

By Senator Brown-Waite

10-701B-99

1 A bill to be entitled
2 An act relating to sentencing; amending s.
3 893.135, F.S.; redefining the offense of
4 trafficking in cannabis to include unlawful
5 sale, purchase, manufacture, delivery, bringing
6 into the state, or possession of cannabis in
7 excess of 25 pounds or 300 cannabis plants;
8 providing mandatory minimum prison terms and
9 mandatory fine amounts for trafficking in
10 specified quantities of cannabis, cocaine, or
11 illegal drugs; providing for sentencing
12 pursuant to the Criminal Punishment Code of
13 offenders convicted of trafficking in specified
14 quantities of cannabis; providing that an
15 offender who is sentenced to a mandatory
16 minimum term upon conviction of trafficking in
17 specified quantities of cannabis, cocaine,
18 illegal drugs, phencyclidine, methaqualone,
19 amphetamine, or flunitrazepam is not eligible
20 for statutory gain-time or other form of early
21 release prior to serving the minimum sentence;
22 providing exceptions; providing penalties;
23 reenacting s. 397.451(7), F.S., relating to the
24 prohibition against dissemination of state
25 funds to service providers convicted of certain
26 offenses, s. 782.04(4)(a), F.S., relating to
27 murder, s. 893.1351(1), F.S., relating to lease
28 or rent for the purpose of trafficking in a
29 controlled substance, s. 903.133, F.S.,
30 relating to the prohibition against bail on
31 appeal for certain felony convictions, s.

1 907.041(4)(b), F.S., relating to pretrial
2 detention and release, s. 921.0022(3)(g), (h),
3 and (i), F.S., relating to the Criminal
4 Punishment Code offense severity ranking chart,
5 s. 921.0024(1)(b), F.S., relating to the
6 Criminal Punishment Code worksheet computations
7 and scoresheets, s. 921.142(2), F.S., relating
8 to sentencing for capital drug trafficking
9 felonies, s. 943.0585, F.S., relating to
10 court-ordered expunction of criminal history
11 records, and s. 943.059, F.S., relating to
12 court-ordered sealing of criminal history
13 records, to incorporate the amendment in
14 references; providing an effective date.

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

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18 Section 1. Section 893.135, Florida Statutes, as
19 amended by section 23 of chapter 97-194, Laws of Florida, is
20 amended to read:

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

24 (1) Except as authorized in this chapter or in chapter
25 499 and notwithstanding the provisions of s. 893.13:

26 (a) 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, in excess
29 of 25 ~~50~~ pounds of cannabis, or in excess of 300 cannabis
30 plants, commits a felony of the first degree, which felony

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1 shall be known as "trafficking in cannabis." If the quantity
2 of cannabis involved:

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

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

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

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

29 a. Is 28 grams or more, but less than 200 grams, such
30 person shall be sentenced pursuant to the Criminal Punishment
31 Code and such sentence shall include a mandatory minimum term

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

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

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

11 2. Any person who knowingly sells, purchases,
12 manufactures, delivers, or brings into this state, or who is
13 knowingly in actual or constructive possession of, 150
14 kilograms or more, but less than 300 kilograms, of cocaine, as
15 described in s. 893.03(2)(a)4., commits the first degree
16 felony of trafficking in cocaine. A person who has been
17 convicted of the first degree felony of trafficking in cocaine
18 under this subparagraph shall be punished by life imprisonment
19 and is not eligible for statutory gain-time under s. 944.275
20 or other form of early release, other than ineligible for any
21 form of discretionary early release except pardon or executive
22 clemency or conditional medical release under s. 947.149.
23 However, if the court determines that, in addition to
24 committing any act specified in this paragraph:

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

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

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1 such person commits the capital felony of trafficking in
2 cocaine, punishable as provided in ss. 775.082 and 921.142.
3 Any person sentenced for a capital felony under this paragraph
4 shall also be sentenced to pay the maximum fine provided under
5 subparagraph 1.

6 3. Any person who knowingly brings into this state 300
7 kilograms or more of cocaine, as described in s.
8 893.03(2)(a)4., and who knows that the probable result of such
9 importation would be the death of any person, commits capital
10 importation of cocaine, a capital felony punishable as
11 provided in ss. 775.082 and 921.142. Any person sentenced for
12 a capital felony under this paragraph shall also be sentenced
13 to pay the maximum fine provided under subparagraph 1.

