

By Senators Webster and Brown-Waite

12-363A-99

See HB

1 A bill to be entitled
2 An act relating to punishment of felons;
3 amending s. 775.087, F.S., relating to felony
4 reclassification and minimum sentence and other
5 penalties for offenders who committed
6 aggravated battery or committed certain acts
7 involving a weapon, firearm, or destructive
8 device during the commission of a felony;
9 conforming terminology to changes made by the
10 act; increasing from 3 to 10 years the minimum
11 prison term for certain felonies or attempted
12 felonies under specified circumstances when the
13 offender possessed a firearm or destructive
14 device during the commission of the offense or
15 flight therefrom; revising the category of such
16 offenses to include murder, sexual battery,
17 robbery, burglary, arson, aggravated assault or
18 aggravated battery, kidnapping, escape,
19 aircraft piracy, aggravated child abuse,
20 aggravated abuse of an elderly person or
21 disabled adult, unlawful throwing, placing, or
22 discharging of a destructive device or bomb,
23 carjacking, home-invasion robbery, aggravated
24 stalking, and trafficking in cannabis,
25 trafficking in cocaine, capital importation of
26 cocaine, trafficking in illegal drugs, capital
27 importation of illegal drugs, trafficking in
28 phencyclidine, capital importation of
29 phencyclidine, trafficking in methaqualone,
30 capital importation of methaqualone,
31 trafficking in amphetamine, capital importation

1 of amphetamine, trafficking in flunitrazepam,
2 or other specified violation of s. 893.135(1),
3 F.S.; providing for imposition of a 20-year
4 minimum term of imprisonment when, in addition
5 to such circumstances, the firearm or
6 destructive device was discharged while the
7 person was carrying, displaying, using, or
8 threatening or attempting to use the firearm or
9 destructive device; providing for imposition of
10 a minimum term of imprisonment of not less than
11 25 years and not more than a term of
12 imprisonment of life in prison when, in further
13 addition to such circumstances, the discharging
14 of the firearm or destructive device resulted
15 in infliction of death or great bodily harm
16 upon any person; providing for construction;
17 providing legislative intent with respect to
18 punishment of offenders who possess, carry,
19 display, use, or threaten or attempt to use
20 firearms or destructive devices; providing
21 imposition of the minimum term of imprisonment
22 consecutive to any other term of imprisonment
23 imposed; providing that the minimum term of
24 imprisonment imposed is authorized by law
25 regardless of the maximum sentence that may be
26 imposed for the underlying felony; increasing
27 from 8 to 15 years the minimum prison term for
28 certain felonies or attempted felonies under
29 specified circumstances when, during the
30 commission of the offense, the offender
31 possessed a semiautomatic firearm and its

1 high-capacity detachable box magazine or a
2 machine gun; providing for the category of such
3 offenses to include murder, sexual battery,
4 robbery, burglary, arson, aggravated assault,
5 aggravated battery, kidnapping, escape,
6 aircraft piracy, aggravated child abuse,
7 aggravated abuse of an elderly person or
8 disabled adult, unlawful throwing, placing, or
9 discharging of a destructive device or bomb,
10 carjacking, home-invasion robbery, aggravated
11 stalking, and trafficking in cannabis,
12 trafficking in cocaine, capital importation of
13 cocaine, trafficking in illegal drugs, capital
14 importation of illegal drugs, trafficking in
15 phencyclidine, capital importation of
16 phencyclidine, trafficking in methaqualone,
17 capital importation of methaqualone,
18 trafficking in amphetamine, capital importation
19 of amphetamine, trafficking in flunitrazepam,
20 or other specified violation of s. 893.135(1);
21 providing for imposition of a 20-year minimum
22 term of imprisonment when, in addition to such
23 circumstances, the semiautomatic firearm and
24 its high-capacity detachable box magazine or a
25 machine gun was discharged while the person was
26 carrying, displaying, using, or threatening or
27 attempting to use the semiautomatic firearm and
28 its high-capacity detachable box magazine or a
29 machine gun; providing for imposition of a
30 minimum term of imprisonment of not less than
31 25 years and not more than a term of

