punishment
6 Code and pay a fine of \$100,000.
- 7 c. Is 400 grams or more, but less than 800 grams, such
8 person shall be sentenced to a mandatory minimum term of
9 imprisonment of 15 calendar years and pay a fine of \$250,000.
- 10 2. Any person who knowingly brings into this state 800
11 grams or more of phencyclidine or of any mixture containing
12 phencyclidine, as described in s. 893.03(2)(b), and who knows
13 that the probable result of such importation would be the
14 death of any person commits capital importation of
15 phencyclidine, a capital felony punishable as provided in ss.
16 775.082 and 921.142. Any person sentenced for a capital felony
17 under this paragraph shall also be sentenced to pay the
18 maximum fine provided under subparagraph 1.
- 19 (e)1. Any person who knowingly sells, purchases,
20 manufactures, delivers, or brings into this state, or who is
21 knowingly in actual or constructive possession of, 200 grams
22 or more of methaqualone or of any mixture containing
23 methaqualone, as described in s. 893.03(1)(d), commits a
24 felony of the first degree, which felony shall be known as
25 "trafficking in methaqualone." If the quantity involved:
- 26 a. Is 200 grams or more, but less than 5 kilograms,
27 such person shall be sentenced pursuant to the Criminal
28 Punishment Code and pay a fine of \$50,000.
- 29 b. Is 5 kilograms or more, but less than 25 kilograms,
30 such person shall be sentenced pursuant to the Criminal
31 Punishment Code and pay a fine of \$100,000.

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

5 2. Any person who knowingly brings into this state 50
6 kilograms or more of methaqualone or of any mixture containing
7 methaqualone, as described in s. 893.03(1)(d), and who knows
8 that the probable result of such importation would be the
9 death of any person commits capital importation of
10 methaqualone, a capital felony punishable as provided in ss.
11 775.082 and 921.142. Any person sentenced for a capital felony
12 under this paragraph shall also be sentenced to pay the
13 maximum fine provided under subparagraph 1.

14 (f)1. Any person who knowingly sells, purchases,
15 manufactures, delivers, or brings into this state, or who is
16 knowingly in actual or constructive possession of, 14 grams or
17 more of amphetamine, as described in s. 893.03(2)(c)2., or
18 methamphetamine, as described in s. 893.03(2)(c)4., or of any
19 mixture containing amphetamine or methamphetamine, or
20 phenylacetone, phenylacetic acid, or ephedrine in conjunction
21 with other chemicals and equipment utilized in the manufacture
22 of amphetamine or methamphetamine, commits a felony of the
23 first degree, which felony shall be known as "trafficking in
24 amphetamine." If the quantity involved:

25 a. Is 14 grams or more, but less than 28 grams, such
26 person shall be sentenced pursuant to the Criminal Punishment
27 Code and pay a fine of \$50,000.

28 b. Is 28 grams or more, but less than 200 grams, such
29 person shall be sentenced pursuant to the Criminal Punishment
30 Code and pay a fine of \$100,000.

31

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

4 2. Any person who knowingly brings into this state 400
5 grams or more of amphetamine, as described in s.
6 893.03(2)(c)2., or methamphetamine, as described in s.
7 893.03(2)(c)4., or of any mixture containing amphetamine or
8 methamphetamine, or phenylacetone, phenylacetic acid, or
9 ephedrine in conjunction with other chemicals and equipment
10 utilized in the manufacture of amphetamine or methamphetamine,
11 and who knows that the probable result of such importation
12 would be the death of any person commits capital importation
13 of amphetamine, a capital felony punishable as provided in ss.
14 775.082 and 921.142. Any person sentenced for a capital felony
15 under this paragraph shall also be sentenced to pay the
16 maximum fine provided under subparagraph 1.

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

24 a. Is 4 grams or more but less than 14 grams, such
25 person shall be sentenced pursuant to the sentencing
26 guidelines and pay a fine of \$50,000.

27 b. Is 14 grams or more but less than 28 grams, such
28 person shall be sentenced pursuant to the sentencing
29 guidelines and pay a fine of \$100,000.

