

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 removing certain requirements that, in order to

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

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

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

1 prohibition against bail on appeal for certain
2 felony convictions, s. 907.041(4)(b), F.S.,
3 relating to pretrial detention and release, s.
4 921.0022(3)(g), (h), and (i), F.S., relating to
5 the Criminal Punishment Code offense severity
6 ranking chart, s. 921.0024(1)(b), F.S.,
7 relating to the Criminal Punishment Code
8 worksheet computations and scoresheets, s.
9 921.142(2), F.S., relating to sentencing for
10 capital drug trafficking felonies, s. 943.0585,
11 F.S., relating to court-ordered expunction of
12 criminal history records, and s. 943.059, F.S.,
13 relating to court-ordered sealing of criminal
14 history records, to incorporate said amendment
15 in references; amending s. 943.0535, F.S.,
16 relating to aliens and criminal records;
17 requiring clerk of the courts to furnish
18 criminal records to United States immigration
19 officers; requiring state attorney to assist
20 clerk of the courts in determining which
21 defendants are aliens; requiring the Governor
22 to place public service announcements
23 explaining the provisions of this act;
24 providing an effective date.

25
26 WHEREAS, in 1996, Florida had the highest violent crime
27 rate of any state in the nation, exceeding the national
28 average by 66 percent, and

29 WHEREAS, although this state possessed the highest
30 state violent crime rate in 1996 in the nation, the
31 incarceration rate in this state in 1996 was less than the

1 incarceration rate in at least eleven other states, all of
2 which had a lower violent crime rate than the rate in this
3 state, and

4 WHEREAS, since 1988, criminals in this state have
5 committed at least 1.6 million violent crimes against
6 Floridians and visitors to this state, and

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

9 WHEREAS, in fiscal year 1996-1997, over 16,000 violent
10 felons in this state were sentenced to probation, community
11 control, and other punishments that did not incarcerate the
12 violent felon for the maximum prison term authorized by law,
13 and

14 WHEREAS, during that same fiscal year, less than 9,900
15 violent felons were sentenced to prison, while during that
16 same period criminals committed approximately 150,000 violent
17 felonies, and

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

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

24 WHEREAS, the rate of incarcerated felons has declined
25 seven out of the last eight years, and

26 WHEREAS, since fiscal year 1993-1994, the per capita
27 prison population rate in this state has increased 10 percent
28 and the proportion of violent offenders incarcerated in state
29 prison has increased 5 percent, and

30 WHEREAS, since 1995, the Florida Legislature has
31 enacted stronger criminal punishment laws, including requiring

1 all prisoners to serve 85 percent of their court-imposed
2 sentences, and

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

5 WHEREAS, the Legislature previously has found that a
6 substantial and disproportionate number of serious crimes are
7 committed in this state by a relatively small number of repeat
8 and violent felony offenders, that priority should be given to
9 the incarceration of career criminals for extended prison
10 terms, and that, in the case of violent career criminals, such
11 extended terms must include substantial minimum terms of
12 imprisonment, and

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

18 WHEREAS, to be sentenced as a "violent career
19 criminal," a felon must be convicted of at least four violent,
20 forcible, or serious felonies and must have served a prison
21 term, and

22 WHEREAS, current law does not require the courts to
23 impose mandatory prison terms on violent felons who commit
24 three violent felonies, and these three-time violent felony
25 offenders should be sentenced to mandatory maximum prison
26 terms to protect citizens of this state and visitors, and

27 WHEREAS, studies such as the recent report issued by
28 the National Center for Policy Analysis, "Does punishment
29 deter?", indicate that recent crime rates have declined
30 because of the increasing number of incarcerated felons, and
31

1 WHEREAS, since California enacted "three strike"
2 legislation in 1994 that requires courts to impose mandatory
3 prison terms on repeat felony offenders convicted of three
4 serious crimes, that state has experienced significant
5 reductions in violent crime, and overall crime rates, and

6 WHEREAS, a study by the RAND Corporation estimates that
7 the enforcement of this California legislation will reduce
8 serious crime in California committed by adults between 22 and
9 34 percent, and

10 WHEREAS, the enactment and enforcement of legislation
11 in Florida that requires courts to impose mandatory prison
12 terms on three-time violent felony offenders will improve
13 public safety by incapacitating repeat offenders who are most
14 likely to murder, rape, rob, or assault innocent victims in
15 our communities, and

16 WHEREAS, imposing mandatory prison terms on three-time
17 violent felony offenders will prevent such offenders from
18 committing more crimes in our communities, and likely
19 accelerate recent declines in the violent crime rate in this
20 state, NOW, THEREFORE,

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. This act may be cited as the "Three-Strike
25 Violent Felony Offender Act."

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

29 775.082 Penalties; applicability of sentencing
30 structures; mandatory minimum sentences for certain
31 reoffenders previously released from prison.--

1 (9)(a)1. "Prison releasee reoffender" means any
2 defendant who commits, or attempts to commit:
3 a. Treason;
4 b. Murder;
5 c. Manslaughter;
6 d. Sexual battery;
7 e. Carjacking;
8 f. Home-invasion robbery;
9 g. Robbery;
10 h. Arson;
11 i. Kidnapping;
12 j. Aggravated assault with a deadly weapon;
13 k. Aggravated battery;
14 l. Aggravated stalking;
15 m. Aircraft piracy;
16 n. Unlawful throwing, placing, or discharging of a
17 destructive device or bomb;
18 o. Any felony that involves the use or threat of
19 physical force or violence against an individual;
20 p. Armed burglary;
21 q. Burglary of an occupied structure or dwelling; or
22 r. Any felony violation of s. 790.07, s. 800.04, s.
23 827.03, or s. 827.071;

24
25 within 3 years of being released from a state correctional
26 facility operated by the Department of Corrections or a
27 private vendor.

