

By the Committee on Criminal Justice and Senator Brown-Waite

307-1760D-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; defining the term
5 "cannabis plant"; providing mandatory minimum
6 prison terms and mandatory fine amounts for
7 trafficking in cannabis, cocaine, illegal
8 drugs, phencyclidine, methaqualone,
9 amphetamine, or flunitrazepam; providing for
10 sentencing pursuant to the Criminal Punishment
11 Code of offenders convicted of trafficking in
12 specified quantities of cannabis; removing
13 weight caps for various trafficking offenses;
14 providing that an offender who is sentenced to
15 a mandatory minimum term upon conviction of
16 trafficking in specified quantities of
17 cannabis, cocaine, illegal drugs,
18 phencyclidine, methaqualone, amphetamine, or
19 flunitrazepam is not eligible for gain time or
20 certain discretionary early-release mechanisms
21 prior to serving the mandatory minimum
22 sentence; providing exceptions; providing
23 penalties; amending s. 921.0024, F.S., relating
24 to the worksheet computations for the Criminal
25 Punishment Code; revising requirements for the
26 court in applying a sentencing multiplier for
27 drug-trafficking offenses; authorizing state
28 attorneys to reduce or suspend any trafficking
29 offense if substantial assistance is provided;
30 reenacting s. 397.451(7), F.S., relating to the
31 prohibition against dissemination of state

1 funds to service providers convicted of certain
2 offenses, s. 782.04(4)(a), F.S., relating to
3 murder, s. 893.1351(1), F.S., relating to lease
4 or rent for the purpose of trafficking in a
5 controlled substance, s. 903.133, F.S.,
6 relating to the prohibition against bail on
7 appeal for certain felony convictions, s.
8 907.041(4)(b), F.S., relating to pretrial
9 detention and release, s. 921.0022(3)(g), (h),
10 and (i), F.S., relating to the Criminal
11 Punishment Code offense severity ranking chart,
12 s. 921.142(2), F.S., relating to sentencing for
13 capital drug trafficking felonies, s. 943.0585,
14 F.S., relating to court-ordered expunction of
15 criminal history records, and s. 943.059, F.S.,
16 relating to court-ordered sealing of criminal
17 history records, to incorporate the amendment
18 in references; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 893.135, Florida Statutes, as
23 amended by section 23 of chapter 97-194, Laws of Florida, is
24 amended to read:

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

28 (1) Except as authorized in this chapter or in chapter
29 499 and notwithstanding the provisions of s. 893.13:

30 (a) Any person who knowingly sells, purchases,
31 manufactures, delivers, or brings into this state, or who is

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

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

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

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

23
24 For the purpose of this paragraph, a plant, including, but not
25 limited to, a seedling or cutting, is a "cannabis plant" if it
26 has some readily observable evidence of root formation, such
27 as root hairs. To determine if a piece or part of a cannabis
28 plant severed from the cannabis plant is itself a cannabis
29 plant, the severed piece or part must have some readily
30 observable evidence of root formation, such as root hairs.
31 Callous tissue is not readily observable evidence of root

1 formation. The viability and sex of a plant and the fact that
2 the plant may or may not be a dead harvested plant are not
3 relevant in determining if the plant is a "cannabis plant" or
4 in the charging of an offense under this paragraph. Upon
5 conviction, the court shall impose the longest term of
6 imprisonment provided for in this paragraph.

7 (b)1. 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, 28 grams or
10 more of cocaine, as described in s. 893.03(2)(a)4., or of any
11 mixture containing cocaine, but less than 150 kilograms of
12 cocaine or any such mixture, commits a felony of the first
13 degree, which felony shall be known as "trafficking in
14 cocaine." If the quantity involved:

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

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

25 c. Is 400 grams or more, but less than 150 kilograms,
26 such 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 sells, purchases,
29 manufactures, delivers, or brings into this state, or who is
30 knowingly in actual or constructive possession of, 150
31 kilograms or more, ~~but less than 300 kilograms,~~ of cocaine, as

1 described in s. 893.03(2)(a)4., commits the first degree
2 felony of trafficking in cocaine. A person who has been
3 convicted of the first degree felony of trafficking in cocaine
4 under this subparagraph shall be punished by life imprisonment
5 and is not eligible for any form of gain time under s. 944.275
6 or ineligible for any form of discretionary early release
7 except pardon or executive clemency or conditional medical
8 release under s. 947.149. However, if the court determines
9 that, in addition to committing any act specified in this
10 paragraph:

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

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

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

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

31

1 (c)1. Any person who knowingly sells, purchases,
2 manufactures, delivers, or brings into this state, or who is
3 knowingly in actual or constructive possession of, 4 grams or
4 more of any morphine, opium, oxycodone, hydrocodone,
5 hydromorphone, or any salt, derivative, isomer, or salt of an
6 isomer thereof, including heroin, as described in s.
7 893.03(1)(b) or (2)(a), or 4 grams or more of any mixture
8 containing any such substance, but less than 30 kilograms of
9 such substance or mixture, commits a felony of the first
10 degree, which felony shall be known as "trafficking in illegal
11 drugs." If the quantity involved:
12 a. Is 4 grams or more, but less than 14 grams, such
13 person shall be sentenced pursuant to the Criminal Punishment
14 Code and such sentence shall include a mandatory minimum term
15 of imprisonment of 3 years, and the defendant shall be ordered
16 to pay a fine of \$50,000.
17 b. Is 14 grams or more, but less than 28 grams, such
18 person shall be sentenced pursuant to the Criminal Punishment
19 Code and such sentence shall include a mandatory minimum term
20 of imprisonment of 15 years, and the defendant shall be
21 ordered to pay a fine of \$100,000.
22 c. Is 28 grams or more, but less than 30 kilograms,
23 such person shall be sentenced to a mandatory minimum term of
24 imprisonment of 25 calendar years and pay a fine of \$500,000.
25 2. Any person who knowingly sells, purchases,
26 manufactures, delivers, or brings into this state, or who is
27 knowingly in actual or constructive possession of, 30
28 kilograms or more, ~~but less than 60 kilograms,~~ of any
29 morphine, opium, oxycodone, hydrocodone, hydromorphone, or any
30 salt, derivative, isomer, or salt of an isomer thereof,
31 including heroin, as described in s. 893.03(1)(b) or (2)(a),

1 | or 30 kilograms or more, ~~but less than 60 kilograms~~, of any
2 | mixture containing any such substance, commits the first
3 | degree felony of trafficking in illegal drugs. A person who
4 | has been convicted of the first degree felony of trafficking
5 | in illegal drugs under this subparagraph shall be punished by
6 | life imprisonment and is not eligible for any form of gain
7 | time under s. 944.275 or ~~ineligible~~ for any form of
8 | discretionary early release except pardon or executive
9 | clemency or conditional medical release under s. 947.149.
10 | However, if the court determines that, in addition to
11 | committing any act specified in this paragraph:
12 | a. The person intentionally killed an individual or
13 | counseled, commanded, induced, procured, or caused the
14 | intentional killing of an individual and such killing was the
15 | result; or
16 | b. The person's conduct in committing that act led to
17 | a natural, though not inevitable, lethal result,
18 |
19 | such person commits the capital felony of trafficking in
20 | illegal drugs, punishable as provided in ss. 775.082 and
21 | 921.142. Any person sentenced for a capital felony under this
22 | paragraph shall also be sentenced to pay the maximum fine
23 | provided under subparagraph 1.
24 | 3. Any person who knowingly brings into this state 60
25 | kilograms or more of any morphine, opium, oxycodone,
26 | hydrocodone, hydromorphone, or any salt, derivative, isomer,
27 | or salt of an isomer thereof, including heroin, as described
28 | in s. 893.03(1)(b) or (2)(a), or 60 kilograms or more of any
29 | mixture containing any such substance, and who knows that the
30 | probable result of such importation would be the death of any
31 | person, commits capital importation of illegal drugs, a

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

5 (d)1. Any person who knowingly sells, purchases,
6 manufactures, delivers, or brings into this state, or who is
7 knowingly in actual or constructive possession of, 28 grams or
8 more of phencyclidine or of any mixture containing

9 phencyclidine, as described in s. 893.03(2)(b), commits a
10 felony of the first degree, which felony shall be known as
11 "trafficking in phencyclidine." If the quantity involved:

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

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

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

25 2. Any person who knowingly brings into this state 800
26 grams or more of phencyclidine or of any mixture containing
27 phencyclidine, as described in s. 893.03(2)(b), and who knows
28 that the probable result of such importation would be the
29 death of any person commits capital importation of
30 phencyclidine, a capital felony punishable as provided in ss.
31 775.082 and 921.142. Any person sentenced for a capital felony

1 under this paragraph shall also be sentenced to pay the
2 maximum fine provided under subparagraph 1.