30
31

1 c. Is 28 grams or more but less than 30 kilograms,
2 such person shall be sentenced to a mandatory minimum term of
3 imprisonment of 25 calendar years and pay a fine of \$500,000.
4 2. Any person who knowingly sells, purchases,
5 manufactures, delivers, or brings into this state or who is
6 knowingly in actual or constructive possession of 30 kilograms
7 or more of flunitrazepam or any mixture containing
8 flunitrazepam as described in s. 893.03(1)(a) commits the
9 first degree felony of trafficking in flunitrazepam. A person
10 who has been convicted of the first degree felony of
11 trafficking in flunitrazepam under this subparagraph shall be
12 punished by life imprisonment and is not eligible for
13 statutory gain-time under s. 944.275 or other form of early
14 release, other than ineligible for any form of discretionary
15 ~~early release except~~ pardon or executive clemency or
16 conditional medical release under s. 947.149. However, if the
17 court determines that, in addition to committing any act
18 specified in this paragraph:
19 a. The person intentionally killed an individual or
20 counseled, commanded, induced, procured, or caused the
21 intentional killing of an individual and such killing was the
22 result; or
23 b. The person's conduct in committing that act led to
24 a natural, though not inevitable, lethal result,
25
26 such person commits the capital felony of trafficking in
27 flunitrazepam, punishable as provided in ss. 775.082 and
28 921.142. Any person sentenced for a capital felony under this
29 paragraph shall also be sentenced to pay the maximum fine
30 provided under subparagraph 1.
31

1 (2) A person acts knowingly under subsection (1) if
2 that person intends to sell, purchase, manufacture, deliver,
3 or bring into this state, or to actually or constructively
4 possess, any of the controlled substances listed in subsection
5 (1), regardless of which controlled substance listed in
6 subsection (1) is in fact sold, purchased, manufactured,
7 delivered, or brought into this state, or actually or
8 constructively possessed.

9 (3) Notwithstanding the provisions of s. 948.01, with
10 respect to any person who is found to have violated this
11 section, adjudication of guilt or imposition of sentence shall
12 not be suspended, deferred, or withheld, nor shall such person
13 be eligible for parole prior to serving the mandatory minimum
14 term of imprisonment prescribed by this section. A person
15 sentenced to a mandatory minimum term of imprisonment under
16 this section is not eligible for statutory gain-time under s.
17 944.275 or other form of early release, other than pardon or
18 executive clemency or conditional medical release under s.
19 947.149, prior to serving the minimum sentence.

20 (4) The state attorney may move the sentencing court
21 to reduce or suspend the sentence of any person who is
22 convicted of a violation of this section and who provides
23 substantial assistance in the identification, arrest, or
24 conviction of any of that person's accomplices, accessories,
25 coconspirators, or principals or of any other person engaged
26 in trafficking in controlled substances. The arresting agency
27 shall be given an opportunity to be heard in aggravation or
28 mitigation in reference to any such motion. Upon good cause
29 shown, the motion may be filed and heard in camera. The judge
30 hearing the motion may reduce or suspend the sentence if the
31

1 judge finds that the defendant rendered such substantial
2 assistance.

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

10 Section 10. For the purpose of incorporating the
11 amendment to section 893.135, Florida Statutes, in references
12 thereto, the following sections or subdivisions of Florida
13 Statutes, or Florida Statutes, 1998 Supplement, are reenacted
14 to read:

15 397.451 Background checks of service provider
16 personnel who have direct contact with unmarried minor clients
17 or clients who are developmentally disabled.--

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

30 782.04 Murder.--

31

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

5 (a) Trafficking offense prohibited by s. 893.135(1),
6
7 is murder in the third degree and constitutes a felony of the
8 second degree, punishable as provided in s. 775.082, s.
9 775.083, or s. 775.084.

10 893.1351 Lease or rent for the purpose of trafficking
11 in a controlled substance.--

12 (1) A person may not lease or rent any place,
13 structure, or part thereof, trailer, or other conveyance, with
14 the knowledge that such place, structure, trailer, or
15 conveyance will be used for the purpose of trafficking in a
16 controlled substance, as provided in s. 893.135, or the sale
17 of a controlled substance, as provided in s. 893.13.

18 903.133 Bail on appeal; prohibited for certain felony
19 convictions.--Notwithstanding the provisions of s. 903.132, no
20 person adjudged guilty of a felony of the first degree for a
21 violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s.
22 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a
23 violation of s. 794.011(2) or (3), shall be admitted to bail
24 pending review either by posttrial motion or appeal.