28 2. "Prison releasee reoffender" also means any
29 defendant who commits or attempts to commit any offense listed
30 in subparagraph (a)1.a.-r. while the defendant was serving a
31 prison sentence or on escape status from a state correctional

1 facility operated by the Department of Corrections or a
2 private vendor.

3 ~~3.2.~~ If the state attorney determines that a defendant
4 is a prison releasee reoffender as defined in subparagraph 1.,
5 the state attorney may seek to have the court sentence the
6 defendant as a prison releasee reoffender. Upon proof from the
7 state attorney that establishes by a preponderance of the
8 evidence that a defendant is a prison releasee reoffender as
9 defined in this section, such defendant is not eligible for
10 sentencing under the sentencing guidelines and must be
11 sentenced as follows:

12 a. For a felony punishable by life, by a term of
13 imprisonment for life;

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

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

18 d. For a felony of the third degree, by a term of
19 imprisonment of 5 years.

20 (d)1. It is the intent of the Legislature that
21 offenders previously released from prison who meet the
22 criteria in paragraph (a) be punished to the fullest extent of
23 the law and as provided in this subsection, unless the state
24 attorney determines that ~~any of the following circumstances~~
25 ~~exist:~~

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

28 ~~b. The testimony of a material witness cannot be~~
29 ~~obtained;~~

30
31

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

4 ~~d. other~~ extenuating circumstances exist which
5 preclude the just prosecution of the offender, including
6 whether the victim recommends that the offender be sentenced
7 as provided in this subsection.

8 2. For every case in which the offender meets the
9 criteria in paragraph (a) and does not receive the mandatory
10 minimum prison sentence, the state attorney must explain the
11 sentencing deviation in writing and place such explanation in
12 the case file maintained by the state attorney. On a quarterly
13 basis, each state attorney shall submit copies of deviation
14 memoranda regarding offenses committed on or after the
15 effective date of this subsection, to the president of the
16 Florida Prosecuting Attorneys Association, Inc. The
17 association must maintain such information, and make such
18 information available to the public upon request, for at least
19 a 10-year period.

20 Section 3. Section 775.084, Florida Statutes, 1998
21 Supplement, is amended to read:

22 775.084 Violent career criminals; habitual felony
23 offenders and habitual violent felony offenders; three-time
24 violent felony offenders; definitions; procedure; enhanced
25 penalties or mandatory minimum prison terms.--

26 (1) As used in this act:

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

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

4 2. The felony for which the defendant is to be
5 sentenced was committed:

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

10 b. Within 5 years of the date of the conviction of the
11 defendant's last prior felony or other qualified offense, or
12 within 5 years of the defendant's release from a prison
13 sentence, probation, community control, control release,
14 conditional release, parole or court-ordered or lawfully
15 imposed supervision or other sentence that is ~~commitment~~
16 imposed as a result of a prior conviction for a felony or
17 other qualified offense, whichever is later.

18 3. The felony for which the defendant is to be
19 sentenced, and one of the two prior felony convictions, is not
20 a violation of s. 893.13 relating to the purchase or the
21 possession of a controlled substance.

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

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

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

- 1 1. The defendant has previously been convicted of a
2 felony or an attempt or conspiracy to commit a felony and one
3 or more of such convictions was for:
- 4 a. Arson;
 - 5 b. Sexual battery;
 - 6 c. Robbery;
 - 7 d. Kidnapping;
 - 8 e. Aggravated child abuse;
 - 9 f. Aggravated abuse of an elderly person or disabled
10 adult;
 - 11 g. Aggravated assault with a deadly weapon;
 - 12 h. Murder;
 - 13 i. Manslaughter;
 - 14 j. Aggravated manslaughter of an elderly person or
15 disabled adult;
 - 16 k. Aggravated manslaughter of a child;
 - 17 l. Unlawful throwing, placing, or discharging of a
18 destructive device or bomb;
 - 19 m. Armed burglary;
 - 20 n. Aggravated battery; or
 - 21 o. Aggravated stalking.
- 22 2. The felony for which the defendant is to be
23 sentenced was committed:
- 24 a. While the defendant was serving a prison sentence
25 or other sentence, or court-ordered or lawfully imposed
26 supervision that is ~~commitment~~ imposed as a result of a prior
27 conviction for an enumerated felony; or
 - 28 b. Within 5 years of the date of the conviction of the
29 last prior enumerated felony, or within 5 years of the
30 defendant's release from a prison sentence, probation,
31 community control, control release, conditional release,

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

4 3. The defendant has not received a pardon on the
5 ground of innocence for any crime that is necessary for the
6 operation of this paragraph.

7 4. A conviction of a crime necessary to the operation
8 of this paragraph has not been set aside in any postconviction
9 proceeding.

10 (c) "Three-time violent felony offender" means a
11 defendant for whom the court must impose a mandatory minimum
12 term of imprisonment, as provided in paragraph (4)(c), if it
13 finds that:

14 1. The defendant has previously been convicted as an
15 adult of a felony, or an attempt to commit a felony, in a
16 minimum of two distinct and separate incidents and sentencing
17 events for:

18 a. Arson;

19 b. Sexual battery;

20 c. Robbery;

21 d. Kidnapping;

22 e. Aggravated child abuse;

23 f. Aggravated abuse of an elderly person or disabled

24 adult;

25 g. Aggravated assault with a deadly weapon;

26 h. Murder;

27 i. Manslaughter;

28 j. Aggravated manslaughter of an elderly person or
29 disabled adult;

30 k. Aggravated manslaughter of a child;

31

1 1. Unlawful throwing, placing, or discharging of a
2 destructive device or bomb;
3 m. Armed burglary;
4 n. Aggravated battery;
5 o. Aggravated stalking;
6 p. Home invasion/robbery;
7 q. Carjacking; or
8 r. An offense which is in violation of a law of any
9 other jurisdiction if the elements of the offense are
10 substantially similar to the elements of any felony offense
11 enumerated in sub-subparagraphs a.-q., or an attempt to commit
12 any such felony offense.