3 (e)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, 200 grams
6 or more of methaqualone or of any mixture containing
7 methaqualone, as described in s. 893.03(1)(d), commits a
8 felony of the first degree, which felony shall be known as
9 "trafficking in methaqualone." If the quantity involved:

10 a. Is 200 grams or more, but less than 5 kilograms,
11 such person shall be sentenced pursuant to the Criminal
12 Punishment Code and such sentence shall include a mandatory
13 minimum term of imprisonment of 3 years, and the defendant
14 shall be ordered to pay a fine of \$50,000.

15 b. Is 5 kilograms or more, but less than 25 kilograms,
16 such person shall be sentenced pursuant to the Criminal
17 Punishment Code and such sentence shall include a mandatory
18 minimum term of imprisonment of 7 years, and the defendant
19 shall be ordered to pay a fine of \$100,000.

20 c. Is 25 kilograms or more, ~~but less than 50~~
21 ~~kilograms~~, such person shall be sentenced to a mandatory
22 minimum term of imprisonment of 15 calendar years and pay a
23 fine of \$250,000.

24 2. Any person who knowingly brings into this state 50
25 kilograms or more of methaqualone or of any mixture containing
26 methaqualone, as described in s. 893.03(1)(d), and who knows
27 that the probable result of such importation would be the
28 death of any person commits capital importation of
29 methaqualone, a capital felony punishable as provided in ss.
30 775.082 and 921.142. Any person sentenced for a capital felony
31

1 under this paragraph shall also be sentenced to pay the
2 maximum fine provided under subparagraph 1.

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

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

19 b. Is 28 grams or more, but less than 200 grams, such
20 person shall be sentenced pursuant to the Criminal Punishment
21 Code and such sentence shall include a mandatory minimum term
22 of imprisonment of 7 years and the defendant shall be ordered
23 to pay a fine of \$100,000.

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

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

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

9 (g)1. Any person who knowingly sells, purchases,
10 manufactures, delivers, or brings into this state, or who is
11 knowingly in actual or constructive possession of, 4 grams or
12 more of flunitrazepam or any mixture containing flunitrazepam
13 as described in s. 893.03(1)(a) commits a felony of the first
14 degree, which felony shall be known as "trafficking in
15 flunitrazepam." If the quantity involved:

16 a. Is 4 grams or more but less than 14 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 3 years and the defendant shall be ordered
20 to sentencing guidelines and pay a fine of \$50,000.

21 b. Is 14 grams or more but less than 28 grams, such
22 person shall be sentenced pursuant to the Criminal Punishment
23 Code and such sentence shall include a mandatory minimum term
24 of imprisonment of 7 years, and the defendant shall be ordered
25 to sentencing guidelines and pay a fine of \$100,000.

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

29 2. 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 30 kilograms

1 or more of flunitrazepam or any mixture containing
2 flunitrazepam as described in s. 893.03(1)(a) commits the
3 first degree felony of trafficking in flunitrazepam. A person
4 who has been convicted of the first degree felony of
5 trafficking in flunitrazepam under this subparagraph shall be
6 punished by life imprisonment and is not eligible for any form
7 of gain time under s. 944.275 or ineligible for any form of
8 discretionary early release except pardon or executive
9 clemency or conditional medical release under s. 947.149.
10 However, if the court determines that, in addition to
11 committing any act specified in this paragraph:
12 a. The person intentionally killed an individual or
13 counseled, commanded, induced, procured, or caused the
14 intentional killing of an individual and such killing was the
15 result; or
16 b. The person's conduct in committing that act led to
17 a natural, though not inevitable, lethal result,
18
19 such person commits the capital felony of trafficking in
20 flunitrazepam, punishable as provided in ss. 775.082 and
21 921.142. Any person sentenced for a capital felony under this
22 paragraph shall also be sentenced to pay the maximum fine
23 provided under subparagraph 1.
24 (2) A person acts knowingly under subsection (1) if
25 that person intends to sell, purchase, manufacture, deliver,
26 or bring into this state, or to actually or constructively
27 possess, any of the controlled substances listed in subsection
28 (1), regardless of which controlled substance listed in
29 subsection (1) is in fact sold, purchased, manufactured,
30 delivered, or brought into this state, or actually or
31 constructively possessed.