25 907.041 Pretrial detention and release.--

26 (4) PRETRIAL DETENTION.--

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

31

1 1. The defendant has previously violated conditions of
2 release and that no further conditions of release are
3 reasonably likely to assure the defendant's appearance at
4 subsequent proceedings;

5 2. The defendant, with the intent to obstruct the
6 judicial process, has threatened, intimidated, or injured any
7 victim, potential witness, juror, or judicial officer, or has
8 attempted or conspired to do so, and that no condition of
9 release will reasonably prevent the obstruction of the
10 judicial process;

11 3. The defendant is charged with trafficking in
12 controlled substances as defined by s. 893.135, that there is
13 a substantial probability that the defendant has committed the
14 offense, and that no conditions of release will reasonably
15 assure the defendant's appearance at subsequent criminal
16 proceedings; or

17 4. The defendant poses the threat of harm to the
18 community. The court may so conclude if it finds that the
19 defendant is presently charged with a dangerous crime, that
20 there is a substantial probability that the defendant
21 committed such crime, that the factual circumstances of the
22 crime indicate a disregard for the safety of the community,
23 and that there are no conditions of release reasonably
24 sufficient to protect the community from the risk of physical
25 harm to persons. In addition, the court must find that at
26 least one of the following conditions is present:

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

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

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

4 921.0022 Criminal Punishment Code; offense severity
5 ranking chart.--

6 (3) OFFENSE SEVERITY RANKING CHART

7	8 Florida	9 Felony	
10	11 Statute	12 Degree	13 Description
14			(g) LEVEL 7
15	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
16	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
17	409.920(2)	3rd	Medicaid provider fraud.
18	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
19	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
20	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

1	782.071	3rd	Killing of human being or viable
2			fetus by the operation of a motor
3			vehicle in a reckless manner
4			(vehicular homicide).
5	782.072	3rd	Killing of a human being by the
6			operation of a vessel in a
7			reckless manner (vessel
8			homicide).
9	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
10			causing great bodily harm or
11			disfigurement.
12	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
13			weapon.
14	784.045(1)(b)	2nd	Aggravated battery; perpetrator
15			aware victim pregnant.
16	784.048(4)	3rd	Aggravated stalking; violation of
17			injunction or court order.
18	784.07(2)(d)	1st	Aggravated battery on law
19			enforcement officer.
20	784.08(2)(a)	1st	Aggravated battery on a person 65
21			years of age or older.
22	784.081(1)	1st	Aggravated battery on specified
23			official or employee.
24	784.082(1)	1st	Aggravated battery by detained
25			person on visitor or other
26			detainee.
27	784.083(1)	1st	Aggravated battery on code
28			inspector.
29	790.07(4)	1st	Specified weapons violation
30			subsequent to previous conviction
31			of s. 790.07(1) or (2).

1	790.16(1)	1st	Discharge of a machine gun under
2			specified circumstances.
3	796.03	2nd	Procuring any person under 16
4			years for prostitution.
5	800.04	2nd	Handle, fondle, or assault child
6			under 16 years in lewd,
7			lascivious, or indecent manner.
8	806.01(2)	2nd	Maliciously damage structure by
9			fire or explosive.
10	810.02(3)(a)	2nd	Burglary of occupied dwelling;
11			unarmed; no assault or battery.
12	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
13			unarmed; no assault or battery.
14	810.02(3)(d)	2nd	Burglary of occupied conveyance;
15			unarmed; no assault or battery.
16	812.014(2)(a)	1st	Property stolen, valued at
17			\$100,000 or more; property stolen
18			while causing other property
19			damage; 1st degree grand theft.
20	812.019(2)	1st	Stolen property; initiates,
21			organizes, plans, etc., the theft
22			of property and traffics in
23			stolen property.
24	812.133(2)(b)	1st	Carjacking; no firearm, deadly
25			weapon, or other weapon.
26	825.102(3)(b)	2nd	Neglecting an elderly person or
27			disabled adult causing great
28			bodily harm, disability, or
29			disfigurement.
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1	825.1025(2)	2nd	Lewd or lascivious battery upon
2			an elderly person or disabled
3			adult.
4	825.103(2)(b)	2nd	Exploiting an elderly person or
5			disabled adult and property is
6			valued at \$20,000 or more, but
7			less than \$100,000.
8	827.03(3)(b)	2nd	Neglect of a child causing great
9			bodily harm, disability, or
10			disfigurement.
11	827.04(4)	3rd	Impregnation of a child under 16
12			years of age by person 21 years
13			of age or older.
14	837.05(2)	3rd	Giving false information about
15			alleged capital felony to a law
16			enforcement officer.
17	872.06	2nd	Abuse of a dead human body.
18	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
19			cocaine (or other drug prohibited
20			under s. 893.03(1)(a), (1)(b),
21			(1)(d), (2)(a), or (2)(b)) within
22			1,000 feet of a child care
23			facility or school.
24	893.13(1)(e)	1st	Sell, manufacture, or deliver
25			cocaine or other drug prohibited
26			under s. 893.03(1)(a), (1)(b),
27			(1)(d), (2)(a), or (2)(b), within
28			1,000 feet of property used for
29			religious services or a specified
30			business site.
31			

