

By the Committee on Criminal Justice and Senators Webster,  
Brown-Waite, Campbell and Bronson

307-786-99

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 or attempted  
15          commission of the offense or flight therefrom;  
16          revising the category of such offenses to  
17          include murder, sexual battery, robbery,  
18          burglary, arson, aggravated assault or  
19          aggravated battery, kidnapping, escape,  
20          aircraft piracy, aggravated child abuse,  
21          aggravated abuse of an elderly person or  
22          disabled adult, unlawful throwing, placing, or  
23          discharging of a destructive device or bomb,  
24          carjacking, home-invasion robbery, aggravated  
25          stalking, possession of a firearm by a  
26          convicted felon, and trafficking in cannabis,  
27          trafficking in cocaine, capital importation of  
28          cocaine, trafficking in illegal drugs, capital  
29          importation of illegal drugs, trafficking in  
30          phencyclidine, capital importation of  
31          phencyclidine, trafficking in methaqualone,

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

1 from 8 to 15 years the minimum prison term for  
2 certain felonies or attempted felonies under  
3 specified circumstances when, during the  
4 commission or attempted commission of the  
5 offense, the offender possessed a semiautomatic  
6 firearm and its high-capacity detachable box  
7 magazine or a machine gun; providing for the  
8 category of such offenses to include murder,  
9 sexual battery, robbery, burglary, arson,  
10 aggravated assault, aggravated battery,  
11 kidnapping, escape, aircraft piracy, aggravated  
12 child abuse, aggravated abuse of an elderly  
13 person or disabled adult, unlawful throwing,  
14 placing, or discharging of a destructive device  
15 or bomb, carjacking, home-invasion robbery,  
16 aggravated stalking, possession of a firearm by  
17 a convicted felon, and trafficking in cannabis,  
18 trafficking in cocaine, capital importation of  
19 cocaine, trafficking in illegal drugs, capital  
20 importation of illegal drugs, trafficking in  
21 phencyclidine, capital importation of  
22 phencyclidine, trafficking in methaqualone,  
23 capital importation of methaqualone,  
24 trafficking in amphetamine, capital importation  
25 of amphetamine, trafficking in flunitrazepam,  
26 or other violation of s. 893.135(1); providing  
27 an exception from the requirement that  
28 possession of a firearm by a convicted felon  
29 result in an 8-year minimum term of  
30 imprisonment; providing for imposition of a  
31 20-year minimum term of imprisonment when, in

1           addition to such circumstances, the  
2           semiautomatic firearm and its high-capacity  
3           detachable box magazine or a machine gun was  
4           discharged while the person was possessing,  
5           carrying, displaying, using, or threatening or  
6           attempting to use the semiautomatic firearm and  
7           its high-capacity detachable box magazine or a  
8           machine gun; providing for imposition of a  
9           minimum term of imprisonment of not less than  
10          25 years and not more than a term of  
11          imprisonment of life in prison when, in further  
12          addition to such circumstances, the discharging  
13          of the semiautomatic firearm and its  
14          high-capacity detachable box magazine or a  
15          machine gun resulted in infliction of death or  
16          great bodily harm upon any person; providing  
17          for construction; providing legislative intent  
18          with respect to punishment of offenders who  
19          possess, carry, display, use, or threaten or  
20          attempt to use a semiautomatic firearm and its  
21          high-capacity detachable box magazine or a  
22          machine gun; providing for imposition of the  
23          minimum term of imprisonment consecutive to any  
24          other term of imprisonment imposed; providing  
25          that the minimum term of imprisonment imposed  
26          is authorized by law regardless of the maximum  
27          sentence that may be imposed for the underlying  
28          felony; requiring the state attorney to explain  
29          mandatory sentence deviations in writing;  
30          requiring state attorneys to submit such  
31          writings to their association, where they must

1           remain available to the public for a specified  
2           period; reenacting s. 921.0022(2), F.S.,  
3           relating to the Criminal Punishment Code  
4           offense severity ranking chart, s.  
5           921.0024(1)(b), F.S., relating to Florida  
6           Criminal Punishment Code worksheet computations  
7           and key, and s. 947.146(3)(b), F.S., relating  
8           to Control Release Authority, to incorporate  
9           said amendment in references; providing for  
10          public service announcements with respect to  
11          the penalties provided in the act; providing an  
12          effective date.

13  
14           WHEREAS, Florida ranks among the most violent states in  
15          the nation, and

16           WHEREAS, in 1975 the Florida Legislature enacted  
17          legislation requiring a minimum mandatory sentence of three  
18          years in prison for possessing a gun during the commission or  
19          attempted commission of a violent felony, and

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

23           WHEREAS, the FBI reports that among persons identified  
24          in the felonious killings of law enforcement officers in 1997,  
25          71% had prior criminal convictions, and one of every four were  
26          on probation or parole for other crimes when they killed the  
27          officers, and

28           WHEREAS, criminals who use guns during the commission  
29          of violent crimes pose an increased danger to the lives,  
30          health, and safety of Florida's citizens and to Florida's law  
31

1 enforcement officers who daily put their lives on the line to  
2 protect citizens from violent criminals, and

3 WHEREAS, the Legislature intends to hold criminals more  
4 accountable for their crimes, and intends for criminals who  
5 use guns to commit violent crimes to receive greater criminal  
6 penalties than they do today, and