14 (c)1. Any person who knowingly sells, purchases,
15 manufactures, delivers, or brings into this state, or who is
16 knowingly in actual or constructive possession of, 4 grams or
17 more of any morphine, opium, oxycodone, hydrocodone,
18 hydromorphone, or any salt, derivative, isomer, or salt of an
19 isomer thereof, including heroin, as described in s.
20 893.03(1)(b) or (2)(a), or 4 grams or more of any mixture
21 containing any such substance, but less than 30 kilograms of
22 such substance or mixture, commits a felony of the first
23 degree, which felony shall be known as "trafficking in illegal
24 drugs." If the quantity involved:

25 a. Is 4 grams or more, but less than 14 grams, such
26 person shall be sentenced pursuant to the Criminal Punishment
27 Code and such sentence shall include a minimum prison term of
28 3 years, and the defendant shall be ordered to pay a fine of
29 \$50,000.

30 b. Is 14 grams or more, but less than 28 grams, such
31 person shall be sentenced pursuant to the Criminal Punishment

1 Code and such sentence shall include a mandatory minimum term
2 of imprisonment of 15 years, and the defendant shall be
3 ordered to pay a fine of \$100,000.

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

7 2. Any person who knowingly sells, purchases,
8 manufactures, delivers, or brings into this state, or who is
9 knowingly in actual or constructive possession of, 30
10 kilograms or more, but less than 60 kilograms, of any
11 morphine, opium, oxycodone, hydrocodone, hydromorphone, or any
12 salt, derivative, isomer, or salt of an isomer thereof,
13 including heroin, as described in s. 893.03(1)(b) or (2)(a),
14 or 30 kilograms or more, but less than 60 kilograms, of any
15 mixture containing any such substance, commits the first
16 degree felony of trafficking in illegal drugs. A person who
17 has been convicted of the first degree felony of trafficking
18 in illegal drugs under this subparagraph shall be punished by
19 life imprisonment and is not eligible for statutory gain-time
20 under s. 944.275 or other form of early release, other than
21 ~~ineligible for any form of discretionary early release except~~

22 pardon or executive clemency or conditional medical release
23 under s. 947.149. However, if the court determines that, in
24 addition to committing any act specified in this paragraph:

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

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

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1 such person commits the capital felony of trafficking in
2 illegal drugs, punishable as provided in ss. 775.082 and
3 921.142. Any person sentenced for a capital felony under this
4 paragraph shall also be sentenced to pay the maximum fine
5 provided under subparagraph 1.

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

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

25 a. Is 28 grams or more, but less than 200 grams, such
26 person shall be sentenced pursuant to the Criminal Punishment
27 Code and pay a fine of \$50,000.

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

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

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

13 (e)1. Any person who knowingly sells, purchases,
14 manufactures, delivers, or brings into this state, or who is
15 knowingly in actual or constructive possession of, 200 grams
16 or more of methaqualone or of any mixture containing
17 methaqualone, as described in s. 893.03(1)(d), commits a
18 felony of the first degree, which felony shall be known as
19 "trafficking in methaqualone." If the quantity involved:

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

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

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

30 2. Any person who knowingly brings into this state 50
31 kilograms or more of methaqualone or of any mixture containing

1 methaqualone, as described in s. 893.03(1)(d), and who knows
2 that the probable result of such importation would be the
3 death of any person commits capital importation of
4 methaqualone, a capital felony punishable as provided in ss.
5 775.082 and 921.142. Any person sentenced for a capital felony
6 under this paragraph shall also be sentenced to pay the
7 maximum fine provided under subparagraph 1.

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

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

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

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

28 2. Any person who knowingly brings into this state 400
29 grams or more of amphetamine, as described in s.
30 893.03(2)(c)2., or methamphetamine, as described in s.
31 893.03(2)(c)4., or of any mixture containing amphetamine or

1 methamphetamine, or phenylacetone, phenylacetic acid, or
2 ephedrine in conjunction with other chemicals and equipment
3 utilized in the manufacture of amphetamine or methamphetamine,
4 and who knows that the probable result of such importation
5 would be the death of any person commits capital importation
6 of amphetamine, a capital felony punishable as provided in ss.
7 775.082 and 921.142. Any person sentenced for a capital felony
8 under this paragraph shall also be sentenced to pay the
9 maximum fine provided under subparagraph 1.