1 (3) Notwithstanding the provisions of s. 948.01, with
2 respect to any person who is found to have violated this
3 section, adjudication of guilt or imposition of sentence shall
4 not be suspended, deferred, or withheld, nor shall such person
5 be eligible for parole prior to serving the mandatory minimum
6 term of imprisonment prescribed by this section. A person
7 sentenced to a mandatory minimum term of imprisonment under
8 this section is not eligible for any form of gain time under
9 s. 944.275 or any form of discretionary early release, except
10 pardon or executive clemency or conditional medical release
11 under s. 947.149, prior to serving the mandatory minimum term
12 of imprisonment.

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

26 (5) Any person who agrees, conspires, combines, or
27 confederates with another person to commit any act prohibited
28 by subsection (1) commits a felony of the first degree and is
29 punishable as if he or she had actually committed such
30 prohibited act. Nothing in this subsection shall be construed
31

1 to prohibit separate convictions and sentences for a violation
2 of this subsection and any violation of subsection (1).

3 Section 2. Paragraph (b) of subsection (1) of section
4 921.0024, Florida Statutes, 1998 Supplement, is amended to
5 read:

6 921.0024 Criminal Punishment Code; worksheet
7 computations; scoresheets.--

8 (1)

9 (b) WORKSHEET KEY:

10

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

15

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

29

30 Prior serious felony points: If the offender has a primary
31 offense or any additional offense ranked in level 8, level 9,

1 or level 10, and one or more prior serious felonies, a single
2 assessment of 30 points shall be added. For purposes of this
3 section, a prior serious felony is an offense in the
4 offender's prior record that is ranked in level 8, level 9, or
5 level 10 under s. 921.0022 or s. 921.0023 and for which the
6 offender is serving a sentence of confinement, supervision, or
7 other sanction or for which the offender's date of release
8 from confinement, supervision, or other sanction, whichever is
9 later, is within 3 years before the date the primary offense
10 or any additional offense was committed.

11

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

23

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

1 firearm as defined in s. 775.087(3) or a machine gun as
2 defined in s. 790.001(9), an additional 25 sentence points are
3 assessed.

4

5 Sentencing multipliers:

6

7 Drug trafficking: If the primary offense is any
8 drug-trafficking offense ~~drug trafficking~~ under s. 893.135,
9 the subtotal sentence points shall be ~~are~~ multiplied, ~~at the~~
10 ~~discretion of the court, for a level 7 or level 8 offense, by~~
11 1.5. The state attorney may move the sentencing court to
12 reduce or suspend the sentence of a person convicted of any
13 drug-trafficking offense under s. 893.135 ~~a level 7 or level 8~~
14 ~~offense~~, if the offender provides substantial assistance as
15 described in s. 893.135(4).

16

17 Law enforcement protection: If the primary offense is a
18 violation of the Law Enforcement Protection Act under s.
19 775.0823(2), the subtotal sentence points are multiplied by
20 2.5. If the primary offense is a violation of s. 775.0823(3),
21 (4), (5), (6), (7), or (8), the subtotal sentence points are
22 multiplied by 2.0. If the primary offense is a violation of s.
23 784.07(3) or s. 775.0875(1), or of the Law Enforcement
24 Protection Act under s. 775.0823(9) or (10), the subtotal
25 sentence points are multiplied by 1.5.

26

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

1
2 Criminal street gang member: If the offender is convicted of
3 the primary offense and is found to have been a member of a
4 criminal street gang at the time of the commission of the
5 primary offense pursuant to s. 874.04, the subtotal sentence
6 points are multiplied by 1.5.

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

15 Section 3. For the purpose of incorporating the
16 amendments made by this act to section 893.135, Florida
17 Statutes, in references thereto, subsection (7) of section
18 397.451, Florida Statutes, is reenacted to read:

19 397.451 Background checks of service provider
20 personnel who have direct contact with unmarried minor clients
21 or clients who are developmentally disabled.--

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

1 trafficking offense in this state, unless the owner's or
2 director's civil rights have been restored.