1	893.13(4)(a)	1st	Deliver to minor cocaine (or
2			other s. 893.03(1)(a), (1)(b),
3			(1)(d), (2)(a), or (2)(b) drugs).
4	893.135(1)(a)1.	1st	Trafficking in cannabis, more
5			than 50 lbs., less than 2,000
6			lbs.
7	893.135		
8	(1)(b)1.a.	1st	Trafficking in cocaine, more than
9			28 grams, less than 200 grams.
10	893.135		
11	(1)(c)1.a.	1st	Trafficking in illegal drugs,
12			more than 4 grams, less than 14
13			grams.
14	893.135		
15	(1)(d)1.	1st	Trafficking in phencyclidine,
16			more than 28 grams, less than 200
17			grams.
18	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
19			than 200 grams, less than 5
20			kilograms.
21	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
22			than 14 grams, less than 28
23			grams.
24	893.135		
25	(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4
26			grams or more, less than 14
27			grams.
28			(h) LEVEL 8
29	316.193		
30	(3)(c)3.a.	2nd	DUI manslaughter.
31	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.

1	777.03(2)(a)	1st	Accessory after the fact, capital
2			felony.
3	782.04(4)	2nd	Killing of human without design
4			when engaged in act or attempt of
5			any felony other than arson,
6			sexual battery, robbery,
7			burglary, kidnapping, aircraft
8			piracy, or unlawfully discharging
9			bomb.
10	782.051(2)	1st	Attempted felony murder while
11			perpetrating or attempting to
12			perpetrate a felony not
13			enumerated in s. 782.04(3).
14	782.071(2)	2nd	Committing vehicular homicide and
15			failing to render aid or give
16			information.
17	782.072(2)	2nd	Committing vessel homicide and
18			failing to render aid or give
19			information.
20	790.161(3)	1st	Discharging a destructive device
21			which results in bodily harm or
22			property damage.
23	794.011(5)	2nd	Sexual battery, victim 12 years
24			or over, offender does not use
25			physical force likely to cause
26			serious injury.
27	806.01(1)	1st	Maliciously damage dwelling or
28			structure by fire or explosive,
29			believing person in structure.
30	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
31			

1	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
2			or dangerous weapon.
3	810.02(2)(c)	1st	Burglary of a dwelling or
4			structure causing structural
5			damage or \$1,000 or more property
6			damage.
7	812.13(2)(b)	1st	Robbery with a weapon.
8	812.135(2)	1st	Home-invasion robbery.
9	825.102(2)	2nd	Aggravated abuse of an elderly
10			person or disabled adult.
11	825.103(2)(a)	1st	Exploiting an elderly person or
12			disabled adult and property is
13			valued at \$100,000 or more.
14	827.03(2)	2nd	Aggravated child abuse.
15	837.02(2)	2nd	Perjury in official proceedings
16			relating to prosecution of a
17			capital felony.
18	837.021(2)	2nd	Making contradictory statements
19			in official proceedings relating
20			to prosecution of a capital
21			felony.
22	860.121(2)(c)	1st	Shooting at or throwing any
23			object in path of railroad
24			vehicle resulting in great bodily
25			harm.
26	860.16	1st	Aircraft piracy.
27	893.13(1)(b)	1st	Sell or deliver in excess of 10
28			grams of any substance specified
29			in s. 893.03(1)(a) or (b).
30			
31			