1 imprisonment of life in prison when, in further
2 addition to such circumstances, the discharging
3 of the semiautomatic firearm and its
4 high-capacity detachable box magazine or a
5 machine gun resulted in infliction of death or
6 great bodily harm upon any person; providing
7 for construction; providing legislative intent
8 with respect to punishment of offenders who
9 possess, carry, display, use, or threaten or
10 attempt to use a semiautomatic firearm and its
11 high-capacity detachable box magazine or a
12 machine gun; providing for imposition of the
13 minimum term of imprisonment consecutive to any
14 other term of imprisonment imposed; providing
15 that the minimum term of imprisonment imposed
16 is authorized by law regardless of the maximum
17 sentence that may be imposed for the underlying
18 felony; providing for legislative policy and
19 intent; providing for a report; reenacting s.
20 921.0022(2), F.S., relating to the Criminal
21 Punishment Code offense severity ranking chart,
22 s. 921.0024(1)(b), F.S., relating to Florida
23 Criminal Punishment Code worksheet computations
24 and key, and s. 947.146(3)(b), F.S., relating
25 to Control Release Authority, to incorporate
26 said amendment in references; providing for
27 public service announcements with respect to
28 the penalties provided in the act; providing an
29 effective date.
30
31

1 WHEREAS, Florida ranks among the most violent states in
2 the nation, and

3 WHEREAS, in 1975 the Florida Legislature enacted
4 legislation requiring a minimum mandatory sentence of three
5 years in prison for possessing a gun during the commission or
6 attempted commission of a violent felony, and

7 WHEREAS, the Legislature enacted this mandatory penalty
8 in order to protect citizens from criminals who are known to
9 use guns during the commission of violent crimes, and

10 WHEREAS, the FBI reports that among persons identified
11 in the felonious killings of law enforcement officers in 1997,
12 71% had prior criminal convictions, and one of every four were
13 on probation or parole for other crimes when they killed the
14 officers, and

15 WHEREAS, criminals who use guns during the commission
16 of violent crimes pose an increased danger to the lives,
17 health, and safety of Florida's citizens and to Florida's law
18 enforcement officers who daily put their lives on the line to
19 protect citizens from violent criminals, and

20 WHEREAS, the Legislature intends to hold criminals more
21 accountable for their crimes, and intends for criminals who
22 use guns to commit violent crimes to receive greater criminal
23 penalties than they do today, and

24 WHEREAS, the Legislature intends that when law
25 enforcement officers put themselves in harm's way to apprehend
26 and arrest these gun-wielding criminals who terrorize the
27 streets and neighborhoods of Florida, that these criminals be
28 sentenced to longer mandatory prison terms than provided in
29 current law, so that these offenders cannot again endanger law
30 enforcement officers and the public, and

31

1 WHEREAS, there is a critical need for effective
2 criminal justice measures that will ensure that violent
3 criminals are sentenced to prison terms that will effectively
4 incapacitate the offender, prevent future crimes, and reduce
5 violent crime rates, and

6 WHEREAS, it is the intent of the Legislature that
7 criminals who use guns to commit violent crimes be vigorously
8 prosecuted and that the state demand that minimum mandatory
9 terms of imprisonment be imposed pursuant to this act, NOW,
10 THEREFORE,

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 775.087, Florida Statutes, is
15 amended to read:

16 775.087 Possession or use of weapon; aggravated
17 battery; felony reclassification; minimum sentence.--

18 (1) Unless otherwise provided by law, whenever a
19 person is charged with a felony, except a felony in which the
20 use of a weapon or firearm is an essential element, and during
21 the commission of such felony the defendant carries, displays,
22 uses, threatens to use, or attempts to use any weapon or
23 firearm, or during the commission of such felony the defendant
24 commits an aggravated battery, the felony for which the person
25 is charged shall be reclassified as follows:

26 (a) In the case of a felony of the first degree, to a
27 life felony.

28 (b) In the case of a felony of the second degree, to a
29 felony of the first degree.

30 (c) In the case of a felony of the third degree, to a
31 felony of the second degree.

1
2 For purposes of sentencing under chapter 921 and determining
3 incentive gain-time eligibility under chapter 944, a felony
4 offense which is reclassified under this section is ranked one
5 level above the ranking under s. 921.0022 or s. 921.0023 of
6 the felony offense committed.