10 (g)1. 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, 4 grams or
13 more of flunitrazepam or any mixture containing flunitrazepam
14 as described in s. 893.03(1)(a) commits a felony of the first
15 degree, which felony shall be known as "trafficking in
16 flunitrazepam." If the quantity involved:

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

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

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

26 2. 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 30 kilograms
29 or more of flunitrazepam or any mixture containing
30 flunitrazepam as described in s. 893.03(1)(a) commits the
31 first degree felony of trafficking in flunitrazepam. A person

1 who has been convicted of the first degree felony of
2 trafficking in flunitrazepam under this subparagraph shall be
3 punished by life imprisonment and is not eligible for
4 statutory gain-time under s. 944.275 or other form of early
5 release, other than ineligible for any form of discretionary
6 ~~early release except~~ pardon or executive clemency or
7 conditional medical release under s. 947.149. However, if the
8 court determines that, in addition to committing any act
9 specified in this paragraph:

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

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

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

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

30 (3) Notwithstanding the provisions of s. 948.01, with
31 respect to any person who is found to have violated this

1 section, adjudication of guilt or imposition of sentence shall
2 not be suspended, deferred, or withheld, nor shall such person
3 be eligible for parole prior to serving the mandatory minimum
4 term of imprisonment prescribed by this section. A person
5 sentenced to a mandatory minimum term of imprisonment under
6 this section is not eligible for statutory gain-time under s.
7 944.275 or other form of early release, other than pardon or
8 executive clemency or conditional medical release under s.
9 947.149, prior to serving the minimum sentence.

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

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

30 Section 2. For the purpose of incorporating the
31 amendments made by this act to section 893.135, Florida

1 Statutes, in references thereto, subsection (7) of section
2 397.451, Florida Statutes, is reenacted to read:

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

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

18 Section 3. For the purpose of incorporating the
19 amendments made by this act to section 893.135, Florida
20 Statutes, in references thereto, subsection (4) of section
21 782.04, Florida Statutes, 1998 Supplement, is reenacted to
22 read:

23 782.04 Murder.--

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

- 28 (a) Trafficking offense prohibited by s. 893.135(1),
29 (b) Arson,
30 (c) Sexual battery,
31 (d) Robbery,

- 1 (e) Burglary,
2 (f) Kidnapping,
3 (g) Escape,
4 (h) Aggravated child abuse,
5 (i) Aggravated abuse of an elderly person or disabled
6 adult,
7 (j) Aircraft piracy,
8 (k) Unlawful throwing, placing, or discharging of a
9 destructive device or bomb,
10 (l) Unlawful distribution of any substance controlled
11 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,
12 or opium or any synthetic or natural salt, compound,
13 derivative, or preparation of opium by a person 18 years of
14 age or older, when such drug is proven to be the proximate
15 cause of the death of the user,
16 (m) Carjacking,
17 (n) Home-invasion robbery,
18 (o) Aggravated stalking, or
19 (p) Murder of another human being,

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21 is murder in the third degree and constitutes a felony of the
22 second degree, punishable as provided in s. 775.082, s.
23 775.083, or s. 775.084.

24 Section 4. For the purpose of incorporating the
25 amendments made by this act to section 893.135, Florida
26 Statutes, in references thereto, subsection (1) of section
27 893.1351, Florida Statutes, is reenacted to read:

28 893.1351 Lease or rent for the purpose of trafficking
29 in a controlled substance.--

30 (1) A person may not lease or rent any place,
31 structure, or part thereof, trailer, or other conveyance, with

1 the knowledge that such place, structure, trailer, or
2 conveyance will be used for the purpose of trafficking in a
3 controlled substance, as provided in s. 893.135, or the sale
4 of a controlled substance, as provided in s. 893.13.

5 Section 5. For the purpose of incorporating the
6 amendments made by this act to section 893.135, Florida
7 Statutes, in references thereto, section 903.133, Florida
8 Statutes, is reenacted to read:

9 903.133 Bail on appeal; prohibited for certain felony
10 convictions.--Notwithstanding the provisions of s. 903.132, no
11 person adjudged guilty of a felony of the first degree for a
12 violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s.
13 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a
14 violation of s. 794.011(2) or (3), shall be admitted to bail
15 pending review either by posttrial motion or appeal.