1	893.13(2)(b)	1st	Purchase in excess of 10 grams of
2			any substance specified in s.
3			893.03(1)(a) or (b).
4	893.13(6)(c)	1st	Possess in excess of 10 grams of
5			any substance specified in s.
6			893.03(1)(a) or (b).
7	893.135(1)(a)2.	1st	Trafficking in cannabis, more
8			than 2,000 lbs., less than 10,000
9			lbs.
10	893.135		
11	(1)(b)1.b.	1st	Trafficking in cocaine, more than
12			200 grams, less than 400 grams.
13	893.135		
14	(1)(c)1.b.	1st	Trafficking in illegal drugs,
15			more than 14 grams, less than 28
16			grams.
17	893.135		
18	(1)(d)1.b.	1st	Trafficking in phencyclidine,
19			more than 200 grams, less than
20			400 grams.
21	893.135		
22	(1)(e)1.b.	1st	Trafficking in methaqualone, more
23			than 5 kilograms, less than 25
24			kilograms.
25	893.135		
26	(1)(f)1.b.	1st	Trafficking in amphetamine, more
27			than 28 grams, less than 200
28			grams.
29			
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1	893.135		
2	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
3			grams or more, less than 28
4			grams.
5	895.03(1)	1st	Use or invest proceeds derived
6			from pattern of racketeering
7			activity.
8	895.03(2)	1st	Acquire or maintain through
9			racketeering activity any
10			interest in or control of any
11			enterprise or real property.
12	895.03(3)	1st	Conduct or participate in any
13			enterprise through pattern of
14			racketeering activity.
15			(i) LEVEL 9
16	316.193		
17	(3)(c)3.b.	1st	DUI manslaughter; failing to
18			render aid or give information.
19	782.04(1)	1st	Attempt, conspire, or solicit to
20			commit premeditated murder.
21	782.04(3)	1st,PBL	Accomplice to murder in
22			connection with arson, sexual
23			battery, robbery, burglary, and
24			other specified felonies.
25	782.051(1)	1st	Attempted felony murder while
26			perpetrating or attempting to
27			perpetrate a felony enumerated in
28			s. 782.04(3).
29	782.07(2)	1st	Aggravated manslaughter of an
30			elderly person or disabled adult.
31			

1	782.07(3)	1st	Aggravated manslaughter of a
2			child.
3	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
4			reward or as a shield or hostage.
5	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
6			or facilitate commission of any
7			felony.
8	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
9			interfere with performance of any
10			governmental or political
11			function.
12	787.02(3)(a)	1st	False imprisonment; child under
13			age 13; perpetrator also commits
14			child abuse, sexual battery,
15			lewd, or lascivious act, etc.
16	790.161	1st	Attempted capital destructive
17			device offense.
18	794.011(2)	1st	Attempted sexual battery; victim
19			less than 12 years of age.
20	794.011(2)	Life	Sexual battery; offender younger
21			than 18 years and commits sexual
22			battery on a person less than 12
23			years.
24	794.011(4)	1st	Sexual battery; victim 12 years
25			or older, certain circumstances.
26	794.011(8)(b)	1st	Sexual battery; engage in sexual
27			conduct with minor 12 to 18 years
28			by person in familial or
29			custodial authority.
30	812.13(2)(a)	1st,PBL	Robbery with firearm or other
31			deadly weapon.

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

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

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

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

24
25 Prior capital felony points: If the offender has one or more
26 prior capital felonies in the offender's criminal record,
27 points shall be added to the subtotal sentence points of the
28 offender equal to twice the number of points the offender
29 receives for the primary offense and any additional offense.
30 A prior capital felony in the offender's criminal record is a
31 previous capital felony offense for which the offender has

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

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

17
18 Sentencing multipliers:

19
20 Drug trafficking: If the primary offense is drug trafficking
21 under s. 893.135, the subtotal sentence points are multiplied,
22 at the discretion of the court, for a level 7 or level 8
23 offense, by 1.5. The state attorney may move the sentencing
24 court to reduce or suspend the sentence of a person convicted
25 of a level 7 or level 8 offense, if the offender provides
26 substantial assistance as described in s. 893.135(4).