7 (2)(a)1. Any person who is convicted of a felony or an
8 attempt to commit a felony and the conviction was for:

- 9 a.~~(a)~~ Murder;
- 10 b.~~(b)~~ Sexual battery;
- 11 c.~~(c)~~ Robbery;
- 12 d.~~(d)~~ Burglary;
- 13 e.~~(e)~~ Arson;
- 14 f.~~(f)~~ Aggravated assault;
- 15 g.~~(g)~~ Aggravated battery;
- 16 h.~~(h)~~ Kidnapping;
- 17 i.~~(i)~~ Escape;
- 18 j.~~(j)~~ Aircraft piracy;
- 19 k.~~(k)~~ Aggravated child abuse;
- 20 l.~~(l)~~ Aggravated abuse of an elderly person or
21 disabled adult;
- 22 m.~~(m)~~ Unlawful throwing, placing, or discharging of a
23 destructive device or bomb;
- 24 n.~~(n)~~ Carjacking;
- 25 o.~~(o)~~ Home-invasion robbery; ~~or~~
- 26 p.~~(p)~~ Aggravated stalking; or
- 27 q. Trafficking in cannabis, trafficking in cocaine,
28 capital importation of cocaine, trafficking in illegal drugs,
29 capital importation of illegal drugs, trafficking in
30 phencyclidine, capital importation of phencyclidine,
31 trafficking in methaqualone, capital importation of

1 methaqualone, trafficking in amphetamine, capital importation
2 of amphetamine, trafficking in flunitrazepam, or other
3 violation of s. 893.135(1)

4
5 and during the commission of the offense, such person
6 possessed a "firearm" or "destructive device" as those terms
7 are defined in s. 790.001, shall be sentenced to a minimum
8 term of imprisonment of 10 3 years.

9 2. Whenever a person is convicted of any of the
10 felonies listed in sub-subparagraphs (a)1.a.-q., regardless of
11 whether the use of a weapon is an element of the felony, and
12 during the course of the commission of the felony or the
13 flight therefrom, a "firearm" or "destructive device" as
14 defined in s. 790.001 was discharged while the person was
15 carrying, displaying, using, threatening to use, or attempting
16 to use it, the person shall be sentenced to a minimum term of
17 imprisonment of 20 years.

18 3. Whenever a person is convicted of any of the
19 felonies listed in sub-subparagraphs (a)1.a.-q., regardless of
20 whether the use of a weapon is an element of the felony, and
21 during the course of the commission of the felony or the
22 flight therefrom, a "firearm" or "destructive device" as
23 defined in s. 790.001 was discharged while the person was
24 carrying, displaying, using, threatening to use, or attempting
25 to use it and, as the result of the discharge, death or great
26 bodily harm was inflicted upon any person, the convicted
27 person shall be sentenced to a minimum term of imprisonment of
28 not less than 25 years and not more than a term of
29 imprisonment of life in prison. Nothing herein shall prevent a
30 court from imposing a greater sentence of incarceration as
31 authorized by law, or from imposing a sentence of death

1 pursuant to other applicable law. Nothing herein shall
2 authorize a court to impose a lesser sentence than otherwise
3 required by law.

4
5 Notwithstanding s. 948.01, adjudication of guilt or imposition
6 of sentence shall not be suspended, deferred, or withheld, and
7 the defendant is not eligible for statutory gain-time under s.
8 944.275 or any form of discretionary early release, other than
9 pardon or executive clemency, or conditional medical release
10 under s. 947.149, prior to serving the minimum sentence.

11 (b) The minimum terms of imprisonment imposed pursuant
12 to this subsection are authorized by law regardless of the
13 maximum sentence that may be imposed for the underlying felony
14 committed by the person during which the firearm or
15 destructive device was possessed, carried, displayed, used,
16 threatened to be used, or attempted to be used.

17 (c) It is the intent of the Legislature that offenders
18 who possess, carry, display, use, threaten to use, or attempt
19 to use firearms or destructive devices be punished to the
20 fullest extent of the law, and the minimum terms of
21 imprisonment imposed pursuant to this subsection shall be
22 imposed for each qualifying felony count for which the person
23 is convicted. The court shall impose any term of imprisonment
24 provided for in this subsection consecutively to any other
25 term of imprisonment imposed for any other felony offense.

