

By the Committee on Criminal Justice and Senators Lee and
Brown-Waite

307-1876-99

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

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

1 penalties; providing procedures and criteria
2 for court determination if the defendant is a
3 three-time violent felony offender; providing
4 for sentencing as a three-time violent felony
5 offender; providing mandatory term of
6 imprisonment for life when the three-time
7 violent felony offense for which the defendant
8 is to be sentenced is a felony punishable by
9 life; providing mandatory prison term of 30
10 years when the three-time violent felony
11 offense is a first-degree felony; providing
12 mandatory prison term of 15 years when the
13 three-time violent felony offense is a
14 second-degree felony; providing mandatory
15 prison term of 5 years when the three-time
16 violent felony offense is a third-degree
17 felony; providing for construction; deleting
18 provisions relating to application of the
19 Criminal Punishment Code; requiring a
20 three-time violent felony offender to serve 100
21 percent of the court-imposed sentence;
22 providing for ineligibility of a three-time
23 violent felony offender for parole, control
24 release, or early release; amending ss. 784.07
25 and 784.08, F.S.; providing minimum terms of
26 imprisonment for persons convicted of
27 aggravated assault or aggravated battery of a
28 law enforcement officer or a person 65 years of
29 age or older; amending s. 790.235, F.S.,
30 relating to prohibitions against, and penalties
31 for, unlawful possession or other unlawful acts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (1) As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 1. The defendant has previously been convicted as an
2 adult two or more times of a felony or an attempt or
3 conspiracy to commit a felony and two or more of such
4 convictions were for committing, or attempting or conspiring
5 to commit, any of the following offenses or combination
6 thereof:

7 a. Arson;

8 b. Sexual battery;

9 c. Robbery;

10 d. Kidnapping;

11 e. Aggravated child abuse;

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

14 g. Aggravated assault;

15 h. Murder;

16 i. Manslaughter;

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

19 k. Aggravated manslaughter of a child;

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

22 m. Armed burglary;

23 n. Aggravated battery;

24 o. Aggravated stalking; or

25 p. An offense that is in violation of a law of any
26 other jurisdiction if the elements of the offense are
27 substantially similar to the elements of any felony offense
28 enumerated in sub-subparagraphs a.-o., or an attempt or
29 conspiracy to commit any such felony offense.

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

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

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

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

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

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

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

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

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

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

31

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

3 e. Lewd, lascivious, or indecent conduct, as described
4 in s. 800.04;

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

6 g. A felony violation of chapter 790 involving the use
7 or possession of a firearm.

8 2. The defendant has been incarcerated in a state
9 prison or a federal prison.

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

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

17 b. Within 5 years after the conviction of the last
18 prior enumerated felony, or within 5 years after the
19 defendant's release from a prison sentence, probation,
20 community control, control release, conditional release,
21 parole, or court-ordered or lawfully imposed supervision or
22 other sentence that is ~~commitment~~ imposed as a result of a
23 prior conviction for an enumerated felony, whichever is later.

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

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

30 (e)(d) "Qualified offense" means any offense,
31 substantially similar in elements and penalties to an offense

1 in this state, which is in violation of a law of any other
2 jurisdiction, whether that of another state, the District of
3 Columbia, the United States or any possession or territory
4 thereof, or any foreign jurisdiction, that was punishable
5 under the law of such jurisdiction at the time of its
6 commission by the defendant by death or imprisonment exceeding
7 1 year.

8 (2) For the purposes of this section, the placing of a
9 person on probation or community control without an
10 adjudication of guilt shall be treated as a prior conviction
11 ~~if the subsequent offense for which the person is to be~~
12 ~~sentenced was committed during such period of probation or~~
13 ~~community control.~~

14 (3)(a) In a separate proceeding, the court shall
15 determine if the defendant is a habitual felony offender or a
16 habitual violent felony offender. The procedure shall be as
17 follows:

18 1. The court shall obtain and consider a presentence
19 investigation prior to the imposition of a sentence as a
20 habitual felony offender or a habitual violent felony
21 offender.

22 2. Written notice shall be served on the defendant and
23 the defendant's attorney a sufficient time prior to the entry
24 of a plea or prior to the imposition of sentence in order to
25 allow the preparation of a submission on behalf of the
26 defendant.

27 3. Except as provided in subparagraph 1., all evidence
28 presented shall be presented in open court with full rights of
29 confrontation, cross-examination, and representation by
30 counsel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ~~(f)(e)~~ At any time when it appears to the court that
28 the defendant is eligible for sentencing under this section,
29 the court shall make that determination as provided in
30 paragraph (3)(a), or paragraph (3)(b), or paragraph (3)(c).
31

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

3 ~~(g) A sentence imposed under this section is not~~
4 ~~subject to s. 921.002.~~

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

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

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

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

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

29 (5) In order to be counted as a prior felony for
30 purposes of sentencing under this section, the felony must
31 have resulted in a conviction sentenced ~~separately~~ prior to

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

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

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

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

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

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

31 | Notwithstanding any other provision of law, any person

1 convicted of aggravated assault upon a law enforcement officer
2 shall be sentenced to a minimum term of imprisonment of 3
3 years.

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

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

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

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

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

21 Restitution and community service work shall be in addition to
22 any fine or sentence which may be imposed and shall not be in
23 lieu thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (f) For an offense committed on or after the effective
24 date of this act, if the state attorney pursues a repeat
25 sexual batterer sanction against the defendant and the court,
26 in a separate proceeding pursuant to this subsection,
27 determines that the defendant meets the criteria under
28 subsection (1) for imposing such sanction, the court must
29 sentence the defendant as a repeat sexual batterer, subject to
30 imprisonment pursuant to this section as provided in
31 subsection (3).

