

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; providing
27 that the placing of a person on probation
28 without an adjudication of guilt shall be
29 treated as a prior conviction regardless of
30 when the subsequent offense was committed;
31 defining "three-time violent felony offender";

1 requiring conviction as an adult of a felony in
2 at least 2 separate and distinct incidents and
3 sentencing events; providing a category of
4 enumerated felony offenses within the
5 definition; requiring the court to sentence a
6 defendant as a three-time violent felony
7 offender and impose certain mandatory minimum
8 terms of imprisonment under specified
9 circumstances when the defendant is to be
10 sentenced for committing or attempting to
11 commit, any of the enumerated felony offenses
12 and the defendant has previously been convicted
13 of committing or attempting to commit, any two
14 of the enumerated felony offenses; providing
15 penalties; providing procedures and criteria
16 for court determination if the defendant is a
17 three-time violent felony offender; providing
18 for sentencing as a three-time violent felony
19 offender; providing mandatory term of
20 imprisonment for life when the three-time
21 violent felony offense for which the defendant
22 is to be sentenced is a felony punishable by
23 life; providing mandatory prison term of 30
24 years when the three-time violent felony
25 offense is a first degree felony; providing
26 mandatory prison term of 15 years when the
27 three-time violent felony offense is a second
28 degree felony; providing mandatory prison term
29 of 5 years when the three-time violent felony
30 offense is a third degree felony; providing for
31 construction; providing that certain sentences

1 imposed before July 1, 1999, are not subject to
2 s. 921.002, F.S., relating to the Criminal
3 Punishment Code; providing for ineligibility of
4 a three-time violent felony offender for
5 parole, control release, or early release;
6 amending ss. 784.07 and 784.08, F.S.; providing
7 minimum terms of imprisonment for persons
8 convicted of aggravated assault or aggravated
9 battery of a law enforcement officer or a
10 person 65 years of age or older; amending s.
11 790.235, F.S., relating to prohibitions
12 against, and penalties for, unlawful possession
13 or other unlawful acts involving firearm,
14 electric weapon or device, or concealed weapon
15 by a violent career criminal; conforming cross
16 references to changes made by the act; creating
17 s. 794.0115, F.S.; defining "repeat sexual
18 batterer"; providing within the definition a
19 category of enumerated felony offenses in
20 violation of s. 794.011, F.S., relating to
21 sexual battery; requiring the court to sentence
22 a defendant as a repeat sexual batterer and
23 impose a 10-year mandatory minimum term of
24 imprisonment under specified circumstances when
25 the defendant is to be sentenced for committing
26 or attempting to commit, any of the enumerated
27 felony violations of s. 794.011, F.S., and the
28 defendant has previously been convicted of
29 committing or attempting to commit, any one of
30 certain enumerated felony offenses involving
31 sexual battery; providing penalties; providing

1 procedures and criteria for court determination
2 if the defendant is a repeat sexual batterer;
3 providing for sentencing as a repeat sexual
4 batterer; providing for construction; amending
5 s. 794.011, F.S., to conform references to
6 changes made by the act; amending s. 893.135,
7 F.S.; redefining the offense of trafficking in
8 cannabis to include unlawful sale, purchase,
9 manufacture, delivery, bringing into the state,
10 or possession of cannabis in excess of 25
11 pounds or 300 cannabis plants; providing
12 mandatory minimum prison terms and mandatory
13 fine amounts for trafficking in specified
14 quantities of cannabis, cocaine, or illegal
15 drugs; providing for sentencing pursuant to the
16 Criminal Punishment Code of offenders convicted
17 of trafficking in specified quantities of
18 cannabis; providing penalties; reenacting s.
19 397.451(7), F.S., relating to the prohibition
20 against dissemination of state funds to service
21 providers convicted of certain offenses, s.
22 782.04(4)(a), F.S., relating to murder, s.
23 893.1351(1), F.S., relating to lease or rent
24 for the purpose of trafficking in a controlled
25 substance, s. 903.133, F.S., relating to the
26 prohibition against bail on appeal for certain
27 felony convictions, s. 907.041(4)(b), F.S.,
28 relating to pretrial detention and release, s.
29 921.0022(3)(g), (h), and (i), F.S., relating to
30 the Criminal Punishment Code offense severity
31 ranking chart, s. 921.0024(1)(b), F.S.,

1 relating to the Criminal Punishment Code
2 worksheet computations and scoresheets, s.
3 921.142(2), F.S., relating to sentencing for
4 capital drug trafficking felonies, s. 943.0585,
5 F.S., relating to court-ordered expunction of
6 criminal history records, and s. 943.059, F.S.,
7 relating to court-ordered sealing of criminal
8 history records, to incorporate said amendment
9 in references; amending s. 943.0535, F.S.,
10 relating to aliens and criminal records;
11 requiring clerk of the courts to furnish
12 criminal records to United States immigration
13 officers; requiring state attorney to assist
14 clerk of the courts in determining which
15 defendants are aliens; requiring the Governor
16 to place public service announcements
17 explaining the provisions of this act;
18 providing an effective date.

19
20 WHEREAS, in 1996, Florida had the highest violent crime
21 rate of any state in the nation, exceeding the national
22 average by 66 percent, and

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

29 WHEREAS, since 1988, criminals in this state have
30 committed at least 1.6 million violent crimes against
31 Floridians and visitors to this state, and

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

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

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

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

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

18 WHEREAS, the rate of incarcerated felons has declined
19 seven out of the last eight years, and

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

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

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

30 WHEREAS, the Legislature previously has found that a
31 substantial and disproportionate number of serious crimes are

1 committed in this state by a relatively small number of repeat
2 and violent felony offenders, that priority should be given to
3 the incarceration of career criminals for extended prison
4 terms, and that, in the case of violent career criminals, such
5 extended terms must include substantial minimum terms of
6 imprisonment, and

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

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

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

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

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

30 WHEREAS, a study by the RAND Corporation estimates that
31 the enforcement of this California legislation will reduce

1 serious crime in California committed by adults between 22 and
2 34 percent, and