26 (3)(a)1. Any person who is convicted of a felony or an
27 attempt to commit a felony and the conviction was for:

- 28 a.1. Murder;
29 b.2. Sexual battery;
30 c.3. Robbery;
31 d.4. Burglary;

1 ~~e.5.~~ Arson;
2 ~~f.6.~~ Aggravated assault;
3 ~~g.7.~~ Aggravated battery;
4 ~~h.8.~~ Kidnapping;
5 ~~i.9.~~ Escape;
6 ~~j.10.~~ Sale, manufacture, delivery, or intent to sell,
7 manufacture, or deliver any controlled substance;
8 ~~k.11.~~ Aircraft piracy;
9 ~~l.12.~~ Aggravated child abuse;
10 ~~m.13.~~ Aggravated abuse of an elderly person or
11 disabled adult;
12 ~~n.14.~~ Unlawful throwing, placing, or discharging of a
13 destructive device or bomb;
14 ~~o.15.~~ Carjacking;
15 ~~p.16.~~ Home-invasion robbery; ~~or~~
16 ~~q.17.~~ Aggravated stalking; ~~or~~
17 r. Trafficking in cannabis, trafficking in cocaine,
18 capital importation of cocaine, trafficking in illegal drugs,
19 capital importation of illegal drugs, trafficking in
20 phencyclidine, capital importation of phencyclidine,
21 trafficking in methaqualone, capital importation of
22 methaqualone, trafficking in amphetamine, capital importation
23 of amphetamine, trafficking in flunitrazepam, or other
24 violation of s. 893.135(1);
25
26 and during the commission of the offense, such person
27 possessed a semiautomatic firearm and its high-capacity
28 detachable box magazine or a machine gun as defined in s.
29 790.001, shall be sentenced to a minimum term of imprisonment
30 of 15 & years.
31

1 2. Whenever a person is convicted of any of the
2 felonies listed in sub-subparagraphs (a)1.a.-r., regardless of
3 whether the use of a weapon is an element of the felony, and
4 during the course of the commission of the felony or the
5 flight therefrom, a semiautomatic firearm and its
6 high-capacity box magazine or a "machine gun" as defined in s.
7 790.001 was discharged while the person was carrying,
8 displaying, using, threatening to use, or attempting to use
9 it, the person shall be sentenced to a minimum term of
10 imprisonment of 20 years.

11 3. Whenever a person is convicted of any of the
12 felonies listed in sub-subparagraphs (a)1.a.-r., regardless of
13 whether the use of a weapon is an element of the felony, and
14 during the course of the commission of the felony or the
15 flight therefrom, a semiautomatic firearm and its
16 high-capacity box magazine or a "machine gun" as defined in s.
17 790.001 was discharged while the person was carrying,
18 displaying, using, threatening to use, or attempting to use it
19 and, as the result of the discharge, great bodily harm was
20 inflicted upon any person, the convicted person shall be
21 sentenced to a minimum term of imprisonment of not less than
22 25 years and not more than a term of imprisonment of life in
23 prison. Nothing herein shall prevent a court from imposing a
24 greater sentence of incarceration as authorized by law, or
25 from imposing a sentence of death pursuant to other applicable
26 law. Nothing herein shall authorize a court to impose a lesser
27 sentence than otherwise required by law.

28
29 Notwithstanding s. 948.01, adjudication of guilt or imposition
30 of sentence shall not be suspended, deferred, or withheld, and
31 the defendant is not eligible for statutory gain-time under s.

1 944.275 or any form of discretionary early release, other than
2 pardon or executive clemency, or conditional medical release
3 under s. 947.149, prior to serving the minimum sentence.

4 (b) The minimum terms of imprisonment imposed pursuant
5 to this subsection are authorized by law regardless of the
6 maximum sentence that may be imposed for the underlying felony
7 committed by the person during which the semiautomatic firearm
8 and its high-capacity box magazine or machine gun was
9 possessed, carried, displayed, used, threatened to be used, or
10 attempted to be used.

11 (c) It is the intent of the Legislature that offenders
12 who possess, carry, display, use, threaten to use, or attempt
13 to use semiautomatic firearms and its high-capacity box
14 magazines or machine guns be punished to the fullest extent of
15 the law, and the minimum terms of imprisonment imposed
16 pursuant to this subsection shall be imposed for each
17 qualifying felony count for which the person is convicted. The
18 court shall impose any term of imprisonment provided for in
19 this subsection consecutively to any other term of
20 imprisonment imposed for any other felony offense.

21 (d)(b) As used in this subsection, the term:

22 1. "High-capacity detachable box magazine" means any
23 detachable box magazine, for use in a semiautomatic firearm,
24 which is capable of being loaded with more than 20 centerfire
25 cartridges.

26 2. "Semiautomatic firearm" means a firearm which is
27 capable of firing a series of rounds by separate successive
28 depressions of the trigger and which uses the energy of
29 discharge to perform a portion of the operating cycle.