3 Section 4. For the purpose of incorporating the
4 amendments made by this act to section 893.135, Florida
5 Statutes, in references thereto, subsection (4) of section
6 782.04, Florida Statutes, 1998 Supplement, is reenacted to
7 read:

8 782.04 Murder.--

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

13 (a) Trafficking offense prohibited by s. 893.135(1),

14 (b) Arson,

15 (c) Sexual battery,

16 (d) Robbery,

17 (e) Burglary,

18 (f) Kidnapping,

19 (g) Escape,

20 (h) Aggravated child abuse,

21 (i) Aggravated abuse of an elderly person or disabled
22 adult,

23 (j) Aircraft piracy,

24 (k) Unlawful throwing, placing, or discharging of a
25 destructive device or bomb,

26 (l) Unlawful distribution of any substance controlled
27 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,
28 or opium or any synthetic or natural salt, compound,
29 derivative, or preparation of opium by a person 18 years of
30 age or older, when such drug is proven to be the proximate
31 cause of the death of the user,

- 1 (m) Carjacking,
2 (n) Home-invasion robbery,
3 (o) Aggravated stalking, or
4 (p) Murder of another human being,
5

6 is murder in the third degree and constitutes a felony of the
7 second degree, punishable as provided in s. 775.082, s.
8 775.083, or s. 775.084.

9 Section 5. For the purpose of incorporating the
10 amendments made by this act to section 893.135, Florida
11 Statutes, in references thereto, subsection (1) of section
12 893.1351, Florida Statutes, is reenacted to read:

13 893.1351 Lease or rent for the purpose of trafficking
14 in a controlled substance.--

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

21 Section 6. For the purpose of incorporating the
22 amendments made by this act to section 893.135, Florida
23 Statutes, in references thereto, section 903.133, Florida
24 Statutes, is reenacted to read:

25 903.133 Bail on appeal; prohibited for certain felony
26 convictions.--Notwithstanding the provisions of s. 903.132, no
27 person adjudged guilty of a felony of the first degree for a
28 violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s.
29 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a
30 violation of s. 794.011(2) or (3), shall be admitted to bail
31 pending review either by posttrial motion or appeal.

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, paragraph (b) of subsection
4 (4) of section 907.041, Florida Statutes, is reenacted to
5 read:

6 907.041 Pretrial detention and release.--

7 (4) PRETRIAL DETENTION.--

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

12 1. The defendant has previously violated conditions of
13 release and that no further conditions of release are
14 reasonably likely to assure the defendant's appearance at
15 subsequent proceedings;

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

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

28 4. The defendant poses the threat of harm to the
29 community. The court may so conclude if it finds that the
30 defendant is presently charged with a dangerous crime, that
31 there is a substantial probability that the defendant

1 committed such crime, that the factual circumstances of the
2 crime indicate a disregard for the safety of the community,
3 and that there are no conditions of release reasonably
4 sufficient to protect the community from the risk of physical
5 harm to persons. In addition, the court must find that at
6 least one of the following conditions is present:

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

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

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

15 Section 8. For the purpose of incorporating the
16 amendments made by this act to section 893.135, Florida
17 Statutes, in references thereto, paragraphs (g), (h), (i), and
18 (j) of subsection (3) of section 921.0022, Florida Statutes,
19 1998 Supplement, are reenacted to read:

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

22 (3) OFFENSE SEVERITY RANKING CHART

23

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

1	409.920(2)	3rd	Medicaid provider fraud.
2	494.0018(2)	1st	Conviction of any violation of
3			ss. 494.001-494.0077 in which the
4			total money and property
5			unlawfully obtained exceeded
6			\$50,000 and there were five or
7			more victims.
8	782.051(3)	2nd	Attempted felony murder of a
9			person by a person other than the
10			perpetrator or the perpetrator of
11			an attempted felony.
12	782.07(1)	2nd	Killing of a human being by the
13			act, procurement, or culpable
14			negligence of another
15			(manslaughter).
16	782.071	3rd	Killing of human being or viable
17			fetus by the operation of a motor
18			vehicle in a reckless manner
19			(vehicular homicide).
20	782.072	3rd	Killing of a human being by the
21			operation of a vessel in a
22			reckless manner (vessel
23			homicide).
24	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
25			causing great bodily harm or
26			disfigurement.
27	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
28			weapon.
29	784.045(1)(b)	2nd	Aggravated battery; perpetrator
30			aware victim pregnant.
31			