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

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

19 b. Within 5 years after the date of the conviction of
20 the last prior offense enumerated in sub-subparagraphs
21 1.a.-r., or within 5 years after the defendant's release from
22 a prison sentence, probation, community control, or other
23 sentence imposed as a result of a prior conviction for any
24 offense enumerated in sub-subparagraphs 1.a.-r., whichever is
25 later.

26 3. 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 paragraph.

29 4. A conviction of a crime necessary to the operation
30 of this paragraph has not been set aside in any postconviction
31 proceeding.

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

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

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

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

10 c. Aggravated child abuse, as described in s.
11 827.03(2);

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

14 e. Lewd, lascivious, or indecent conduct, as described
15 in s. 800.04;

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

17 g. A felony violation of chapter 790 involving the use
18 or possession of a firearm.

19 2. The defendant has been incarcerated in a state
20 prison or a federal prison.

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

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

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

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

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

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

10 (e)~~(d)~~ "Qualified offense" means any offense,
11 substantially similar in elements and penalties to an offense
12 in this state, which is in violation of a law of any other
13 jurisdiction, whether that of another state, the District of
14 Columbia, the United States or any possession or territory
15 thereof, or any foreign jurisdiction, that was punishable
16 under the law of such jurisdiction at the time of its
17 commission by the defendant by death or imprisonment exceeding
18 1 year.

19 (2) For the purposes of this section, the placing of a
20 person on probation or community control without an
21 adjudication of guilt shall be treated as a prior conviction
22 ~~if the subsequent offense for which the person is to be~~
23 ~~sentenced was committed during such period of probation or~~
24 ~~community control.~~

25 (3)(a) In a separate proceeding, the court shall
26 determine if the defendant is a habitual felony offender or a
27 habitual violent felony offender. The procedure shall be as
28 follows:

29 1. The court shall obtain and consider a presentence
30 investigation prior to the imposition of a sentence as a
31

1 habitual felony offender or a habitual violent felony
2 offender.

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

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

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

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

19 6. For an offense committed on or after October 1,
20 1995, if the state attorney pursues a habitual felony offender
21 sanction or a habitual violent felony offender sanction
22 against the defendant and the court, in a separate proceeding
23 pursuant to this paragraph, determines that the defendant
24 meets the criteria under subsection (1) for imposing such
25 sanction, the court must sentence the defendant as a habitual
26 felony offender or a habitual violent felony offender, subject
27 to imprisonment pursuant to this section unless the court
28 finds that such sentence is not necessary for the protection
29 of the public. If the court finds that it is not necessary
30 for the protection of the public to sentence the defendant as
31 a habitual felony offender or a habitual violent felony

1 offender, the court shall provide written reasons; a written
 2 transcript of orally stated reasons is permissible, if filed
 3 by the court within 7 days after the date of sentencing. Each
 4 month, the court shall submit to the Office of Economic and
 5 Demographic Research of the Legislature the written reasons or
 6 transcripts in each case in which the court determines not to
 7 sentence a defendant as a habitual felony offender or a
 8 habitual violent felony offender as provided in this
 9 subparagraph.

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

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

16 2. Written notice shall be served on the defendant and
 17 the defendant's attorney a sufficient time prior to the entry
 18 of a plea or prior to the imposition of sentence in order to
 19 allow the preparation of a submission on behalf of the
 20 defendant.

21 3. Except as provided in subparagraph 1., all evidence
 22 presented shall be presented in open court with full rights of
 23 confrontation, cross-examination, and representation by
 24 counsel.

25 4. Each of the findings required as the basis for such
 26 sentence shall be found to exist by a preponderance of the
 27 evidence and shall be appealable to the extent normally
 28 applicable to similar findings.

29 5. For the purpose of identification of a three-time
 30 violent felony offender, the court shall fingerprint the
 31 defendant pursuant to s. 921.241.

1 6. For an offense committed on or after the effective
2 date of this act, if the state attorney pursues a three-time
3 violent felony offender sanction against the defendant and the
4 court, in a separate proceeding pursuant to this paragraph,
5 determines that the defendant meets the criteria under
6 subsection (1) for imposing such sanction, the court must
7 sentence the defendant as a three-time violent felony
8 offender, subject to imprisonment pursuant to this section as
9 provided in paragraph (4)(c).

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

14 1. Written notice shall be served on the defendant and
15 the defendant's attorney a sufficient time prior to the entry
16 of a plea or prior to the imposition of sentence in order to
17 allow the preparation of a submission on behalf of the
18 defendant.

19 2. All evidence presented shall be presented in open
20 court with full rights of confrontation, cross-examination,
21 and representation by counsel.

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

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

28 5. For an offense committed on or after October 1,
29 1995, if the state attorney pursues a violent career criminal
30 sanction against the defendant and the court, in a separate
31 proceeding pursuant to this paragraph, determines that the

1 defendant meets the criteria under subsection (1) for imposing
2 such sanction, the court must sentence the defendant as a
3 violent career criminal, subject to imprisonment pursuant to
4 this section unless the court finds that such sentence is not
5 necessary for the protection of the public. If the court
6 finds that it is not necessary for the protection of the
7 public to sentence the defendant as a violent career criminal,
8 the court shall provide written reasons; a written transcript
9 of orally stated reasons is permissible, if filed by the court
10 within 7 days after the date of sentencing. Each month, the
11 court shall submit to the Office of Economic and Demographic
12 Research of the Legislature the written reasons or transcripts
13 in each case in which the court determines not to sentence a
14 defendant as a violent career criminal as provided in this
15 subparagraph.