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

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

14

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

16

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

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

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

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

- 27 a. Treason;
28 b. Murder;
29 c. Manslaughter;
30 d. Sexual battery;
31 e. Carjacking;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (1) As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 term of imprisonment, as provided in paragraph (4)(c), if it
2 finds that:

3 The defendant has previously been convicted as an adult
4 of a felony, or an attempt to commit a felony, in a minimum of
5 two distinct and separate incidents and sentencing events for:

6 a. Arson;

7 b. Sexual battery;

8 c. Robbery;

9 d. Kidnapping;

10 e. Aggravated child abuse;

11 f. Aggravated abuse of an elderly person or disabled
12 adult;

13 g. Aggravated assault;

14 h. Murder;

15 i. Manslaughter;

16 j. Aggravated manslaughter of an elderly person or
17 disabled adult;

18 k. Aggravated manslaughter of a child;

19 l. Unlawful throwing, placing, or discharging of a
20 destructive device or bomb;

21 m. Armed burglary;

22 n. Aggravated battery;

23 o. Aggravated stalking;

24 p. Home invasion/robbery;

25 q. Carjacking; or

26 r. An offense which is in violation of a law of any
27 other jurisdiction if the elements of the offense are
28 substantially similar to the elements of any felony offense
29 enumerated in sub-subparagraphs a.-q., or an attempt to commit
30 any such felony offense.

31

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.-q. 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.-r.; 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.-r., 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.-r., 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)(e) "Violent career criminal" means a defendant for
21 whom the court must impose imprisonment pursuant to paragraph
22 (4)(d)(e), 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)~~(c)~~.

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)~~(e)~~1. A person sentenced under paragraph (4)(d)~~(e)~~
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 is ineligible for any form of
26 discretionary early release, parole, or control release.

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

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

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

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

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

27 (c) In the case of aggravated assault, from a felony
28 of the third degree to a felony of the second degree.
29 Notwithstanding any other provision of law, any person
30 convicted of aggravated assault upon a law enforcement officer
31

1 shall be sentenced to a minimum term of imprisonment of 3
2 years.

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

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

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

11 784.08 Assault or battery on persons 65 years of age
12 or older; reclassification of offenses; minimum sentence.--

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

23 Section 6. Section 790.235, Florida Statutes, is
24 amended to read:

25 790.235 Possession of firearm by violent career
26 criminal unlawful; penalty.--

27 (1) Any person who meets the violent career criminal
28 criteria under s. 775.084(1)(d)(~~c~~), regardless of whether such
29 person is or has previously been sentenced as a violent career
30 criminal, who owns or has in his or her care, custody,
31 possession, or control any firearm or electric weapon or

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

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

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

25 Section 7. Section 794.0115, Florida Statutes, is
26 created to read:

27 794.0115 Repeat sexual batterers; definition;
28 procedure; enhanced penalties.--

29 (1) As used in this act, "repeat sexual batterer"
30 means a defendant for whom the court must impose a mandatory
31

1 minimum term of imprisonment, as provided in subsection (3),
2 if it finds that:

3 (a) The defendant has previously been convicted of a
4 felony or an attempt or conspiracy to commit a felony and one
5 or more of such convictions was for:

6 1. Any felony offense in violation of s.
7 794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy
8 to commit the felony offense.

9 2. A qualified offense as defined in s. 775.084(1)(e),
10 if the elements of the qualified offense are substantially
11 similar to the elements of a felony offense in violation of s.
12 794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy
13 to commit the felony offense.

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

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

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

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

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

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

4 (a) The court shall obtain and consider a presentence
5 investigation prior to the imposition of a sentence as a
6 repeat sexual batterer.

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

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

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

20 (e) For the purpose of identification of a repeat
21 sexual batterer, the court shall fingerprint the defendant
22 pursuant to s. 921.241.

23 (f) For an offense committed on or after the effective
24 date of this act, if the state attorney pursues a repeat
25 sexual batterer sanction against the defendant and the court,
26 in a separate proceeding pursuant to this subsection,
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 repeat sexual batterer, subject to
30 imprisonment pursuant to this section as provided in
31 subsection (3).

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

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

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

10 794.011 Sexual battery.--

11 (1) As used in this chapter:

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

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

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

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

28 (e) "Physically helpless" means unconscious, asleep,
29 or for any other reason physically unable to communicate
30 unwillingness to an act.

31

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

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

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

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

13 (j) "Physically incapacitated" means bodily impaired
14 or handicapped and substantially limited in ability to resist
15 or flee.

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

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

26 (3) A person who commits sexual battery upon a person
27 12 years of age or older, without that person's consent, and
28 in the process thereof uses or threatens to use a deadly
29 weapon or uses actual physical force likely to cause serious
30 personal injury commits a life felony, punishable as provided
31 in s. 775.082, s. 775.083, ~~or~~ s. 775.084, or s. 794.0115.

1 (4) A person who commits sexual battery upon a person
2 12 years of age or older without that person's consent, under
3 any of the following circumstances, commits a felony of the
4 first degree, punishable as provided in s. 775.082, s.
5 775.083, ~~or s. 775.084, or s. 794.0115~~:

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

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

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

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

21 (e) When the victim is mentally defective and the
22 offender has reason to believe this or has actual knowledge of
23 this fact.

24 (f) When the victim is physically incapacitated.

25 (g) When the offender is a law enforcement officer,
26 correctional officer, or correctional probation officer as
27 defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who
28 is certified under the provisions of s. 943.1395 or is an
29 elected official exempt from such certification by virtue of
30 s. 943.253, or any other person in a position of control or
31 authority in a probation, community control, controlled

1 release, detention, custodial, or similar setting, and such
2 officer, official, or person is acting in such a manner as to
3 lead the victim to reasonably believe that the offender is in
4 a position of control or authority as an agent or employee of
5 government.