16 Section 6. For the purpose of incorporating the
17 amendments made by this act to section 893.135, Florida
18 Statutes, in references thereto, paragraph (b) of subsection
19 (4) of section 907.041, Florida Statutes, is reenacted to
20 read:

21 907.041 Pretrial detention and release.--

22 (4) PRETRIAL DETENTION.--

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

27 1. The defendant has previously violated conditions of
28 release and that no further conditions of release are
29 reasonably likely to assure the defendant's appearance at
30 subsequent proceedings;

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

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

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

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

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

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

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1 Section 7. For the purpose of incorporating the
2 amendments made by this act to section 893.135, Florida
3 Statutes, in references thereto, paragraphs (g), (h), (i), and
4 (j) of subsection (3) of section 921.0022, Florida Statutes,
5 1998 Supplement, are reenacted to read:

6 921.0022 Criminal Punishment Code; offense severity
7 ranking chart.--

8 (3) OFFENSE SEVERITY RANKING CHART

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

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1	782.07(1)	2nd	Killing of a human being by the
2			act, procurement, or culpable
3			negligence of another
4			(manslaughter).
5	782.071	3rd	Killing of human being or viable
6			fetus by the operation of a motor
7			vehicle in a reckless manner
8			(vehicular homicide).
9	782.072	3rd	Killing of a human being by the
10			operation of a vessel in a
11			reckless manner (vessel
12			homicide).
13	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
14			causing great bodily harm or
15			disfigurement.
16	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
17			weapon.
18	784.045(1)(b)	2nd	Aggravated battery; perpetrator
19			aware victim pregnant.
20	784.048(4)	3rd	Aggravated stalking; violation of
21			injunction or court order.
22	784.07(2)(d)	1st	Aggravated battery on law
23			enforcement officer.
24	784.08(2)(a)	1st	Aggravated battery on a person 65
25			years of age or older.
26	784.081(1)	1st	Aggravated battery on specified
27			official or employee.
28	784.082(1)	1st	Aggravated battery by detained
29			person on visitor or other
30			detainee.
31			

1	784.083(1)	1st	Aggravated battery on code
2			inspector.
3	790.07(4)	1st	Specified weapons violation
4			subsequent to previous conviction
5			of s. 790.07(1) or (2).
6	790.16(1)	1st	Discharge of a machine gun under
7			specified circumstances.
8	796.03	2nd	Procuring any person under 16
9			years for prostitution.
10	800.04	2nd	Handle, fondle, or assault child
11			under 16 years in lewd,
12			lascivious, or indecent manner.
13	806.01(2)	2nd	Maliciously damage structure by
14			fire or explosive.
15	810.02(3)(a)	2nd	Burglary of occupied dwelling;
16			unarmed; no assault or battery.
17	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
18			unarmed; no assault or battery.
19	810.02(3)(d)	2nd	Burglary of occupied conveyance;
20			unarmed; no assault or battery.
21	812.014(2)(a)	1st	Property stolen, valued at
22			\$100,000 or more; property stolen
23			while causing other property
24			damage; 1st degree grand theft.
25	812.019(2)	1st	Stolen property; initiates,
26			organizes, plans, etc., the theft
27			of property and traffics in
28			stolen property.
29	812.133(2)(b)	1st	Carjacking; no firearm, deadly
30			weapon, or other weapon.
31			