30 Section 2. Legislative intent and policy; report.--
31

1 (1) It is the intent of the Legislature that convicted
2 criminal offenders who meet the criteria in s. 775.087(2) and
3 (3), Florida Statutes, be sentenced to the minimum mandatory
4 prison terms provided herein, unless the state attorney's
5 office submits a written memorandum to the court requesting
6 that the minimum mandatory term not be imposed, stating the
7 basis for that request. This memorandum shall be entered in
8 the court file before the court imposes a sentence in any case
9 in which the charging law enforcement agency based a criminal
10 charge on facts demonstrating that the defendant met the
11 criteria in s. 775.087(2) and (3), Florida Statutes, and could
12 have been sentenced to the minimum mandatory prison terms
13 provided therein. The memorandum must also be placed in the
14 case file of the office of the state attorney.

15 (2) Effective July 1, 2000, each state attorney shall
16 annually report to the Speaker of the House, the President of
17 the Senate, and the Executive Office of the Governor regarding
18 the prosecution and sentencing of offenders who met the
19 criteria in s. 775.087(2) and (3), Florida Statutes. The
20 report shall include the number of charges received in each
21 circuit during the previous fiscal year by law enforcement
22 agencies which based a criminal charge on facts demonstrating
23 that the defendant met the criteria in s. 775.087(2) and (3),
24 Florida Statutes, the case number of the state attorney's
25 office involving such criminal charges, the final disposition,
26 if any, of such cases, whether the minimum mandatory prison
27 terms authorized herein were imposed in such cases, and a copy
28 of each memorandum submitted to the courts that state a
29 written basis in those cases in which the minimum mandatory
30 prison terms were not requested. Cases in which a final
31 disposition has not yet been reached shall be reported in a

1 subsequent annual report. Copies of each report shall be
2 maintained by the Florida Prosecuting Attorneys Association
3 and each elected state attorney. By July 1, 2001, each elected
4 state attorney or the Florida Prosecuting Attorneys
5 Association shall make each annual report available to the
6 public on the Internet.

7 Section 3. For the purpose of incorporating the
8 amendment to section 775.087, Florida Statutes, in references
9 thereto, subsection (2) of section 921.0022, Florida Statutes,
10 1998 Supplement, is reenacted to read:

11 921.0022 Criminal Punishment Code; offense severity
12 ranking chart.--

13 (2) The offense severity ranking chart has 10 offense
14 levels, ranked from least severe, which are level 1 offenses,
15 to most severe, which are level 10 offenses, and each felony
16 offense is assigned to a level according to the severity of
17 the offense. For purposes of determining which felony offenses
18 are specifically listed in the offense severity ranking chart
19 and which severity level has been assigned to each of these
20 offenses, the numerical statutory references in the left
21 column of the chart and the felony degree designations in the
22 middle column of the chart are controlling; the language in
23 the right column of the chart is provided solely for
24 descriptive purposes. Reclassification of the degree of the
25 felony through the application of s. 775.0845, s. 775.087, s.
26 775.0875, s. 794.023, or any other law that provides an
27 enhanced penalty for a felony offense, to any offense listed
28 in the offense severity ranking chart in this section shall
29 not cause the offense to become unlisted and is not subject to
30 the provisions of s. 921.0023.

31

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

11

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

23

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

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

4

5 Sentencing multipliers:

6

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

14

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

24

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

30

31

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

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

14 Section 5. For the purpose of incorporating the
15 amendment to section 775.087, Florida Statutes, in references
16 thereto, subsection (3) of section 947.146, Florida Statutes,
17 1998 Supplement, is reenacted to read:

18 947.146 Control Release Authority.--

19 (3) Within 120 days prior to the date the state
20 correctional system is projected pursuant to s. 216.136 to
21 exceed 99 percent of total capacity, the authority shall
22 determine eligibility for and establish a control release date
23 for an appropriate number of parole ineligible inmates
24 committed to the department and incarcerated within the state
25 who have been determined by the authority to be eligible for
26 discretionary early release pursuant to this section. In
27 establishing control release dates, it is the intent of the
28 Legislature that the authority prioritize consideration of
29 eligible inmates closest to their tentative release date. The
30 authority shall rely upon commitment data on the offender
31 information system maintained by the department to initially