6 (5) A person who commits sexual battery upon a person
7 12 years of age or older, without that person's consent, and
8 in the process thereof does not use physical force and
9 violence likely to cause serious personal injury commits a
10 felony of the second degree, punishable as provided in s.
11 775.082, s. 775.083, ~~or s. 775.084~~, or s. 794.0115.

12 (6) The offense described in subsection (5) is
13 included in any sexual battery offense charged under
14 subsection (3) or subsection (4).

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

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

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

28 (b) Engages in any act with that person while the
29 person is 12 years of age or older but less than 18 years of
30 age which constitutes sexual battery under paragraph (1)(h)

31

1 commits a felony of the first degree, punishable as provided
2 in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

22 Section 9. Section 893.135, Florida Statutes, is
23 amended to read:

24 893.135 Trafficking; mandatory sentences; suspension
25 or reduction of sentences; conspiracy to engage in
26 trafficking.--

27 (1) Except as authorized in this chapter or in chapter
28 499 and notwithstanding the provisions of s. 893.13:

29 (a) Any person who knowingly sells, purchases,
30 manufactures, delivers, or brings into this state, or who is
31 knowingly in actual or constructive possession of, in excess

1 of ~~25 50~~ pounds of cannabis, or in excess of 300 cannabis
2 plants, commits a felony of the first degree, which felony
3 shall be known as "trafficking in cannabis." If the quantity
4 of cannabis involved:

5 1. Is in excess of ~~25 50~~ pounds, but less than 2,000
6 pounds, or is in excess of 300 cannabis plants, but not more
7 than 2,000 cannabis plants, such person shall be sentenced
8 pursuant to the Criminal Punishment Code and such sentence
9 shall include a mandatory minimum term of imprisonment of 3
10 years, and the defendant shall be ordered to pay a fine of
11 \$25,000.

12 2. Is 2,000 pounds or more, but less than 10,000
13 pounds, or is in excess of 2,000 cannabis plants, but not more
14 than 10,000 cannabis plants, such person shall be sentenced
15 pursuant to the Criminal Punishment Code and such sentence
16 shall include a mandatory minimum term of imprisonment of 7
17 years, and the defendant shall be ordered to pay a fine of
18 \$50,000.

19 3. Is 10,000 pounds or more, or is in excess of 10,000
20 cannabis plants, such person shall be sentenced to a mandatory
21 minimum term of imprisonment of 15 calendar years and pay a
22 fine of \$200,000.

23 (b)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 cocaine, as described in s. 893.03(2)(a)4., or of any
27 mixture containing cocaine, but less than 150 kilograms of
28 cocaine or any such mixture, commits a felony of the first
29 degree, which felony shall be known as "trafficking in
30 cocaine." If the quantity involved:
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 such sentence shall include a mandatory minimum term
4 of imprisonment of 3 years, and the defendant shall be ordered
5 to pay a fine of \$50,000.

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

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

14 2. 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, 150
17 kilograms or more, but less than 300 kilograms, of cocaine, as
18 described in s. 893.03(2)(a)4., commits the first degree
19 felony of trafficking in cocaine. A person who has been
20 convicted of the first degree felony of trafficking in cocaine
21 under this subparagraph shall be punished by life imprisonment
22 and is ineligible for any form of discretionary early release
23 except pardon or executive clemency or conditional medical
24 release under s. 947.149. However, if the court determines
25 that, in addition to committing any act specified in this
26 paragraph:

27 a. The person intentionally killed an individual or
28 counseled, commanded, induced, procured, or caused the
29 intentional killing of an individual and such killing was the
30 result; or

31

1 b. The person's conduct in committing that act led to
2 a natural, though not inevitable, lethal result,
3
4 such person commits the capital felony of trafficking in
5 cocaine, punishable as provided in ss. 775.082 and 921.142.
6 Any person sentenced for a capital felony under this paragraph
7 shall also be sentenced to pay the maximum fine provided under
8 subparagraph 1.

9 3. Any person who knowingly brings into this state 300
10 kilograms or more of cocaine, as described in s.
11 893.03(2)(a)4., and who knows that the probable result of such
12 importation would be the death of any person, commits capital
13 importation of cocaine, a capital felony punishable as
14 provided in ss. 775.082 and 921.142. Any person sentenced for
15 a capital felony under this paragraph shall also be sentenced
16 to pay the maximum fine provided under subparagraph 1.

17 (c)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 any morphine, opium, oxycodone, hydrocodone,
21 hydromorphone, or any salt, derivative, isomer, or salt of an
22 isomer thereof, including heroin, as described in s.
23 893.03(1)(b) or (2)(a), or 4 grams or more of any mixture
24 containing any such substance, but less than 30 kilograms of
25 such substance or mixture, commits a felony of the first
26 degree, which felony shall be known as "trafficking in illegal
27 drugs." If the quantity involved:

28 a. Is 4 grams or more, but less than 14 grams, such
29 person shall be sentenced pursuant to the Criminal Punishment
30 Code and such sentence shall include a minimum prison term of
31

1 3 years, and the defendant shall be ordered to pay a fine of
2 \$50,000.

3 b. Is 14 grams or more, but less than 28 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 15 years, and the defendant shall be
7 ordered to pay a fine of \$100,000.

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

11 2. Any person who knowingly sells, purchases,
12 manufactures, delivers, or brings into this state, or who is
13 knowingly in actual or constructive possession of, 30
14 kilograms or more, but less than 60 kilograms, of any
15 morphine, opium, oxycodone, hydrocodone, hydromorphone, or any
16 salt, derivative, isomer, or salt of an isomer thereof,
17 including heroin, as described in s. 893.03(1)(b) or (2)(a),
18 or 30 kilograms or more, but less than 60 kilograms, of any
19 mixture containing any such substance, commits the first
20 degree felony of trafficking in illegal drugs. A person who
21 has been convicted of the first degree felony of trafficking
22 in illegal drugs under this subparagraph shall be punished by
23 life imprisonment and is ineligible for any form of
24 discretionary early release except pardon or executive
25 clemency or conditional medical release under s. 947.149.
26 However, if the court determines that, in addition to
27 committing any act specified in this paragraph:

28 a. The person intentionally killed an individual or
29 counseled, commanded, induced, procured, or caused the
30 intentional killing of an individual and such killing was the
31 result; or

1 b. The person's conduct in committing that act led to
2 a natural, though not inevitable, lethal result,
3
4 such person commits the capital felony of trafficking in
5 illegal drugs, punishable as provided in ss. 775.082 and
6 921.142. Any person sentenced for a capital felony under this
7 paragraph shall also be sentenced to pay the maximum fine
8 provided under subparagraph 1.