1	825.102(3)(b)	2nd	Neglecting an elderly person or
2			disabled adult causing great
3			bodily harm, disability, or
4			disfigurement.
5	825.1025(2)	2nd	Lewd or lascivious battery upon
6			an elderly person or disabled
7			adult.
8	825.103(2)(b)	2nd	Exploiting an elderly person or
9			disabled adult and property is
10			valued at \$20,000 or more, but
11			less than \$100,000.
12	827.03(3)(b)	2nd	Neglect of a child causing great
13			bodily harm, disability, or
14			disfigurement.
15	827.04(4)	3rd	Impregnation of a child under 16
16			years of age by person 21 years
17			of age or older.
18	837.05(2)	3rd	Giving false information about
19			alleged capital felony to a law
20			enforcement officer.
21	872.06	2nd	Abuse of a dead human body.
22	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
23			cocaine (or other drug prohibited
24			under s. 893.03(1)(a), (1)(b),
25			(1)(d), (2)(a), or (2)(b)) within
26			1,000 feet of a child care
27			facility or school.
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1	893.13(1)(e)	1st	Sell, manufacture, or deliver
2			cocaine or other drug prohibited
3			under s. 893.03(1)(a), (1)(b),
4			(1)(d), (2)(a), or (2)(b), within
5			1,000 feet of property used for
6			religious services or a specified
7			business site.
8	893.13(4)(a)	1st	Deliver to minor cocaine (or
9			other s. 893.03(1)(a), (1)(b),
10			(1)(d), (2)(a), or (2)(b) drugs).
11	893.135(1)(a)1.	1st	Trafficking in cannabis, more
12			than 50 lbs., less than 2,000
13			lbs.
14	893.135		
15	(1)(b)1.a.	1st	Trafficking in cocaine, more than
16			28 grams, less than 200 grams.
17	893.135		
18	(1)(c)1.a.	1st	Trafficking in illegal drugs,
19			more than 4 grams, less than 14
20			grams.
21	893.135		
22	(1)(d)1.	1st	Trafficking in phencyclidine,
23			more than 28 grams, less than 200
24			grams.
25	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
26			than 200 grams, less than 5
27			kilograms.
28	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
29			than 14 grams, less than 28
30			grams.
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1	893.135		
2	(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4
3			grams or more, less than 14
4			grams.
5			(h) LEVEL 8
6	316.193		
7	(3)(c)3.a.	2nd	DUI manslaughter.
8	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
9	777.03(2)(a)	1st	Accessory after the fact, capital
10			felony.
11	782.04(4)	2nd	Killing of human without design
12			when engaged in act or attempt of
13			any felony other than arson,
14			sexual battery, robbery,
15			burglary, kidnapping, aircraft
16			piracy, or unlawfully discharging
17			bomb.
18	782.051(2)	1st	Attempted felony murder while
19			perpetrating or attempting to
20			perpetrate a felony not
21			enumerated in s. 782.04(3).
22	782.071(2)	2nd	Committing vehicular homicide and
23			failing to render aid or give
24			information.
25	782.072(2)	2nd	Committing vessel homicide and
26			failing to render aid or give
27			information.
28	790.161(3)	1st	Discharging a destructive device
29			which results in bodily harm or
30			property damage.
31			

1	794.011(5)	2nd	Sexual battery, victim 12 years
2			or over, offender does not use
3			physical force likely to cause
4			serious injury.
5	806.01(1)	1st	Maliciously damage dwelling or
6			structure by fire or explosive,
7			believing person in structure.
8	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
9	810.02(2)(b)	1st,PBL	Burglary; armed with explosives
10			or dangerous weapon.
11	810.02(2)(c)	1st	Burglary of a dwelling or
12			structure causing structural
13			damage or \$1,000 or more property
14			damage.
15	812.13(2)(b)	1st	Robbery with a weapon.
16	812.135(2)	1st	Home-invasion robbery.
17	825.102(2)	2nd	Aggravated abuse of an elderly
18			person or disabled adult.
19	825.103(2)(a)	1st	Exploiting an elderly person or
20			disabled adult and property is
21			valued at \$100,000 or more.
22	827.03(2)	2nd	Aggravated child abuse.
23	837.02(2)	2nd	Perjury in official proceedings
24			relating to prosecution of a
25			capital felony.
26	837.021(2)	2nd	Making contradictory statements
27			in official proceedings relating
28			to prosecution of a capital
29			felony.
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1	860.121(2)(c)	1st	Shooting at or throwing any
2			object in path of railroad
3			vehicle resulting in great bodily
4			harm.
5	860.16	1st	Aircraft piracy.
6	893.13(1)(b)	1st	Sell or deliver in excess of 10
7			grams of any substance specified
8			in s. 893.03(1)(a) or (b).
9	893.13(2)(b)	1st	Purchase in excess of 10 grams of
10			any substance specified in s.
11			893.03(1)(a) or (b).
12	893.13(6)(c)	1st	Possess in excess of 10 grams of
13			any substance specified in s.
14			893.03(1)(a) or (b).
15	893.135(1)(a)2.	1st	Trafficking in cannabis, more
16			than 2,000 lbs., less than 10,000
17			lbs.
18	893.135		
19	(1)(b)1.b.	1st	Trafficking in cocaine, more than
20			200 grams, less than 400 grams.
21	893.135		
22	(1)(c)1.b.	1st	Trafficking in illegal drugs,
23			more than 14 grams, less than 28
24			grams.
25	893.135		
26	(1)(d)1.b.	1st	Trafficking in phencyclidine,
27			more than 200 grams, less than
28			400 grams.
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1	893.135		
2	(1)(e)1.b.	1st	Trafficking in methaqualone, more
3			than 5 kilograms, less than 25
4			kilograms.
5	893.135		
6	(1)(f)1.b.	1st	Trafficking in amphetamine, more
7			than 28 grams, less than 200
8			grams.
9	893.135		
10	(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14
11			grams or more, less than 28
12			grams.
13	895.03(1)	1st	Use or invest proceeds derived
14			from pattern of racketeering
15			activity.
16	895.03(2)	1st	Acquire or maintain through
17			racketeering activity any
18			interest in or control of any
19			enterprise or real property.
20	895.03(3)	1st	Conduct or participate in any
21			enterprise through pattern of
22			racketeering activity.
23			(i) LEVEL 9
24	316.193		
25	(3)(c)3.b.	1st	DUI manslaughter; failing to
26			render aid or give information.
27	782.04(1)	1st	Attempt, conspire, or solicit to
28			commit premeditated murder.
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1	782.04(3)	1st,PBL	Accomplice to murder in
2			connection with arson, sexual
3			battery, robbery, burglary, and
4			other specified felonies.
5	782.051(1)	1st	Attempted felony murder while
6			perpetrating or attempting to
7			perpetrate a felony enumerated in
8			s. 782.04(3).
9	782.07(2)	1st	Aggravated manslaughter of an
10			elderly person or disabled adult.
11	782.07(3)	1st	Aggravated manslaughter of a
12			child.
13	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or
14			reward or as a shield or hostage.
15	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit
16			or facilitate commission of any
17			felony.
18	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to
19			interfere with performance of any
20			governmental or political
21			function.
22	787.02(3)(a)	1st	False imprisonment; child under
23			age 13; perpetrator also commits
24			child abuse, sexual battery,
25			lewd, or lascivious act, etc.
26	790.161	1st	Attempted capital destructive
27			device offense.
28	794.011(2)	1st	Attempted sexual battery; victim
29			less than 12 years of age.
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1	794.011(2)	Life	Sexual battery; offender younger
2			than 18 years and commits sexual
3			battery on a person less than 12
4			years.
5	794.011(4)	1st	Sexual battery; victim 12 years
6			or older, certain circumstances.
7	794.011(8)(b)	1st	Sexual battery; engage in sexual
8			conduct with minor 12 to 18 years
9			by person in familial or
10			custodial authority.
11	812.13(2)(a)	1st,PBL	Robbery with firearm or other
12			deadly weapon.
13	812.133(2)(a)	1st,PBL	Carjacking; firearm or other
14			deadly weapon.
15	847.0145(1)	1st	Selling, or otherwise
16			transferring custody or control,
17			of a minor.
18	847.0145(2)	1st	Purchasing, or otherwise
19			obtaining custody or control, of
20			a minor.
21	859.01	1st	Poisoning food, drink, medicine,
22			or water with intent to kill or
23			injure another person.
24	893.135	1st	Attempted capital trafficking
25			offense.
26	893.135(1)(a)3.	1st	Trafficking in cannabis, more
27			than 10,000 lbs.
28	893.135		
29	(1)(b)1.c.	1st	Trafficking in cocaine, more than
30			400 grams, less than 150
31			kilograms.