27
28 Law enforcement protection: If the primary offense is a
29 violation of the Law Enforcement Protection Act under s.
30 775.0823(2), the subtotal sentence points are multiplied by
31 2.5. If the primary offense is a violation of s. 775.0823(3),

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

6
7 Grand theft of a motor vehicle: If the primary offense is
8 grand theft of the third degree involving a motor vehicle and
9 in the offender's prior record, there are three or more grand
10 thefts of the third degree involving a motor vehicle, the
11 subtotal sentence points are multiplied by 1.5.

12
13 Criminal street gang member: If the offender is convicted of
14 the primary offense and is found to have been a member of a
15 criminal street gang at the time of the commission of the
16 primary offense pursuant to s. 874.04, the subtotal sentence
17 points are multiplied by 1.5.

18
19 Domestic violence in the presence of a child: If the offender
20 is convicted of the primary offense and the primary offense is
21 a crime of domestic violence, as defined in s. 741.28, which
22 was committed in the presence of a child under 16 years of age
23 who is a family household member as defined in s. 741.28(2)
24 with the victim or perpetrator, the subtotal sentence points
25 are multiplied, at the discretion of the court, by 1.5.

26 921.142 Sentence of death or life imprisonment for
27 capital drug trafficking felonies; further proceedings to
28 determine sentence.--

29 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon
30 conviction or adjudication of guilt of a defendant of a
31 capital felony under s. 893.135, the court shall conduct a

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

28 943.0585 Court-ordered expunction of criminal history
29 records.--The courts of this state have jurisdiction over
30 their own procedures, including the maintenance, expunction,
31 and correction of judicial records containing criminal history

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

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

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

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

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

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

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

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

30 4. Is eligible for such an expunction to the best of
31 his or her knowledge or belief and does not have any other

1 petition to expunge or any petition to seal pending before any
2 court.

3

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (h) Is not required to wait a minimum of 10 years
26 prior to being eligible for an expunction of such records
27 because all charges related to the arrest or criminal activity
28 to which the petition to expunge pertains were dismissed prior
29 to trial, adjudication, or the withholding of adjudication.
30 Otherwise, such criminal history record must be sealed under
31 this section, former s. 893.14, former s. 901.33, or former s.

1 943.058 for at least 10 years before such record is eligible
2 for expunction.

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

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

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

23 (c) For an order to expunge entered by a court prior
24 to July 1, 1992, the department shall notify the appropriate
25 state attorney or statewide prosecutor of an order to expunge
26 which is contrary to law because the person who is the subject
27 of the record has previously been convicted of a crime or
28 comparable ordinance violation or has had a prior criminal
29 history record sealed or expunged. Upon receipt of such
30 notice, the appropriate state attorney or statewide prosecutor
31 shall take action, within 60 days, to correct the record and

1 petition the court to void the order to expunge. The
2 department shall seal the record until such time as the order
3 is voided by the court.

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

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

1 retain a notation indicating compliance with an order to
2 expunge.

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

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

29 (b) Subject to the exceptions in paragraph (a), a
30 person who has been granted an expunction under this section,
31 former s. 893.14, former s. 901.33, or former s. 943.058 may

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

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

25 943.059 Court-ordered sealing of criminal history
26 records.--The courts of this state shall continue to have
27 jurisdiction over their own procedures, including the
28 maintenance, sealing, and correction of judicial records
29 containing criminal history information to the extent such
30 procedures are not inconsistent with the conditions,
31 responsibilities, and duties established by this section. Any

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

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

29 (e) Has never secured a prior sealing or expunction of
30 a criminal history record under this section, former s.
31 893.14, former s. 901.33, or former s. 943.058.

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

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

5 (a) In judicial proceedings under this section, a copy
6 of the completed petition to seal 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 seal.

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 to the
16 arresting agency. The arresting agency is responsible for
17 forwarding the order to any other agency to which the
18 arresting agency disseminated the criminal history record
19 information to which the order pertains. The department shall
20 forward the order to seal to the Federal Bureau of
21 Investigation. The clerk of the court shall certify a copy of
22 the order to any other agency which the records of the court
23 reflect has received the criminal history record from the
24 court.

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

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

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

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

27 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
28 criminal history record of a minor or an adult which is
29 ordered sealed by a court of competent jurisdiction pursuant
30 to this section is confidential and exempt from the provisions
31 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution

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

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

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

31

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~~

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. This act shall take effect July 1, 1999.
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