9 3. Any person who knowingly brings into this state 60
10 kilograms or more of any morphine, opium, oxycodone,
11 hydrocodone, hydromorphone, or any salt, derivative, isomer,
12 or salt of an isomer thereof, including heroin, as described
13 in s. 893.03(1)(b) or (2)(a), or 60 kilograms or more of any
14 mixture containing any such substance, and who knows that the
15 probable result of such importation would be the death of any
16 person, commits capital importation of illegal drugs, a
17 capital felony punishable as provided in ss. 775.082 and
18 921.142. Any person sentenced for a capital felony under this
19 paragraph shall also be sentenced to pay the maximum fine
20 provided under subparagraph 1.

21 (d)1. Any person who knowingly sells, purchases,
22 manufactures, delivers, or brings into this state, or who is
23 knowingly in actual or constructive possession of, 28 grams or
24 more of phencyclidine or of any mixture containing
25 phencyclidine, as described in s. 893.03(2)(b), commits a
26 felony of the first degree, which felony shall be known as
27 "trafficking in phencyclidine." If the quantity involved:

28 a. 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 \$50,000.

31

1 b. Is 200 grams or more, but less than 400 grams, such
2 person shall be sentenced pursuant to the Criminal Punishment
3 Code and pay a fine of \$100,000.

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

7 2. Any person who knowingly brings into this state 800
8 grams or more of phencyclidine or of any mixture containing
9 phencyclidine, as described in s. 893.03(2)(b), and who knows
10 that the probable result of such importation would be the
11 death of any person commits capital importation of
12 phencyclidine, a capital felony punishable as provided in ss.
13 775.082 and 921.142. Any person sentenced for a capital felony
14 under this paragraph shall also be sentenced to pay the
15 maximum fine provided under subparagraph 1.

16 (e)1. 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, 200 grams
19 or more of methaqualone or of any mixture containing
20 methaqualone, as described in s. 893.03(1)(d), commits a
21 felony of the first degree, which felony shall be known as
22 "trafficking in methaqualone." If the quantity involved:

23 a. Is 200 grams or more, but less than 5 kilograms,
24 such person shall be sentenced pursuant to the Criminal
25 Punishment Code and pay a fine of \$50,000.

26 b. Is 5 kilograms or more, but less than 25 kilograms,
27 such person shall be sentenced pursuant to the Criminal
28 Punishment Code and pay a fine of \$100,000.

29 c. Is 25 kilograms or more, but less than 50
30 kilograms, such person shall be sentenced to a mandatory
31

1 minimum term of imprisonment of 15 calendar years and pay a
2 fine of \$250,000.

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

12 (f)1. 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, 14 grams or
15 more of amphetamine, as described in s. 893.03(2)(c)2., or
16 methamphetamine, as described in s. 893.03(2)(c)4., or of any
17 mixture containing amphetamine or methamphetamine, or
18 phenylacetone, phenylacetic acid, or ephedrine in conjunction
19 with other chemicals and equipment utilized in the manufacture
20 of amphetamine or methamphetamine, commits a felony of the
21 first degree, which felony shall be known as "trafficking in
22 amphetamine." If the quantity involved:

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

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

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

1 2. Any person who knowingly brings into this state 400
2 grams or more of amphetamine, as described in s.
3 893.03(2)(c)2., or methamphetamine, as described in s.
4 893.03(2)(c)4., or of any mixture containing amphetamine or
5 methamphetamine, or phenylacetone, phenylacetic acid, or
6 ephedrine in conjunction with other chemicals and equipment
7 utilized in the manufacture of amphetamine or methamphetamine,
8 and who knows that the probable result of such importation
9 would be the death of any person commits capital importation
10 of amphetamine, 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 (g)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, 4 grams or
17 more of flunitrazepam or any mixture containing flunitrazepam
18 as described in s. 893.03(1)(a) commits a felony of the first
19 degree, which felony shall be known as "trafficking in
20 flunitrazepam." If the quantity involved:

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

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

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

30 2. Any person who knowingly sells, purchases,
31 manufactures, delivers, or brings into this state or who is

1 knowingly in actual or constructive possession of 30 kilograms
2 or more of flunitrazepam or any mixture containing
3 flunitrazepam as described in s. 893.03(1)(a) commits the
4 first degree felony of trafficking in flunitrazepam. A person
5 who has been convicted of the first degree felony of
6 trafficking in flunitrazepam under this subparagraph shall be
7 punished by life imprisonment and is ineligible for any form
8 of discretionary early release except pardon or executive
9 clemency or conditional medical release under s. 947.149.

10 However, if the court determines that, in addition to
11 committing any act specified in this paragraph:

12 a. The person intentionally killed an individual or
13 counseled, commanded, induced, procured, or caused the
14 intentional killing of an individual and such killing was the
15 result; or

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

18
19 such person commits the capital felony of trafficking in
20 flunitrazepam, punishable as provided in ss. 775.082 and
21 921.142. Any person sentenced for a capital felony under this
22 paragraph shall also be sentenced to pay the maximum fine
23 provided under subparagraph 1.

24 (2) A person acts knowingly under subsection (1) if
25 that person intends to sell, purchase, manufacture, deliver,
26 or bring into this state, or to actually or constructively
27 possess, any of the controlled substances listed in subsection
28 (1), regardless of which controlled substance listed in
29 subsection (1) is in fact sold, purchased, manufactured,
30 delivered, or brought into this state, or actually or
31 constructively possessed.