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

1 (1) of section 921.0024, Florida Statutes, 1998 Supplement, is
2 reenacted to read:

3 921.0024 Criminal Punishment Code; worksheet
4 computations; scoresheets.--

5 (1)

6 (b) WORKSHEET KEY:

7
8 Legal status points are assessed when any form of legal status
9 existed at the time the offender committed an offense before
10 the court for sentencing. Four (4) sentence points are
11 assessed for an offender's legal status.

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

26
27 Prior serious felony points: If the offender has a primary
28 offense or any additional offense ranked in level 8, level 9,
29 or level 10, and one or more prior serious felonies, a single
30 assessment of 30 points shall be added. For purposes of this
31 section, a prior serious felony is an offense in the

1 offender's prior record that is ranked in level 8, level 9, or
2 level 10 under s. 921.0022 or s. 921.0023 and for which the
3 offender is serving a sentence of confinement, supervision, or
4 other sanction or for which the offender's date of release
5 from confinement, supervision, or other sanction, whichever is
6 later, is within 3 years before the date the primary offense
7 or any additional offense was committed.

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

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

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Sentencing multipliers:

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

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

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

Criminal street gang member: If the offender is convicted of the primary offense and is found to have been a member of a criminal street gang at the time of the commission of the

1 primary offense pursuant to s. 874.04, the subtotal sentence
2 points are multiplied by 1.5.

3
4 Domestic violence in the presence of a child: If the offender
5 is convicted of the primary offense and the primary offense is
6 a crime of domestic violence, as defined in s. 741.28, which
7 was committed in the presence of a child under 16 years of age
8 who is a family household member as defined in s. 741.28(2)
9 with the victim or perpetrator, the subtotal sentence points
10 are multiplied, at the discretion of the court, by 1.5.