1	784.048(4)	3rd	Aggravated stalking; violation of
2			injunction or court order.
3	784.07(2)(d)	1st	Aggravated battery on law
4			enforcement officer.
5	784.08(2)(a)	1st	Aggravated battery on a person 65
6			years of age or older.
7	784.081(1)	1st	Aggravated battery on specified
8			official or employee.
9	784.082(1)	1st	Aggravated battery by detained
10			person on visitor or other
11			detainee.
12	784.083(1)	1st	Aggravated battery on code
13			inspector.
14	790.07(4)	1st	Specified weapons violation
15			subsequent to previous conviction
16			of s. 790.07(1) or (2).
17	790.16(1)	1st	Discharge of a machine gun under
18			specified circumstances.
19	796.03	2nd	Procuring any person under 16
20			years for prostitution.
21	800.04	2nd	Handle, fondle, or assault child
22			under 16 years in lewd,
23			lascivious, or indecent manner.
24	806.01(2)	2nd	Maliciously damage structure by
25			fire or explosive.
26	810.02(3)(a)	2nd	Burglary of occupied dwelling;
27			unarmed; no assault or battery.
28	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
29			unarmed; no assault or battery.
30	810.02(3)(d)	2nd	Burglary of occupied conveyance;
31			unarmed; no assault or battery.

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

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

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

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

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

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

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

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

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

1 Statutes, in references thereto, subsection (2) of section
2 921.142, Florida Statutes, is reenacted to read:

3 921.142 Sentence of death or life imprisonment for
4 capital drug trafficking felonies; further proceedings to
5 determine sentence.--

6 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon
7 conviction or adjudication of guilt of a defendant of a
8 capital felony under s. 893.135, the court shall conduct a
9 separate sentencing proceeding to determine whether the
10 defendant should be sentenced to death or life imprisonment as
11 authorized by s. 775.082. The proceeding shall be conducted
12 by the trial judge before the trial jury as soon as
13 practicable. If, through impossibility or inability, the
14 trial jury is unable to reconvene for a hearing on the issue
15 of penalty, having determined the guilt of the accused, the
16 trial judge may summon a special juror or jurors as provided
17 in chapter 913 to determine the issue of the imposition of the
18 penalty. If the trial jury has been waived, or if the
19 defendant pleaded guilty, the sentencing proceeding shall be
20 conducted before a jury impaneled for that purpose, unless
21 waived by the defendant. In the proceeding, evidence may be
22 presented as to any matter that the court deems relevant to
23 the nature of the crime and the character of the defendant and
24 shall include matters relating to any of the aggravating or
25 mitigating circumstances enumerated in subsections (6) and
26 (7). Any such evidence which the court deems to have
27 probative value may be received, regardless of its
28 admissibility under the exclusionary rules of evidence,
29 provided the defendant is accorded a fair opportunity to rebut
30 any hearsay statements. However, this subsection shall not be
31 construed to authorize the introduction of any evidence

1 secured in violation of the Constitution of the United States
2 or the Constitution of the State of Florida. The state and the
3 defendant or the defendant's counsel shall be permitted to
4 present argument for or against sentence of death.

5 Section 10. For the purpose of incorporating the
6 amendments made by this act to section 893.135, Florida
7 Statutes, in references thereto, section 943.0585, Florida
8 Statutes, 1998 Supplement, is reenacted to read:

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

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

23 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY

24 RECORD.--Each petition to a court to expunge a criminal
25 history record is complete only when accompanied by:

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

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

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

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

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

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

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

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

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

30
31

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

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

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

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

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

22 (c) Has submitted to the department a certified copy
23 of the disposition of the charge to which the petition to
24 expunge pertains.

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

29 (e) Has not been adjudicated guilty of, or adjudicated
30 delinquent for committing, any of the acts stemming from the
31

1 arrest or alleged criminal activity to which the petition to
2 expunge pertains.

3 (f) Has never secured a prior sealing or expunction of
4 a criminal history record under this section, former s.
5 893.14, former s. 901.33, or former s. 943.058.