16 (d)~~(c)~~1. A person sentenced under paragraph (4)(d)~~(c)~~
17 as a violent career criminal has the right of direct appeal,
18 and either the state or the defendant may petition the trial
19 court to vacate an illegal sentence at any time. However, the
20 determination of the trial court to impose or not to impose a
21 violent career criminal sentence is presumed appropriate and
22 no petition or motion for collateral or other postconviction
23 relief may be considered based on an allegation either by the
24 state or the defendant that such sentence is inappropriate,
25 inadequate, or excessive.

26 2. It is the intent of the Legislature that, with
27 respect to both direct appeal and collateral review of violent
28 career criminal sentences, all claims of error or illegality
29 be raised at the first opportunity and that no claim should be
30 filed more than 2 years after the judgment and sentence became
31 final, unless it is established that the basis for the claim

1 could not have been ascertained at the time by the exercise of
2 due diligence. Technical violations and mistakes at trials and
3 sentencing proceedings involving violent career criminals that
4 do not affect due process or fundamental fairness are not
5 appealable by either the state or the defendant.

6 3. It is the intent of the Legislature that no funds,
7 resources, or employees of the state or its political
8 subdivisions be used, directly or indirectly, in appellate or
9 collateral proceedings based on violent career criminal
10 sentencing, except when such use is constitutionally or
11 statutorily mandated.

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

15 1. In the case of a life felony or a felony of the
16 first degree, for life.

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

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

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

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

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

30
31

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

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

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

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

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

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

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

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

22 1. In the case of a life felony or a felony of the
23 first degree, for life.

24 2. In the case of a felony of the second degree, for a
25 term of years not exceeding 40, with a mandatory minimum term
26 of 30 years' imprisonment.

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

30 ~~(e)(d)~~ If the court finds, pursuant to paragraph
31 (3)(a) or paragraph (3)(c)(b), that it is not necessary for

1 the protection of the public to sentence a defendant who meets
2 the criteria for sentencing as a habitual felony offender, a
3 habitual violent felony offender, or a violent career
4 criminal, with respect to an offense committed on or after
5 October 1, 1995, sentence shall be imposed without regard to
6 this section.

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

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

13 (h)~~(g)~~ A sentence imposed under this section for an
14 offense committed before July 1, 1999, is not subject to s.
15 921.002.

16 (i)~~(h)~~ The provisions of this section do not apply to
17 capital felonies, and a sentence authorized under this section
18 does not preclude the imposition of the death penalty for a
19 capital felony.

20 (j)~~(i)~~ The provisions of s. 947.1405 shall apply to
21 persons sentenced as habitual felony offenders and persons
22 sentenced as habitual violent felony offenders.

23 (k)~~(j)~~1. A defendant sentenced under this section as a
24 habitual felony offender, a habitual violent felony offender,
25 or a violent career criminal is eligible for gain-time granted
26 by the Department of Corrections as provided in s.
27 944.275(4)(b).

28 2. For an offense committed on or after October 1,
29 1995, a defendant sentenced under this section as a violent
30 career criminal is not eligible for any form of discretionary
31

1 early release, other than pardon or executive clemency, or
2 conditional medical release granted pursuant to s. 947.149.

3 3. For an offense committed on or after July 1, 1999,
4 a defendant sentenced under this section as a three-time
5 violent felony offender is ineligible for any form of
6 discretionary early release, parole, or control release.

7 (5) In order to be counted as a prior felony for
8 purposes of sentencing under this section, the felony must
9 have resulted in a conviction sentenced ~~separately~~ prior to
10 the current offense ~~and sentenced separately from any other~~
11 ~~felony conviction that is to be counted as a prior felony.~~

12 (6) The purpose of this section is to provide uniform
13 punishment for those crimes made punishable under this
14 section, and to this end, a reference to this section
15 constitutes a general reference under the doctrine of
16 incorporation by reference.

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

20 784.07 Assault or battery of law enforcement officers,
21 firefighters, emergency medical care providers, public transit
22 employees or agents, or other specified officers;
23 reclassification of offenses; minimum sentences.--

24 (2) Whenever any person is charged with knowingly
25 committing an assault or battery upon a law enforcement
26 officer, a firefighter, an emergency medical care provider, a
27 traffic accident investigation officer as described in s.
28 316.640, a traffic infraction enforcement officer as described
29 in s. 318.141, a parking enforcement specialist as defined in
30 s. 316.640, or a security officer employed by the board of
31 trustees of a community college, while the officer,

1 firefighter, emergency medical care provider, intake officer,
2 traffic accident investigation officer, traffic infraction
3 enforcement officer, parking enforcement specialist, public
4 transit employee or agent, or security officer is engaged in
5 the lawful performance of his or her duties, the offense for
6 which the person is charged shall be reclassified as follows:

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

9 Notwithstanding any other provision of law, any person
10 convicted of aggravated assault upon a law enforcement officer
11 shall be sentenced to a minimum term of imprisonment of 3
12 years.

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

15 Notwithstanding any other provision of law, any person
16 convicted of aggravated battery of a law enforcement officer
17 shall be sentenced to a minimum term of imprisonment of 5
18 years.