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

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

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

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

1 397.451 Background checks of service provider
2 personnel who have direct contact with unmarried minor clients
3 or clients who are developmentally disabled.--

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

16 782.04 Murder.--

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

21 (a) Trafficking offense prohibited by s. 893.135(1),
22
23 is murder in the third degree and constitutes a felony of the
24 second degree, punishable as provided in s. 775.082, s.
25 775.083, or s. 775.084.

26 893.1351 Lease or rent for the purpose of trafficking
27 in a controlled substance.--

28 (1) A person may not lease or rent any place,
29 structure, or part thereof, trailer, or other conveyance, with
30 the knowledge that such place, structure, trailer, or
31 conveyance will be used for the purpose of trafficking in a

1 controlled substance, as provided in s. 893.135, or the sale
2 of a controlled substance, as provided in s. 893.13.

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

10 907.041 Pretrial detention and release.--

11 (4) PRETRIAL DETENTION.--

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

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

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

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

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

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

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

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

19 921.0022 Criminal Punishment Code; offense severity
 20 ranking chart.--

21 (3) OFFENSE SEVERITY RANKING CHART

22

23 Florida	Felony	
24 Statute	Degree	Description
		(g) LEVEL 7
27 316.193(3)(c)2.	3rd	DUI resulting in serious bodily 28 injury.
29 327.35(3)(c)2.	3rd	Vessel BUI resulting in serious 30 bodily injury.
31 409.920(2)	3rd	Medicaid provider fraud.

1	494.0018(2)	1st	Conviction of any violation of
2			ss. 494.001-494.0077 in which the
3			total money and property
4			unlawfully obtained exceeded
5			\$50,000 and there were five or
6			more victims.
7	782.051(3)	2nd	Attempted felony murder of a
8			person by a person other than the
9			perpetrator or the perpetrator of
10			an attempted felony.
11	782.07(1)	2nd	Killing of a human being by the
12			act, procurement, or culpable
13			negligence of another
14			(manslaughter).
15	782.071	3rd	Killing of human being or viable
16			fetus by the operation of a motor
17			vehicle in a reckless manner
18			(vehicular homicide).
19	782.072	3rd	Killing of a human being by the
20			operation of a vessel in a
21			reckless manner (vessel
22			homicide).
23	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
24			causing great bodily harm or
25			disfigurement.
26	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
27			weapon.
28	784.045(1)(b)	2nd	Aggravated battery; perpetrator
29			aware victim pregnant.
30	784.048(4)	3rd	Aggravated stalking; violation of
31			injunction or court order.

1	784.07(2)(d)	1st	Aggravated battery on law
2			enforcement officer.
3	784.08(2)(a)	1st	Aggravated battery on a person 65
4			years of age or older.
5	784.081(1)	1st	Aggravated battery on specified
6			official or employee.
7	784.082(1)	1st	Aggravated battery by detained
8			person on visitor or other
9			detainee.
10	784.083(1)	1st	Aggravated battery on code
11			inspector.
12	790.07(4)	1st	Specified weapons violation
13			subsequent to previous conviction
14			of s. 790.07(1) or (2).
15	790.16(1)	1st	Discharge of a machine gun under
16			specified circumstances.
17	796.03	2nd	Procuring any person under 16
18			years for prostitution.
19	800.04	2nd	Handle, fondle, or assault child
20			under 16 years in lewd,
21			lascivious, or indecent manner.
22	806.01(2)	2nd	Maliciously damage structure by
23			fire or explosive.
24	810.02(3)(a)	2nd	Burglary of occupied dwelling;
25			unarmed; no assault or battery.
26	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
27			unarmed; no assault or battery.
28	810.02(3)(d)	2nd	Burglary of occupied conveyance;
29			unarmed; no assault or battery.
30			
31			

1	812.014(2)(a)	1st	Property stolen, valued at
2			\$100,000 or more; property stolen
3			while causing other property
4			damage; 1st degree grand theft.
5	812.019(2)	1st	Stolen property; initiates,
6			organizes, plans, etc., the theft
7			of property and traffics in
8			stolen property.
9	812.133(2)(b)	1st	Carjacking; no firearm, deadly
10			weapon, or other weapon.
11	825.102(3)(b)	2nd	Neglecting an elderly person or
12			disabled adult causing great
13			bodily harm, disability, or
14			disfigurement.
15	825.1025(2)	2nd	Lewd or lascivious battery upon
16			an elderly person or disabled
17			adult.
18	825.103(2)(b)	2nd	Exploiting an elderly person or
19			disabled adult and property is
20			valued at \$20,000 or more, but
21			less than \$100,000.
22	827.03(3)(b)	2nd	Neglect of a child causing great
23			bodily harm, disability, or
24			disfigurement.
25	827.04(4)	3rd	Impregnation of a child under 16
26			years of age by person 21 years
27			of age or older.
28	837.05(2)	3rd	Giving false information about
29			alleged capital felony to a law
30			enforcement officer.
31	872.06	2nd	Abuse of a dead human body.

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

1	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
2			than 200 grams, less than 5
3			kilograms.
4	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
5			than 14 grams, less than 28
6			grams.
7	893.135		
8	(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4
9			grams or more, less than 14
10			grams.
11			(h) LEVEL 8
12	316.193		
13	(3)(c)3.a.	2nd	DUI manslaughter.
14	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
15	777.03(2)(a)	1st	Accessory after the fact, capital
16			felony.
17	782.04(4)	2nd	Killing of human without design
18			when engaged in act or attempt of
19			any felony other than arson,
20			sexual battery, robbery,
21			burglary, kidnapping, aircraft
22			piracy, or unlawfully discharging
23			bomb.
24	782.051(2)	1st	Attempted felony murder while
25			perpetrating or attempting to
26			perpetrate a felony not
27			enumerated in s. 782.04(3).
28	782.071(2)	2nd	Committing vehicular homicide and
29			failing to render aid or give
30			information.
31			