11 Section 9. For the purpose of incorporating the
12 amendments made by this act to section 893.135, Florida
13 Statutes, in references thereto, subsection (2) of section
14 921.142, Florida Statutes, is reenacted to read:

15 921.142 Sentence of death or life imprisonment for
16 capital drug trafficking felonies; further proceedings to
17 determine sentence.--

18 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon
19 conviction or adjudication of guilt of a defendant of a
20 capital felony under s. 893.135, the court shall conduct a
21 separate sentencing proceeding to determine whether the
22 defendant should be sentenced to death or life imprisonment as
23 authorized by s. 775.082. The proceeding shall be conducted
24 by the trial judge before the trial jury as soon as
25 practicable. If, through impossibility or inability, the
26 trial jury is unable to reconvene for a hearing on the issue
27 of penalty, having determined the guilt of the accused, the
28 trial judge may summon a special juror or jurors as provided
29 in chapter 913 to determine the issue of the imposition of the
30 penalty. If the trial jury has been waived, or if the
31 defendant pleaded guilty, the sentencing proceeding shall be

1 conducted before a jury impaneled for that purpose, unless
2 waived by the defendant. In the proceeding, evidence may be
3 presented as to any matter that the court deems relevant to
4 the nature of the crime and the character of the defendant and
5 shall include matters relating to any of the aggravating or
6 mitigating circumstances enumerated in subsections (6) and
7 (7). Any such evidence which the court deems to have
8 probative value may be received, regardless of its
9 admissibility under the exclusionary rules of evidence,
10 provided the defendant is accorded a fair opportunity to rebut
11 any hearsay statements. However, this subsection shall not be
12 construed to authorize the introduction of any evidence
13 secured in violation of the Constitution of the United States
14 or the Constitution of the State of Florida. The state and the
15 defendant or the defendant's counsel shall be permitted to
16 present argument for or against sentence of death.

17 Section 10. For the purpose of incorporating the
18 amendments made by this act to section 893.135, Florida
19 Statutes, in references thereto, section 943.0585, Florida
20 Statutes, 1998 Supplement, is reenacted to read:

21 943.0585 Court-ordered expunction of criminal history
22 records.--The courts of this state have jurisdiction over
23 their own procedures, including the maintenance, expunction,
24 and correction of judicial records containing criminal history
25 information to the extent such procedures are not inconsistent
26 with the conditions, responsibilities, and duties established
27 by this section. Any court of competent jurisdiction may
28 order a criminal justice agency to expunge the criminal
29 history record of a minor or an adult who complies with the
30 requirements of this section. The court shall not order a
31 criminal justice agency to expunge a criminal history record

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

1 any right to the expunction of any criminal history record,
2 and any request for expunction of a criminal history record
3 may be denied at the sole discretion of the court.

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

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

9 (b) The petitioner's sworn statement attesting that
10 the petitioner:

11 1. 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 2. 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
18 pertains.

19 3. 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, or from any
22 jurisdiction outside the state.

23 4. Is eligible for such an expunction to the best of
24 his or her knowledge or belief and does not have any other
25 petition to expunge or any petition to seal pending before any
26 court.

27
28 Any person who knowingly provides false information on such
29 sworn statement to the court commits a felony of the third
30 degree, punishable as provided in s. 775.082, s. 775.083, or
31 s. 775.084.

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

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

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

16 2. That an indictment, information, or other charging
17 document, if filed or issued in the case, was dismissed or
18 nolle prosequi by the state attorney or statewide prosecutor,
19 or was dismissed by a court of competent jurisdiction.

20 3. That the criminal history record does not relate to
21 a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071,
22 chapter 839, s. 893.135, or a violation enumerated in s.
23 907.041, where the defendant was found guilty of, or pled
24 guilty or nolo contendere to any such offense, or that the
25 defendant, as a minor, was found to have committed, or pled
26 guilty or nolo contendere to committing, such an offense as a
27 delinquent act, without regard to whether adjudication was
28 withheld.

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

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

4 (d) Has never previously been adjudicated guilty of a
5 criminal offense or comparable ordinance violation or
6 adjudicated delinquent for committing a felony or a
7 misdemeanor specified in s. 943.051(3)(b).

8 (e) Has not been adjudicated guilty of, or adjudicated
9 delinquent for committing, any of the acts stemming from the
10 arrest or alleged criminal activity to which the petition to
11 expunge pertains.