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

21 784.08 Assault or battery on persons 65 years of age
22 or older; reclassification of offenses; minimum sentence.--

23 (1) A person who is convicted of an aggravated assault
24 or aggravated battery upon a person 65 years of age or older
25 shall be sentenced to a minimum term of imprisonment of 3
26 years ~~pursuant to the Criminal Punishment Code~~ and fined not
27 more than \$10,000 and shall also be ordered by the sentencing
28 judge to make restitution to the victim of such offense and to
29 perform up to 500 hours of community service work.

30 Restitution and community service work shall be in addition to

31

1 any fine or sentence which may be imposed and shall not be in
2 lieu thereof.

3 Section 6. Section 790.235, Florida Statutes, is
4 amended to read:

5 790.235 Possession of firearm by violent career
6 criminal unlawful; penalty.--

7 (1) Any person who meets the violent career criminal
8 criteria under s. 775.084(1)(d)(~~e~~), regardless of whether such
9 person is or has previously been sentenced as a violent career
10 criminal, who owns or has in his or her care, custody,
11 possession, or control any firearm or electric weapon or
12 device, or carries a concealed weapon, including a tear gas
13 gun or chemical weapon or device, commits a felony of the
14 first degree, punishable as provided in s. 775.082, s.
15 775.083, or s. 775.084. A person convicted of a violation of
16 this section shall be sentenced to a mandatory minimum of 15
17 years' imprisonment; however, if the person would be sentenced
18 to a longer term of imprisonment under s. 775.084(4)(d)(~~e~~),
19 the person must be sentenced under that provision. A person
20 convicted of a violation of this section is not eligible for
21 any form of discretionary early release, other than pardon,
22 executive clemency, or conditional medical release under s.
23 947.149.

24 (2) For purposes of this section, the previous felony
25 convictions necessary to meet the violent career criminal
26 criteria under s. 775.084(1)(d)(~~e~~) may be convictions for
27 felonies committed as an adult or adjudications of delinquency
28 for felonies committed as a juvenile. In order to be counted
29 as a prior felony for purposes of this section, the felony
30 must have resulted in a conviction sentenced separately, or an
31 adjudication of delinquency entered separately, prior to the

1 current offense, and sentenced or adjudicated separately from
2 any other felony that is to be counted as a prior felony.

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

5 Section 7. Section 794.0115, Florida Statutes, is
6 created to read:

7 794.0115 Repeat sexual batterers; definition;
8 procedure; enhanced penalties.--

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

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

16 1. Any felony offense in violation of s.
17 794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy
18 to commit the felony offense.

19 2. A qualified offense as defined in s. 775.084(1)(e),
20 if the elements of the qualified offense are substantially
21 similar to the elements of a felony offense in violation of s.
22 794.011(2)(b), (3), (4), or (5), or an attempt or conspiracy
23 to commit the felony offense.

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

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

30 2. Within 10 years after the date of the conviction of
31 the last prior offense enumerated in subparagraph (a)1. or 2.,

1 or within 10 years after the defendant's release from a prison
2 sentence, probation, community control, or other sentence
3 imposed as a result of a prior conviction for any offense
4 enumerated in subparagraph (a)1. or 2., whichever is later.

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

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

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

14 (a) The court shall obtain and consider a presentence
15 investigation prior to the imposition of a sentence as a
16 repeat sexual batterer.

17 (b) Written notice shall be served on the defendant
18 and the defendant's attorney a sufficient time prior to the
19 entry of a plea or prior to the imposition of sentence in
20 order to allow the preparation of a submission on behalf of
21 the defendant.

22 (c) Except as provided in paragraph (a), all evidence
23 presented shall be presented in open court with full rights of
24 confrontation, cross-examination, and representation by
25 counsel.

26 (d) Each of the findings required as the basis for
27 such sentence shall be found to exist by a preponderance of
28 the evidence and shall be appealable to the extent normally
29 applicable to similar findings.

30
31

1 (e) For the purpose of identification of a repeat
2 sexual batterer, the court shall fingerprint the defendant
3 pursuant to s. 921.241.

4 (f) For an offense committed on or after the effective
5 date of this act, if the state attorney pursues a repeat
6 sexual batterer sanction against the defendant and the court,
7 in a separate proceeding pursuant to this subsection,
8 determines that the defendant meets the criteria under
9 subsection (1) for imposing such sanction, the court must
10 sentence the defendant as a repeat sexual batterer, subject to
11 imprisonment pursuant to this section as provided in
12 subsection (3).

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

17 (b) Nothing in this subsection shall prevent a court
18 from imposing a greater sentence of incarceration as
19 authorized by law.

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

22 794.011 Sexual battery.--

23 (1) As used in this chapter:

24 (a) "Consent" means intelligent, knowing, and
25 voluntary consent and does not include coerced submission.
26 "Consent" shall not be deemed or construed to mean the failure
27 by the alleged victim to offer physical resistance to the
28 offender.

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

1 (c) "Mentally incapacitated" means temporarily
2 incapable of appraising or controlling a person's own conduct
3 due to the influence of a narcotic, anesthetic, or
4 intoxicating substance administered without his or her consent
5 or due to any other act committed upon that person without his
6 or her consent.

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

9 (e) "Physically helpless" means unconscious, asleep,
10 or for any other reason physically unable to communicate
11 unwillingness to an act.

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

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

17 (h) "Sexual battery" means oral, anal, or vaginal
18 penetration by, or union with, the sexual organ of another or
19 the anal or vaginal penetration of another by any other
20 object; however, sexual battery does not include an act done
21 for a bona fide medical purpose.

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

24 (j) "Physically incapacitated" means bodily impaired
25 or handicapped and substantially limited in ability to resist
26 or flee.