1	782.072(2)	2nd	Committing vessel homicide and
2			failing to render aid or give
3			information.
4	790.161(3)	1st	Discharging a destructive device
5			which results in bodily harm or
6			property damage.
7	794.011(5)	2nd	Sexual battery, victim 12 years
8			or over, offender does not use
9			physical force likely to cause
10			serious injury.
11	806.01(1)	1st	Maliciously damage dwelling or
12			structure by fire or explosive,
13			believing person in structure.
14	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
15	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
16			or dangerous weapon.
17	810.02(2)(c)	1st	Burglary of a dwelling or
18			structure causing structural
19			damage or \$1,000 or more property
20			damage.
21	812.13(2)(b)	1st	Robbery with a weapon.
22	812.135(2)	1st	Home-invasion robbery.
23	825.102(2)	2nd	Aggravated abuse of an elderly
24			person or disabled adult.
25	825.103(2)(a)	1st	Exploiting an elderly person or
26			disabled adult and property is
27			valued at \$100,000 or more.
28	827.03(2)	2nd	Aggravated child abuse.
29	837.02(2)	2nd	Perjury in official proceedings
30			relating to prosecution of a
31			capital felony.

1	837.021(2)	2nd	Making contradictory statements
2			in official proceedings relating
3			to prosecution of a capital
4			felony.
5	860.121(2)(c)	1st	Shooting at or throwing any
6			object in path of railroad
7			vehicle resulting in great bodily
8			harm.
9	860.16	1st	Aircraft piracy.
10	893.13(1)(b)	1st	Sell or deliver in excess of 10
11			grams of any substance specified
12			in s. 893.03(1)(a) or (b).
13	893.13(2)(b)	1st	Purchase in excess of 10 grams of
14			any substance specified in s.
15			893.03(1)(a) or (b).
16	893.13(6)(c)	1st	Possess in excess of 10 grams of
17			any substance specified in s.
18			893.03(1)(a) or (b).
19	893.135(1)(a)2.	1st	Trafficking in cannabis, more
20			than 2,000 lbs., less than 10,000
21			lbs.
22	893.135		
23	(1)(b)1.b.	1st	Trafficking in cocaine, more than
24			200 grams, less than 400 grams.
25	893.135		
26	(1)(c)1.b.	1st	Trafficking in illegal drugs,
27			more than 14 grams, less than 28
28			grams.
29			
30			
31			

1	893.135		
2	(1)(d)1.b.	1st	Trafficking in phencyclidine,
3			more than 200 grams, less than
4			400 grams.
5	893.135		
6	(1)(e)1.b.	1st	Trafficking in methaqualone, more
7			than 5 kilograms, less than 25
8			kilograms.
9	893.135		
10	(1)(f)1.b.	1st	Trafficking in amphetamine, more
11			than 28 grams, less than 200
12			grams.
13	893.135		
14	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
15			grams or more, less than 28
16			grams.
17	895.03(1)	1st	Use or invest proceeds derived
18			from pattern of racketeering
19			activity.
20	895.03(2)	1st	Acquire or maintain through
21			racketeering activity any
22			interest in or control of any
23			enterprise or real property.
24	895.03(3)	1st	Conduct or participate in any
25			enterprise through pattern of
26			racketeering activity.
27			(i) LEVEL 9
28	316.193		
29	(3)(c)3.b.	1st	DUI manslaughter; failing to
30			render aid or give information.
31			

1	782.04(1)	1st	Attempt, conspire, or solicit to
2			commit premeditated murder.
3	782.04(3)	1st,PBL	Accomplice to murder in
4			connection with arson, sexual
5			battery, robbery, burglary, and
6			other specified felonies.
7	782.051(1)	1st	Attempted felony murder while
8			perpetrating or attempting to
9			perpetrate a felony enumerated in
10			s. 782.04(3).
11	782.07(2)	1st	Aggravated manslaughter of an
12			elderly person or disabled adult.
13	782.07(3)	1st	Aggravated manslaughter of a
14			child.
15	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
16			reward or as a shield or hostage.
17	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
18			or facilitate commission of any
19			felony.
20	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
21			interfere with performance of any
22			governmental or political
23			function.
24	787.02(3)(a)	1st	False imprisonment; child under
25			age 13; perpetrator also commits
26			child abuse, sexual battery,
27			lewd, or lascivious act, etc.
28	790.161	1st	Attempted capital destructive
29			device offense.
30	794.011(2)	1st	Attempted sexual battery; victim
31			less than 12 years of age.

1	794.011(2)	Life	Sexual battery; offender younger
2			than 18 years and commits sexual
3			battery on a person less than 12
4			years.
5	794.011(4)	1st	Sexual battery; victim 12 years
6			or older, certain circumstances.
7	794.011(8)(b)	1st	Sexual battery; engage in sexual
8			conduct with minor 12 to 18 years
9			by person in familial or
10			custodial authority.
11	812.13(2)(a)	1st,PBL	Robbery with firearm or other
12			deadly weapon.
13	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
14			deadly weapon.
15	847.0145(1)	1st	Selling, or otherwise
16			transferring custody or control,
17			of a minor.
18	847.0145(2)	1st	Purchasing, or otherwise
19			obtaining custody or control, of
20			a minor.
21	859.01	1st	Poisoning food, drink, medicine,
22			or water with intent to kill or
23			injure another person.
24	893.135	1st	Attempted capital trafficking
25			offense.
26	893.135(1)(a)3.	1st	Trafficking in cannabis, more
27			than 10,000 lbs.
28	893.135		
29	(1)(b)1.c.	1st	Trafficking in cocaine, more than
30			400 grams, less than 150
31			kilograms.