1 identify inmates who are to be reviewed for control release
2 consideration. The authority may use a method of objective
3 risk assessment in determining if an eligible inmate should be
4 released. Such assessment shall be a part of the department's
5 management information system. However, the authority shall
6 have sole responsibility for determining control release
7 eligibility, establishing a control release date, and
8 effectuating the release of a sufficient number of inmates to
9 maintain the inmate population between 99 percent and 100
10 percent of total capacity. Inmates who are ineligible for
11 control release are inmates who are parole eligible or inmates
12 who:

13 (a) Are serving a sentence that includes a mandatory
14 minimum provision for a capital offense or drug trafficking
15 offense and have not served the number of days equal to the
16 mandatory minimum term less any jail-time credit awarded by
17 the court;

18 (b) Are serving the mandatory minimum portion of a
19 sentence enhanced under s. 775.087(2) or (3), or s. 784.07(3);

20 (c) Are convicted, or have been previously convicted,
21 of committing or attempting to commit sexual battery, incest,
22 or any of the following lewd or indecent assaults or acts:
23 masturbating in public; exposing the sexual organs in a
24 perverted manner; or nonconsensual handling or fondling of the
25 sexual organs of another person;

26 (d) Are convicted, or have been previously convicted,
27 of committing or attempting to commit assault, aggravated
28 assault, battery, or aggravated battery, and a sex act was
29 attempted or completed during commission of such offense;

30 (e) Are convicted, or have been previously convicted,
31 of committing or attempting to commit kidnapping, burglary, or

1 murder, and the offense was committed with the intent to
2 commit sexual battery or a sex act was attempted or completed
3 during commission of the offense;

4 (f) Are convicted, or have been previously convicted,
5 of committing or attempting to commit false imprisonment upon
6 a child under the age of 13 and, in the course of committing
7 the offense, the inmate committed aggravated child abuse,
8 sexual battery against the child, or a lewd, lascivious, or
9 indecent assault or act upon or in the presence of the child;

10 (g) Are sentenced, have previously been sentenced, or
11 have been sentenced at any time under s. 775.084, or have been
12 sentenced at any time in another jurisdiction as a habitual
13 offender;

14 (h) Are convicted, or have been previously convicted,
15 of committing or attempting to commit assault, aggravated
16 assault, battery, aggravated battery, kidnapping,
17 manslaughter, or murder against an officer as defined in s.
18 943.10(1), (2), (3), (6), (7), (8), or (9); against a state
19 attorney or assistant state attorney; or against a justice or
20 judge of a court described in Art. V of the State
21 Constitution; or against an officer, judge, or state attorney
22 employed in a comparable position by any other jurisdiction;
23 or

24 (i) Are convicted, or have been previously convicted,
25 of committing or attempting to commit murder in the first,
26 second, or third degree under s. 782.04(1), (2), (3), or (4),
27 or have ever been convicted of any degree of murder or
28 attempted murder in another jurisdiction;

29 (j) Are convicted, or have been previously convicted,
30 of DUI manslaughter under s. 316.193(3)(c)3., and are
31 sentenced, or have been sentenced at any time, as a habitual

1 offender for such offense, or have been sentenced at any time
2 in another jurisdiction as a habitual offender for such
3 offense;

4 (k)1. Are serving a sentence for an offense committed
5 on or after January 1, 1994, for a violation of the Law
6 Enforcement Protection Act under s. 775.0823(2), (3), (4), or
7 (5), and the subtotal of the offender's sentence points is
8 multiplied pursuant to former s. 921.0014 or s. 921.0024;

9 2. Are serving a sentence for an offense committed on
10 or after October 1, 1995, for a violation of the Law
11 Enforcement Protection Act under s. 775.0823(2), (3), (4),
12 (5), (6), (7), or (8), and the subtotal of the offender's
13 sentence points is multiplied pursuant to former s. 921.0014
14 or s. 921.0024;

15 (l) Are serving a sentence for an offense committed on
16 or after January 1, 1994, for possession of a firearm,
17 semiautomatic firearm, or machine gun in which additional
18 points are added to the subtotal of the offender's sentence
19 points pursuant to former s. 921.0014 or s. 921.0024; or

20 (m) Are convicted, or have been previously convicted,
21 of committing or attempting to commit manslaughter,
22 kidnapping, robbery, carjacking, home-invasion robbery, or a
23 burglary under s. 810.02(2).

24

25 In making control release eligibility determinations under
26 this subsection, the authority may rely on any document
27 leading to or generated during the course of the criminal
28 proceedings, including, but not limited to, any presentence or
29 postsentence investigation or any information contained in
30 arrest reports relating to circumstances of the offense.

31