27 (2)(a) A person 18 years of age or older who commits
28 sexual battery upon, or in an attempt to commit sexual battery
29 injures the sexual organs of, a person less than 12 years of
30 age commits a capital felony, punishable as provided in ss.
31 775.082 and 921.141.

1 (b) A person less than 18 years of age who commits
2 sexual battery upon, or in an attempt to commit sexual battery
3 injures the sexual organs of, a person less than 12 years of
4 age commits a life felony, punishable as provided in s.
5 775.082, s. 775.083, ~~or~~ s. 775.084, or s. 794.0115.

6 (3) 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 uses or threatens to use a deadly
9 weapon or uses actual physical force likely to cause serious
10 personal injury commits a life felony, punishable as provided
11 in s. 775.082, s. 775.083, ~~or~~ s. 775.084, or s. 794.0115.

12 (4) A person who commits sexual battery upon a person
13 12 years of age or older without that person's consent, under
14 any of the following circumstances, commits a felony of the
15 first degree, punishable as provided in s. 775.082, s.
16 775.083, ~~or~~ s. 775.084, or s. 794.0115:

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

18 (b) When the offender coerces the victim to submit by
19 threatening to use force or violence likely to cause serious
20 personal injury on the victim, and the victim reasonably
21 believes that the offender has the present ability to execute
22 the threat.

23 (c) When the offender coerces the victim to submit by
24 threatening to retaliate against the victim, or any other
25 person, and the victim reasonably believes that the offender
26 has the ability to execute the threat in the future.

27 (d) When the offender, without the prior knowledge or
28 consent of the victim, administers or has knowledge of someone
29 else administering to the victim any narcotic, anesthetic, or
30 other intoxicating substance which mentally or physically
31 incapacitates the victim.

1 (e) When the victim is mentally defective and the
2 offender has reason to believe this or has actual knowledge of
3 this fact.

4 (f) When the victim is physically incapacitated.

5 (g) When the offender is a law enforcement officer,
6 correctional officer, or correctional probation officer as
7 defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who
8 is certified under the provisions of s. 943.1395 or is an
9 elected official exempt from such certification by virtue of
10 s. 943.253, or any other person in a position of control or
11 authority in a probation, community control, controlled
12 release, detention, custodial, or similar setting, and such
13 officer, official, or person is acting in such a manner as to
14 lead the victim to reasonably believe that the offender is in
15 a position of control or authority as an agent or employee of
16 government.

17 (5) A person who commits sexual battery upon a person
18 12 years of age or older, without that person's consent, and
19 in the process thereof does not use physical force and
20 violence likely to cause serious personal injury commits a
21 felony of the second degree, punishable as provided in s.
22 775.082, s. 775.083, ~~or~~ s. 775.084, or s. 794.0115.

23 (6) The offense described in subsection (5) is
24 included in any sexual battery offense charged under
25 subsection (3) or subsection (4).

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

30 (8) Without regard to the willingness or consent of
31 the victim, which is not a defense to prosecution under this

1 subsection, a person who is in a position of familial or
2 custodial authority to a person less than 18 years of age and
3 who:

4 (a) Solicits that person to engage in any act which
5 would constitute sexual battery under paragraph (1)(h) commits
6 a felony of the third degree, punishable as provided in s.
7 775.082, s. 775.083, or s. 775.084.

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

13 (c) Engages in any act with that person while the
14 person is less than 12 years of age which constitutes sexual
15 battery under paragraph (1)(h), or in an attempt to commit
16 sexual battery injures the sexual organs of such person
17 commits a capital or life felony, punishable pursuant to
18 subsection (2).

19 (9) For prosecution under paragraph (4)(g),
20 acquiescence to a person reasonably believed by the victim to
21 be in a position of authority or control does not constitute
22 consent, and it is not a defense that the perpetrator was not
23 actually in a position of control or authority if the
24 circumstances were such as to lead the victim to reasonably
25 believe that the person was in such a position.

26 (10) Any person who falsely accuses any person listed
27 in paragraph (4)(g) or other person in a position of control
28 or authority as an agent or employee of government of
29 violating paragraph (4)(g) is guilty of a felony of the third
30 degree, punishable as provided in s. 775.082, s. 775.083, or
31 s. 775.084.

1 Section 9. Section 893.135, Florida Statutes, is
2 amended to read:

3 893.135 Trafficking; mandatory sentences; suspension
4 or reduction of sentences; conspiracy to engage in
5 trafficking.--

6 (1) Except as authorized in this chapter or in chapter
7 499 and notwithstanding the provisions of s. 893.13:

8 (a) Any person who knowingly sells, purchases,
9 manufactures, delivers, or brings into this state, or who is
10 knowingly in actual or constructive possession of, in excess
11 of 25 50 pounds of cannabis, or in excess of 300 cannabis
12 plants, commits a felony of the first degree, which felony
13 shall be known as "trafficking in cannabis." If the quantity
14 of cannabis involved:

15 1. Is in excess of 25 50 pounds, but less than 2,000
16 pounds, or is in excess of 300 cannabis plants, but not more
17 than 2,000 cannabis plants, such person shall be sentenced
18 pursuant to the Criminal Punishment Code and such sentence
19 shall include a mandatory minimum term of imprisonment of 3
20 years, and the defendant shall be ordered to pay a fine of
21 \$25,000.

22 2. Is 2,000 pounds or more, but less than 10,000
23 pounds, or is in excess of 2,000 cannabis plants, but not more
24 than 10,000 cannabis plants, such person shall be sentenced
25 pursuant to the Criminal Punishment Code and such sentence
26 shall include a mandatory minimum term of imprisonment of 7
27 years, and the defendant shall be ordered to pay a fine of
28 \$50,000.