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

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

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

10 794.011 Sexual battery.--

11 (1) As used in this chapter:

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

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

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

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

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

31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (f) When the victim is physically incapacitated.

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

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

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

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

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

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

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

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

31

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

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

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

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

22 Section 9. Section 893.135, Florida Statutes, 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 10. For the purpose of incorporating the
4 amendments made by this act to section 893.135, Florida
5 Statutes, in references thereto, subsection (7) of section
6 397.451, Florida Statutes, is reenacted to read:

7 397.451 Background checks of service provider
8 personnel who have direct contact with unmarried minor clients
9 or clients who are developmentally disabled.--

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

22 Section 11. For the purpose of incorporating the
23 amendments made by this act to section 893.135, Florida
24 Statutes, in references thereto, subsection (4) of section
25 782.04, Florida Statutes, 1998 Supplement, is reenacted to
26 read:

27 782.04 Murder.--

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

- 1 (a) Trafficking offense prohibited by s. 893.135(1),
2 (b) Arson,
3 (c) Sexual battery,
4 (d) Robbery,
5 (e) Burglary,
6 (f) Kidnapping,
7 (g) Escape,
8 (h) Aggravated child abuse,
9 (i) Aggravated abuse of an elderly person or disabled
10 adult,
11 (j) Aircraft piracy,
12 (k) Unlawful throwing, placing, or discharging of a
13 destructive device or bomb,
14 (l) Unlawful distribution of any substance controlled
15 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,
16 or opium or any synthetic or natural salt, compound,
17 derivative, or preparation of opium by a person 18 years of
18 age or older, when such drug is proven to be the proximate
19 cause of the death of the user,
20 (m) Carjacking,
21 (n) Home-invasion robbery,
22 (o) Aggravated stalking, or
23 (p) Murder of another human being,
24
25 is murder in the third degree and constitutes a felony of the
26 second degree, punishable as provided in s. 775.082, s.
27 775.083, or s. 775.084.

28 Section 12. For the purpose of incorporating the
29 amendments made by this act to section 893.135, Florida
30 Statutes, in references thereto, subsection (1) of section
31 893.1351, Florida Statutes, is reenacted to read:

1 893.1351 Lease or rent for the purpose of trafficking
2 in a controlled substance.--

3 (1) A person may not lease or rent any place,
4 structure, or part thereof, trailer, or other conveyance, with
5 the knowledge that such place, structure, trailer, or
6 conveyance will be used for the purpose of trafficking in a
7 controlled substance, as provided in s. 893.135, or the sale
8 of a controlled substance, as provided in s. 893.13.

9 Section 13. For the purpose of incorporating the
10 amendments made by this act to section 893.135, Florida
11 Statutes, in references thereto, section 903.133, Florida
12 Statutes, is reenacted to read:

13 903.133 Bail on appeal; prohibited for certain felony
14 convictions.--Notwithstanding the provisions of s. 903.132, no
15 person adjudged guilty of a felony of the first degree for a
16 violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s.
17 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a
18 violation of s. 794.011(2) or (3), shall be admitted to bail
19 pending review either by posttrial motion or appeal.

20 Section 14. For the purpose of incorporating the
21 amendments made by this act to section 893.135, Florida
22 Statutes, in references thereto, paragraph (b) of subsection
23 (4) of section 907.041, Florida Statutes, is reenacted to
24 read:

25 907.041 Pretrial detention and release.--

26 (4) PRETRIAL DETENTION.--

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

31

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

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

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

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

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

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

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

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

9 921.0022 Criminal Punishment Code; offense severity
10 ranking chart.--

11 (3) OFFENSE SEVERITY RANKING CHART

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

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.
28			
29			
30			
31			

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.
31			

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.
30			
31			

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 16. 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 17. 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 18. 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
31

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 19. 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 20. Section 943.0535, Florida Statutes, is
27 amended to read:

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

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

14 Section 21. In order to inform the public and to deter
15 and prevent crime in the state, the Executive Office of the
16 Governor shall place public service announcements in visible
17 local media throughout the state explaining the penalties
18 provided in this act.

19 Section 22. This act shall take effect July 1, 1999.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1746

4 1 Provides for 3-year mandatory minimum terms for
5 trafficking in cannabis, cocaine, "illegal drugs,"
6 methaqualone, amphetamines and methamphetamines,
7 phencyclidine, and flunitrazepam;
8 - Lowers the threshold for trafficking in cannabis from 50
9 pounds to 25 pounds;
10 - Provides for 7-year mandatory minimum terms for
11 trafficking in cannabis, cocaine, methaqualone,
12 amphetamines, and methamphetamines, phencyclidine, and
13 flunitrazepam and a 15-year mandatory minimum term for
14 illegal drugs;
15 - Removes the upper caps for weight ranges applicable to
16 high-weight, first degree felony trafficking offenses;
17 - Provides that sentencing can be based upon the number of
18 cannabis plants, regardless of weight, which is
19 conceptually similar to a former federal sentencing
20 scheme;
21 - Defines "cannabis plant" and provides for how a court
22 shall sentence cannabis trafficking offenses based upon
23 weight and number;
24 - Provides that persons convicted of certain first degree
25 felony trafficking offenses relating to trafficking in
26 cocaine, illegal drugs, and flunitrazepam, are
27 ineligible for any form of gain-time.
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