1	893.135		
2	(1)(c)1.c.	1st	Trafficking in illegal drugs,
3			more than 28 grams, less than 30
4			kilograms.
5	893.135		
6	(1)(d)1.c.	1st	Trafficking in phencyclidine,
7			more than 400 grams.
8	893.135		
9	(1)(e)1.c.	1st	Trafficking in methaqualone, more
10			than 25 kilograms.
11	893.135		
12	(1)(f)1.c.	1st	Trafficking in amphetamine, more
13			than 200 grams.
14			(j) LEVEL 10
15	782.04(2)	1st,PBL	Unlawful killing of human; act is
16			homicide, unpremeditated.
17	787.01(1)(a)3.	1st,PBL	Kidnapping; inflict bodily harm
18			upon or terrorize victim.
19	787.01(3)(a)	Life	Kidnapping; child under age 13,
20			perpetrator also commits child
21			abuse, sexual battery, lewd, or
22			lascivious act, etc.
23	794.011(3)	Life	Sexual battery; victim 12 years
24			or older, offender uses or
25			threatens to use deadly weapon or
26			physical force to cause serious
27			injury.
28	876.32	1st	Treason against the state.
29	921.0024	Criminal Punishment Code; worksheet	
30	computations; scoresheets.--		
31	(1)		

(b) WORKSHEET KEY:

1
2
3 Legal status points are assessed when any form of legal status
4 existed at the time the offender committed an offense before
5 the court for sentencing. Four (4) sentence points are
6 assessed for an offender's legal status.

7
8 Community sanction violation points are assessed when a
9 community sanction violation is before the court for
10 sentencing. Six (6) sentence points are assessed for each
11 community sanction violation, and each successive community
12 sanction violation; however, if the community sanction
13 violation includes a new felony conviction before the
14 sentencing court, twelve (12) community sanction violation
15 points are assessed for such violation, and for each
16 successive community sanction violation involving a new felony
17 conviction. Multiple counts of community sanction violations
18 before the sentencing court shall not be a basis for
19 multiplying the assessment of community sanction violation
20 points.

21
22 Prior serious felony points: If the offender has a primary
23 offense or any additional offense ranked in level 8, level 9,
24 or level 10, and one or more prior serious felonies, a single
25 assessment of 30 points shall be added. For purposes of this
26 section, a prior serious felony is an offense in the
27 offender's prior record that is ranked in level 8, level 9, or
28 level 10 under s. 921.0022 or s. 921.0023 and for which the
29 offender is serving a sentence of confinement, supervision, or
30 other sanction or for which the offender's date of release
31 from confinement, supervision, or other sanction, whichever is

1 later, is within 3 years before the date the primary offense
2 or any additional offense was committed.

3

4 Prior capital felony points: If the offender has one or more
5 prior capital felonies in the offender's criminal record,
6 points shall be added to the subtotal sentence points of the
7 offender equal to twice the number of points the offender
8 receives for the primary offense and any additional offense.
9 A prior capital felony in the offender's criminal record is a
10 previous capital felony offense for which the offender has
11 entered a plea of nolo contendere or guilty or has been found
12 guilty; or a felony in another jurisdiction which is a capital
13 felony in that jurisdiction, or would be a capital felony if
14 the offense were committed in this state.

15

16 Possession of a firearm, semiautomatic firearm, or machine
17 gun: If the offender is convicted of committing or attempting
18 to commit any felony other than those enumerated in s.
19 775.087(2) while having in his possession: a firearm as
20 defined in s. 790.001(6), an additional 18 sentence points are
21 assessed; or if the offender is convicted of committing or
22 attempting to commit any felony other than those enumerated in
23 s. 775.087(3) while having in his possession a semiautomatic
24 firearm as defined in s. 775.087(3) or a machine gun as
25 defined in s. 790.001(9), an additional 25 sentence points are
26 assessed.

27

28 Sentencing multipliers:

29

30 Drug trafficking: If the primary offense is drug trafficking
31 under s. 893.135, the subtotal sentence points are multiplied,

1 at the discretion of the court, for a level 7 or level 8
2 offense, by 1.5. The state attorney may move the sentencing
3 court to reduce or suspend the sentence of a person convicted
4 of a level 7 or level 8 offense, if the offender provides
5 substantial assistance as described in s. 893.135(4).

6
7 Law enforcement protection: If the primary offense is a
8 violation of the Law Enforcement Protection Act under s.
9 775.0823(2), the subtotal sentence points are multiplied by
10 2.5. If the primary offense is a violation of s. 775.0823(3),
11 (4), (5), (6), (7), or (8), the subtotal sentence points are
12 multiplied by 2.0. If the primary offense is a violation of s.
13 784.07(3) or s. 775.0875(1), or of the Law Enforcement
14 Protection Act under s. 775.0823(9) or (10), the subtotal
15 sentence points are multiplied by 1.5.

16
17 Grand theft of a motor vehicle: If the primary offense is
18 grand theft of the third degree involving a motor vehicle and
19 in the offender's prior record, there are three or more grand
20 thefts of the third degree involving a motor vehicle, the
21 subtotal sentence points are multiplied by 1.5.

22
23 Criminal street gang member: If the offender is convicted of
24 the primary offense and is found to have been a member of a
25 criminal street gang at the time of the commission of the
26 primary offense pursuant to s. 874.04, the subtotal sentence
27 points are multiplied by 1.5.

28
29 Domestic violence in the presence of a child: If the offender
30 is convicted of the primary offense and the primary offense is
31 a crime of domestic violence, as defined in s. 741.28, which

1 was committed in the presence of a child under 16 years of age
2 who is a family household member as defined in s. 741.28(2)
3 with the victim or perpetrator, the subtotal sentence points
4 are multiplied, at the discretion of the court, by 1.5.

5 921.142 Sentence of death or life imprisonment for
6 capital drug trafficking felonies; further proceedings to
7 determine sentence.--

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

1 any hearsay statements. However, this subsection shall not be
2 construed to authorize the introduction of any evidence
3 secured in violation of the Constitution of the United States
4 or the Constitution of the State of Florida. The state and the
5 defendant or the defendant's counsel shall be permitted to
6 present argument for or against sentence of death.