29 3. Is 10,000 pounds or more, or is in excess of 10,000
30 cannabis plants, such person shall be sentenced to a mandatory
31

1 minimum term of imprisonment of 15 calendar years and pay a
2 fine of \$200,000.

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

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

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

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

24 2. Any person who knowingly sells, purchases,
25 manufactures, delivers, or brings into this state, or who is
26 knowingly in actual or constructive possession of, 150
27 kilograms or more, but less than 300 kilograms, of cocaine, as
28 described in s. 893.03(2)(a)4., commits the first degree
29 felony of trafficking in cocaine. A person who has been
30 convicted of the first degree felony of trafficking in cocaine
31 under this subparagraph shall be punished by life imprisonment

1 and is ineligible for any form of discretionary early release
2 except pardon or executive clemency or conditional medical
3 release under s. 947.149. However, if the court determines
4 that, in addition to committing any act specified in this
5 paragraph:

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

10 b. The person's conduct in committing that act led to
11 a natural, though not inevitable, lethal result,
12
13 such person commits the capital felony of trafficking in
14 cocaine, punishable as provided in ss. 775.082 and 921.142.
15 Any person sentenced for a capital felony under this paragraph
16 shall also be sentenced to pay the maximum fine provided under
17 subparagraph 1.

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

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

1 893.03(1)(b) or (2)(a), or 4 grams or more of any mixture
2 containing any such substance, but less than 30 kilograms of
3 such substance or mixture, commits a felony of the first
4 degree, which felony shall be known as "trafficking in illegal
5 drugs." If the quantity involved:

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

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

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

19 2. Any person who knowingly sells, purchases,
20 manufactures, delivers, or brings into this state, or who is
21 knowingly in actual or constructive possession of, 30
22 kilograms or more, but less than 60 kilograms, of any
23 morphine, opium, oxycodone, hydrocodone, hydromorphone, or any
24 salt, derivative, isomer, or salt of an isomer thereof,
25 including heroin, as described in s. 893.03(1)(b) or (2)(a),
26 or 30 kilograms or more, but less than 60 kilograms, of any
27 mixture containing any such substance, commits the first
28 degree felony of trafficking in illegal drugs. A person who
29 has been convicted of the first degree felony of trafficking
30 in illegal drugs under this subparagraph shall be punished by
31 life imprisonment and is ineligible for any form of

1 discretionary early release except pardon or executive
2 clemency or conditional medical release under s. 947.149.

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

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

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

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

17 3. Any person who knowingly brings into this state 60
18 kilograms or more of any morphine, opium, oxycodone,
19 hydrocodone, hydromorphone, or any salt, derivative, isomer,
20 or salt of an isomer thereof, including heroin, as described
21 in s. 893.03(1)(b) or (2)(a), or 60 kilograms or more of any
22 mixture containing any such substance, and who knows that the
23 probable result of such importation would be the death of any
24 person, commits capital importation of illegal drugs, a
25 capital felony punishable as provided in ss. 775.082 and
26 921.142. Any person sentenced for a capital felony under this
27 paragraph shall also be sentenced to pay the maximum fine
28 provided under subparagraph 1.

29 (d)1. Any person who knowingly sells, purchases,
30 manufactures, delivers, or brings into this state, or who is
31 knowingly in actual or constructive possession of, 28 grams or

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

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

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

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

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

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

31

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

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

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

10 2. Any person who knowingly brings into this state 400
11 grams or more of amphetamine, as described in s.

12 893.03(2)(c)2., or methamphetamine, as described in s.

13 893.03(2)(c)4., or of any mixture containing amphetamine or
14 methamphetamine, or phenylacetone, phenylacetic acid, or

15 ephedrine in conjunction with other chemicals and equipment

16 utilized in the manufacture of amphetamine or methamphetamine,

17 and who knows that the probable result of such importation

18 would be the death of any person commits capital importation

19 of amphetamine, a capital felony punishable as provided in ss.

20 775.082 and 921.142. Any person sentenced for a capital felony

21 under this paragraph shall also be sentenced to pay the

22 maximum fine provided under subparagraph 1.

23 (g)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, 4 grams or

26 more of flunitrazepam or any mixture containing flunitrazepam

27 as described in s. 893.03(1)(a) commits a felony of the first

28 degree, which felony shall be known as "trafficking in

29 flunitrazepam." If the quantity involved:

30

31

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

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

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

10 2. Any person who knowingly sells, purchases,
11 manufactures, delivers, or brings into this state or who is
12 knowingly in actual or constructive possession of 30 kilograms
13 or more of flunitrazepam or any mixture containing
14 flunitrazepam as described in s. 893.03(1)(a) commits the
15 first degree felony of trafficking in flunitrazepam. A person
16 who has been convicted of the first degree felony of
17 trafficking in flunitrazepam under this subparagraph shall be
18 punished by life imprisonment and is ineligible for any form
19 of discretionary early release except pardon or executive
20 clemency or conditional medical release under s. 947.149.
21 However, if the court determines that, in addition to
22 committing any act specified in this paragraph:

23 a. The person intentionally killed an individual or
24 counseled, commanded, induced, procured, or caused the
25 intentional killing of an individual and such killing was the
26 result; or

27 b. The person's conduct in committing that act led to
28 a natural, though not inevitable, lethal result,
29
30 such person commits the capital felony of trafficking in
31 flunitrazepam, punishable as provided in ss. 775.082 and

1 921.142. Any person sentenced for a capital felony under this
2 paragraph shall also be sentenced to pay the maximum fine
3 provided under subparagraph 1.