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

9 (h) Is not required to wait a minimum of 10 years
10 prior to being eligible for an expunction of such records
11 because all charges related to the arrest or criminal activity
12 to which the petition to expunge pertains were dismissed prior
13 to trial, adjudication, or the withholding of adjudication.
14 Otherwise, such criminal history record must be sealed under
15 this section, former s. 893.14, former s. 901.33, or former s.
16 943.058 for at least 10 years before such record is eligible
17 for expunction.

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

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

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

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

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

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

1 order failed to obtain the certificate of eligibility as
2 required by this section or such order does not otherwise
3 comply with the requirements of this section.

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

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

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

1 or the Department of Juvenile Justice or to be employed or
2 used by such contractor or licensee in a sensitive position
3 having direct contact with children, the developmentally
4 disabled, the aged, or the elderly as provided in s.
5 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
6 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
7 415.1075(4), s. 985.407, or chapter 400; or

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

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

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

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

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

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

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

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

30 | (a) A certificate of eligibility for sealing issued by
31 | the department pursuant to subsection (2).

1 (b) The petitioner's sworn statement attesting that
2 the petitioner:

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

7 2. Has not been adjudicated guilty of or adjudicated
8 delinquent for committing any of the acts stemming from the
9 arrest or alleged criminal activity to which the petition to
10 seal pertains.

11 3. Has never secured a prior sealing or expunction of
12 a criminal history record under this section, former s.
13 893.14, former s. 901.33, former s. 943.058, or from any
14 jurisdiction outside the state.

15 4. Is eligible for such a sealing to the best of his
16 or her knowledge or belief and does not have any other
17 petition to seal or any petition to expunge pending before any
18 court.

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

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

1 eligibility for sealing to a person who is the subject of a
2 criminal history record provided that such person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 1. Is a candidate for employment with a criminal
31 justice agency;

1 2. Is a defendant in a criminal prosecution;
2 3. Concurrently or subsequently petitions for relief
3 under this section or s. 943.0585;
4 4. Is a candidate for admission to The Florida Bar;
5 5. Is seeking to be employed or licensed by or to
6 contract with the Department of Children and Family Services
7 or the Department of Juvenile Justice or to be employed or
8 used by such contractor or licensee in a sensitive position
9 having direct contact with children, the developmentally
10 disabled, the aged, or the elderly as provided in s.
11 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
12 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
13 415.103, s. 985.407, or chapter 400; or
14 6. Is seeking to be employed or licensed by the Office
15 of Teacher Education, Certification, Staff Development, and
16 Professional Practices of the Department of Education, any
17 district school board, or any local governmental entity which
18 licenses child care facilities.
19 (b) Subject to the exceptions in paragraph (a), a
20 person who has been granted a sealing under this section,
21 former s. 893.14, former s. 901.33, or former s. 943.058 may
22 not be held under any provision of law of this state to commit
23 perjury or to be otherwise liable for giving a false statement
24 by reason of such person's failure to recite or acknowledge a
25 sealed criminal history record.
26 (c) Information relating to the existence of a sealed
27 criminal record provided in accordance with the provisions of
28 paragraph (a) is confidential and exempt from the provisions
29 of s. 119.07(1) and s. 24(a), Art. I of the State
30 Constitution, except that the department shall disclose the
31 sealed criminal history record to the entities set forth in

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

13 Section 12. This act shall take effect July 1, 1999.

14
15 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
16 COMMITTEE SUBSTITUTE FOR
17 Senate Bill 1614

- 18 - Provides for 3 and 5 year mandatory minimum terms of
19 imprisonment for lower-weight trafficking in
20 methaqualone, amphetamines and methamphetamines,
21 phencyclidine, and flunitrazepam.
22 - Defines "cannabis plant" for purposes of sentencing for
23 the offense of trafficking in cannabis based upon the
24 number of cannabis plants.
25 - Directs how a court shall sentence cannabis trafficking
26 based upon weight and number of cannabis plants.
27 - Provides that a current sentencing multiplier for
28 certain trafficking offenses be applied to all
29 trafficking offenses, and authorizes state attorneys to
30 move to reduce or suspend any trafficking offense if the
31 offender provides substantial assistance.
- Removes the upper caps for weight ranges applicable to
high-weight, first degree felony trafficking offenses.