7 943.0585 Court-ordered expunction of criminal history
8 records.--The courts of this state have jurisdiction over
9 their own procedures, including the maintenance, expunction,
10 and correction of judicial records containing criminal history
11 information to the extent such procedures are not inconsistent
12 with the conditions, responsibilities, and duties established
13 by this section. Any court of competent jurisdiction may
14 order a criminal justice agency to expunge the criminal
15 history record of a minor or an adult who complies with the
16 requirements of this section. The court shall not order a
17 criminal justice agency to expunge a criminal history record
18 until the person seeking to expunge a criminal history record
19 has applied for and received a certificate of eligibility for
20 expunction pursuant to subsection (2). A criminal history
21 record that relates to a violation of chapter 794, s. 800.04,
22 s. 817.034, s. 827.071, chapter 839, s. 893.135, or a
23 violation enumerated in s. 907.041 may not be expunged,
24 without regard to whether adjudication was withheld, if the
25 defendant was found guilty of or pled guilty or nolo
26 contendere to the offense, or if the defendant, as a minor,
27 was found to have committed, or pled guilty or nolo contendere
28 to committing, the offense as a delinquent act. The court may
29 only order expunction of a criminal history record pertaining
30 to one arrest or one incident of alleged criminal activity,
31 except as provided in this section. The court may, at its sole

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

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

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

26 (b) The petitioner's sworn statement attesting that
27 the petitioner:

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

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

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

9 4. Is eligible for such an expunction to the best of
10 his or her knowledge or belief and does not have any other
11 petition to expunge or any petition to seal pending before any
12 court.

13
14 Any person who knowingly provides false information on such
15 sworn statement to the court commits a felony of the third
16 degree, punishable as provided in s. 775.082, s. 775.083, or
17 s. 775.084.

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

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

31

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

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

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

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

19 (c) Has submitted to the department a certified copy
20 of the disposition of the charge to which the petition to
21 expunge pertains.

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

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

30
31

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

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

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

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

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

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

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

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

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

1 required by this section or such order does not otherwise
2 comply with the requirements of this section.

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

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

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

1 used by such contractor or licensee in a sensitive position
2 having direct contact with children, the developmentally
3 disabled, the aged, or the elderly as provided in s.
4 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
5 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
6 415.1075(4), s. 985.407, or chapter 400; or

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

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

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

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

8 943.059 Court-ordered sealing of criminal history
9 records.--The courts of this state shall continue to have
10 jurisdiction over their own procedures, including the
11 maintenance, sealing, and correction of judicial records
12 containing criminal history information to the extent such
13 procedures are not inconsistent with the conditions,
14 responsibilities, and duties established by this section. Any
15 court of competent jurisdiction may order a criminal justice
16 agency to seal the criminal history record of a minor or an
17 adult who complies with the requirements of this section. The
18 court shall not order a criminal justice agency to seal a
19 criminal history record until the person seeking to seal a
20 criminal history record has applied for and received a
21 certificate of eligibility for sealing pursuant to subsection
22 (2). A criminal history record that relates to a violation of
23 chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839,
24 s. 893.135, or a violation enumerated in s. 907.041 may not be
25 sealed, without regard to whether adjudication was withheld,
26 if the defendant was found guilty of or pled guilty or nolo
27 contendere to the offense, or if the defendant, as a minor,
28 was found to have committed or pled guilty or nolo contendere
29 to committing the offense as a delinquent act. The court may
30 only order sealing of a criminal history record pertaining to
31 one arrest or one incident of alleged criminal activity,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 1. Is a candidate for employment with a criminal
29 justice agency;

30 2. Is a defendant in a criminal prosecution;

31

1 3. Concurrently or subsequently petitions for relief
2 under this section or s. 943.0585;

3 4. Is a candidate for admission to The Florida Bar;

4 5. Is seeking to be employed or licensed by or to
5 contract with the Department of Children and Family Services
6 or the Department of Juvenile Justice or to be employed or
7 used by such contractor or licensee in a sensitive position
8 having direct contact with children, the developmentally
9 disabled, the aged, or the elderly as provided in s.

10 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
11 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
12 415.103, s. 985.407, or chapter 400; or

13 6. Is seeking to be employed or licensed by the Office
14 of Teacher Education, Certification, Staff Development, and
15 Professional Practices of the Department of Education, any
16 district school board, or any local governmental entity which
17 licenses child care facilities.

18 (b) Subject to the exceptions in paragraph (a), a
19 person who has been granted a sealing under this section,
20 former s. 893.14, former s. 901.33, or former s. 943.058 may
21 not be held under any provision of law of this state to commit
22 perjury or to be otherwise liable for giving a false statement
23 by reason of such person's failure to recite or acknowledge a
24 sealed criminal history record.

25 (c) Information relating to the existence of a sealed
26 criminal record provided in accordance with the provisions of
27 paragraph (a) is confidential and exempt from the provisions
28 of s. 119.07(1) and s. 24(a), Art. I of the State
29 Constitution, except that the department shall disclose the
30 sealed criminal history record to the entities set forth in
31 subparagraphs (a)1., 4., 5., and 6. for their respective

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

12 Section 11. Section 943.0535, Florida Statutes, is
13 amended to read:

14 943.0535 Aliens, criminal records.--~~Upon the official~~
15 ~~request of the United States immigration officer in charge of~~
16 ~~the territory or district in which is located any court~~
17 ~~committing an alien, for the conviction of a felony or a~~
18 ~~misdemeanor, to any state or county institution which is~~
19 ~~supported, wholly or in part, by public funds,~~It shall be the
20 duty of the clerk of ~~such~~ court to furnish without charge a
21 certified copy of the complaint, information, or indictment
22 and the judgment and sentence and any other record pertaining
23 to the case of any the convicted alien to the United States
24 immigration officer in charge of the territory or district in
25 which the court is located in every case in which an alien is
26 convicted of a felony or misdemeanor or enters a plea of
27 guilty or nolo contendere to any felony or misdemeanor charge.
28 The state attorney shall assist the clerk of the court in
29 determining if a defendant entering a plea or is convicted is
30 an alien.

31

1 Section 12. In order to inform the public and to deter
2 and prevent crime in the state, the Executive Office of the
3 Governor shall place public service announcements in visible
4 local media throughout the state explaining the penalties
5 provided in this act.

6 Section 13. This act shall take effect July 1, 1999.
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