12 (f) Has never secured a prior sealing or expunction of
13 a criminal history record under this section, former s.
14 893.14, former s. 901.33, or former s. 943.058.

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

18 (h) Is not required to wait a minimum of 10 years
19 prior to being eligible for an expunction of such records
20 because all charges related to the arrest or criminal activity
21 to which the petition to expunge pertains were dismissed prior
22 to trial, adjudication, or the withholding of adjudication.
23 Otherwise, such criminal history record must be sealed under
24 this section, former s. 893.14, former s. 901.33, or former s.
25 943.058 for at least 10 years before such record is eligible
26 for expunction.

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

28 (a) In judicial proceedings under this section, a copy
29 of the completed petition to expunge shall be served upon the
30 appropriate state attorney or the statewide prosecutor and
31 upon the arresting agency; however, it is not necessary to

1 make any agency other than the state a party. The appropriate
2 state attorney or the statewide prosecutor and the arresting
3 agency may respond to the court regarding the completed
4 petition to expunge.

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

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

28 (d) On or after July 1, 1992, the department or any
29 other criminal justice agency is not required to act on an
30 order to expunge entered by a court when such order does not
31 comply with the requirements of this section. Upon receipt of

1 such an order, the department must notify the issuing court,
2 the appropriate state attorney or statewide prosecutor, the
3 petitioner or the petitioner's attorney, and the arresting
4 agency of the reason for noncompliance. The appropriate state
5 attorney or statewide prosecutor shall take action within 60
6 days to correct the record and petition the court to void the
7 order. No cause of action, including contempt of court, shall
8 arise against any criminal justice agency for failure to
9 comply with an order to expunge when the petitioner for such
10 order failed to obtain the certificate of eligibility as
11 required by this section or such order does not otherwise
12 comply with the requirements of this section.

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

27 (a) The person who is the subject of a criminal
28 history record that is expunged under this section or under
29 other provisions of law, including former s. 893.14, former s.
30 901.33, and former s. 943.058, may lawfully deny or fail to
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1 acknowledge the arrests covered by the expunged record, except
2 when the subject of the record:

3 1. Is a candidate for employment with a criminal
4 justice agency;

5 2. Is a defendant in a criminal prosecution;

6 3. Concurrently or subsequently petitions for relief
7 under this section or s. 943.059;

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

9 5. Is seeking to be employed or licensed by or to
10 contract with the Department of Children and Family Services
11 or the Department of Juvenile Justice or to be employed or
12 used by such contractor or licensee in a sensitive position
13 having direct contact with children, the developmentally
14 disabled, the aged, or the elderly as provided in s.
15 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
16 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
17 415.1075(4), s. 985.407, or chapter 400; or

18 6. Is seeking to be employed or licensed by the Office
19 of Teacher Education, Certification, Staff Development, and
20 Professional Practices of the Department of Education, any
21 district school board, or any local governmental entity that
22 licenses child care facilities.

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

30 (c) Information relating to the existence of an
31 expunged criminal history record which is provided in

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

19 Section 11. For the purpose of incorporating the
20 amendments made by this act to section 893.135, Florida
21 Statutes, in references thereto, section 943.059, Florida
22 Statutes, 1998 Supplement, is reenacted to read:

23 943.059 Court-ordered sealing of criminal history
24 records.--The courts of this state shall continue to have
25 jurisdiction over their own procedures, including the
26 maintenance, sealing, and correction of judicial records
27 containing criminal history information to the extent such
28 procedures are not inconsistent with the conditions,
29 responsibilities, and duties established by this section. Any
30 court of competent jurisdiction may order a criminal justice
31 agency to seal the criminal history record of a minor or an

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

1 handling of criminal history records or information derived
2 therefrom. This section does not confer any right to the
3 sealing of any criminal history record, and any request for
4 sealing a criminal history record may be denied at the sole
5 discretion of the court.

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

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

11 (b) The petitioner's sworn statement attesting that
12 the petitioner:

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

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

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

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

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30 Any person who knowingly provides false information on such
31 sworn statement to the court commits a felony of the third

1 degree, punishable as provided in s. 775.082, s. 775.083, or
2 s. 775.084.

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

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

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

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

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

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

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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.

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

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

26 Section 12. This act shall take effect July 1, 1999.
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SENATE SUMMARY

Redefines the offense of trafficking in cannabis.
Provides mandatory minimum terms of imprisonment and
mandatory fines for specified drug offenses. Provides
that persons convicted of specified drug offenses are
ineligible for gain-time or early release. (See bill for
details.)