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

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

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

31

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

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

13 397.451 Background checks of service provider
14 personnel who have direct contact with unmarried minor clients
15 or clients who are developmentally disabled.--

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

28 782.04 Murder.--

29 (4) The unlawful killing of a human being, when
30 perpetrated without any design to effect death, by a person
31

1 engaged in the perpetration of, or in the attempt to
2 perpetrate, any felony other than any:

3 (a) Trafficking offense prohibited by s. 893.135(1),
4
5 is murder in the third degree and constitutes a felony of the
6 second degree, punishable as provided in s. 775.082, s.
7 775.083, or s. 775.084.

8 893.1351 Lease or rent for the purpose of trafficking
9 in a controlled substance.--

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

16 903.133 Bail on appeal; prohibited for certain felony
17 convictions.--Notwithstanding the provisions of s. 903.132, no
18 person adjudged guilty of a felony of the first degree for a
19 violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s.
20 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a
21 violation of s. 794.011(2) or (3), shall be admitted to bail
22 pending review either by posttrial motion or appeal.

23 907.041 Pretrial detention and release.--

24 (4) PRETRIAL DETENTION.--

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

29 1. The defendant has previously violated conditions of
30 release and that no further conditions of release are
31

1 reasonably likely to assure the defendant's appearance at
2 subsequent proceedings;

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

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

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

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

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

30
31

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

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

6 (3) OFFENSE SEVERITY RANKING CHART

7 Florida	Felony	
8 Statute	Degree	Description
		(g) LEVEL 7
12 316.193(3)(c)2.	3rd	13 DUI resulting in serious bodily injury.
14 327.35(3)(c)2.	3rd	15 Vessel BUI resulting in serious bodily injury.
16 409.920(2)	3rd	16 Medicaid provider fraud.
17 494.0018(2)	1st	18 Conviction of any violation of 19 ss. 494.001-494.0077 in which the 20 total money and property 21 unlawfully obtained exceeded 22 \$50,000 and there were five or 23 more victims.
24 782.051(3)	2nd	25 Attempted felony murder of a 26 person by a person other than the 27 perpetrator or the perpetrator of 28 an attempted felony.
29 782.07(1)	2nd	30 Killing of a human being by the 31 act, procurement, or culpable negligence of another (manslaughter).

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

1	790.16(1)	1st	Discharge of a machine gun under
2			specified circumstances.
3	796.03	2nd	Procuring any person under 16
4			years for prostitution.
5	800.04	2nd	Handle, fondle, or assault child
6			under 16 years in lewd,
7			lascivious, or indecent manner.
8	806.01(2)	2nd	Maliciously damage structure by
9			fire or explosive.
10	810.02(3)(a)	2nd	Burglary of occupied dwelling;
11			unarmed; no assault or battery.
12	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
13			unarmed; no assault or battery.
14	810.02(3)(d)	2nd	Burglary of occupied conveyance;
15			unarmed; no assault or battery.
16	812.014(2)(a)	1st	Property stolen, valued at
17			\$100,000 or more; property stolen
18			while causing other property
19			damage; 1st degree grand theft.
20	812.019(2)	1st	Stolen property; initiates,
21			organizes, plans, etc., the theft
22			of property and traffics in
23			stolen property.
24	812.133(2)(b)	1st	Carjacking; no firearm, deadly
25			weapon, or other weapon.
26	825.102(3)(b)	2nd	Neglecting an elderly person or
27			disabled adult causing great
28			bodily harm, disability, or
29			disfigurement.
30			
31			

1	825.1025(2)	2nd	Lewd or lascivious battery upon
2			an elderly person or disabled
3			adult.
4	825.103(2)(b)	2nd	Exploiting an elderly person or
5			disabled adult and property is
6			valued at \$20,000 or more, but
7			less than \$100,000.
8	827.03(3)(b)	2nd	Neglect of a child causing great
9			bodily harm, disability, or
10			disfigurement.
11	827.04(4)	3rd	Impregnation of a child under 16
12			years of age by person 21 years
13			of age or older.
14	837.05(2)	3rd	Giving false information about
15			alleged capital felony to a law
16			enforcement officer.
17	872.06	2nd	Abuse of a dead human body.
18	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
19			cocaine (or other drug prohibited
20			under s. 893.03(1)(a), (1)(b),
21			(1)(d), (2)(a), or (2)(b)) within
22			1,000 feet of a child care
23			facility or school.
24	893.13(1)(e)	1st	Sell, manufacture, or deliver
25			cocaine or other drug prohibited
26			under s. 893.03(1)(a), (1)(b),
27			(1)(d), (2)(a), or (2)(b), within
28			1,000 feet of property used for
29			religious services or a specified
30			business site.
31			

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

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

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

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

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

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

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

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

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

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

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

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

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

17
18 Sentencing multipliers:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 1. Is a candidate for employment with a criminal
12 justice agency;

13 2. Is a defendant in a criminal prosecution;

14 3. Concurrently or subsequently petitions for relief
15 under this section or s. 943.0585;

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

17 5. Is seeking to be employed or licensed by or to
18 contract with the Department of Children and Family Services
19 or the Department of Juvenile Justice or to be employed or
20 used by such contractor or licensee in a sensitive position
21 having direct contact with children, the developmentally
22 disabled, the aged, or the elderly as provided in s.

23 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
24 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
25 415.103, s. 985.407, or chapter 400; or

26 6. Is seeking to be employed or licensed by the Office
27 of Teacher Education, Certification, Staff Development, and
28 Professional Practices of the Department of Education, any
29 district school board, or any local governmental entity which
30 licenses child care facilities.

31

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

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

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

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

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

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

19 Section 13. This act shall take effect July 1, 1999.
20
21
22
23
24
25
26
27
28
29
30
31