7 WHEREAS, the Legislature intends that when law  
8 enforcement officers put themselves in harm's way to apprehend  
9 and arrest these gun-wielding criminals who terrorize the  
10 streets and neighborhoods of Florida, that these criminals be  
11 sentenced to longer mandatory prison terms than provided in  
12 current law, so that these offenders cannot again endanger law  
13 enforcement officers and the public, and

14 WHEREAS, there is a critical need for effective  
15 criminal justice measures that will ensure that violent  
16 criminals are sentenced to prison terms that will effectively  
17 incapacitate the offender, prevent future crimes, and reduce  
18 violent crime rates, and

19 WHEREAS, it is the intent of the Legislature that  
20 criminals who use guns to commit violent crimes be vigorously  
21 prosecuted and that the state demand that minimum mandatory  
22 terms of imprisonment be imposed pursuant to this act, NOW,  
23 THEREFORE,

24

25 Be It Enacted by the Legislature of the State of Florida:

26

27 Section 1. Section 775.087, Florida Statutes, is  
28 amended to read:

29 775.087 Possession or use of weapon; aggravated  
30 battery; felony reclassification; minimum sentence.--

31

1 (1) Unless otherwise provided by law, whenever a  
2 person is charged with a felony, except a felony in which the  
3 use of a weapon or firearm is an essential element, and during  
4 the commission of such felony the defendant carries, displays,  
5 uses, threatens to use, or attempts to use any weapon or  
6 firearm, or during the commission of such felony the defendant  
7 commits an aggravated battery, the felony for which the person  
8 is charged shall be reclassified as follows:

9 (a) In the case of a felony of the first degree, to a  
10 life felony.

11 (b) In the case of a felony of the second degree, to a  
12 felony of the first degree.

13 (c) In the case of a felony of the third degree, to a  
14 felony of the second degree.

15  
16 For purposes of sentencing under chapter 921 and determining  
17 incentive gain-time eligibility under chapter 944, a felony  
18 offense which is reclassified under this section is ranked one  
19 level above the ranking under s. 921.0022 or s. 921.0023 of  
20 the felony offense committed.

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

23 a.~~(a)~~ Murder;

24 b.~~(b)~~ Sexual battery;

25 c.~~(c)~~ Robbery;

26 d.~~(d)~~ Burglary;

27 e.~~(e)~~ Arson;

28 f.~~(f)~~ Aggravated assault;

29 g.~~(g)~~ Aggravated battery;

30 h.~~(h)~~ Kidnapping;

31 i.~~(i)~~ Escape;

1           ~~j.(j)~~ Aircraft piracy;  
2           ~~k.(k)~~ Aggravated child abuse;  
3           ~~l.(l)~~ Aggravated abuse of an elderly person or  
4 disabled adult;  
5           ~~m.(m)~~ Unlawful throwing, placing, or discharging of a  
6 destructive device or bomb;  
7           ~~n.(n)~~ Carjacking;  
8           ~~o.(o)~~ Home-invasion robbery; ~~or~~  
9           ~~p.(p)~~ Aggravated stalking;  
10          ~~q.~~ Possession of a firearm by a convicted felon; or  
11          ~~r.~~ Trafficking in cannabis, trafficking in cocaine,  
12 capital importation of cocaine, trafficking in illegal drugs,  
13 capital importation of illegal drugs, trafficking in  
14 phencyclidine, capital importation of phencyclidine,  
15 trafficking in methaqualone, capital importation of  
16 methaqualone, trafficking in amphetamine, capital importation  
17 of amphetamine, trafficking in flunitrazepam, or other  
18 violation of s. 893.135(1)  
19  
20 and during the commission of the offense, such person  
21 possessed a "firearm" or "destructive device" as those terms  
22 are defined in s. 790.001, shall be sentenced to a minimum  
23 term of imprisonment of 10 3 years, except that a person who  
24 is convicted of the commission or attempted commission of  
25 possession of a firearm by a convicted felon shall be  
26 sentenced to a minimum mandatory term of imprisonment of 3  
27 years.  
28          2. Whenever a person is convicted of any of the  
29 felonies delineated in subparagraph (a)1., regardless of  
30 whether the use of a weapon is an element of the felony, and  
31 during the course of the commission of the felony or the



1 flight therefrom, a "firearm" or "destructive device" as  
2 defined in s. 790.001 was discharged while the person was  
3 possessing, carrying, displaying, using, threatening to use,  
4 or attempting to use it, the person shall be sentenced to a  
5 minimum term of imprisonment of 20 years.

6 3. Whenever a person is convicted of any of the  
7 felonies delineated in subparagraph (a)1., regardless of  
8 whether the use of a weapon is an element of the felony, and  
9 during the course of the commission of the felony or the  
10 flight therefrom, a "firearm" or "destructive device" as  
11 defined in s. 790.001 was discharged while the person was  
12 possessing, carrying, displaying, using, threatening to use,  
13 or attempting to use it and, as the result of the discharge,  
14 death or great bodily harm was inflicted upon any person, the  
15 convicted person shall be sentenced to a minimum term of  
16 imprisonment of not less than 25 years and not more than a  
17 term of imprisonment of life in prison.

18 (b) Subparagraph (a)1., subparagraph (a)2., or  
19 subparagraph (a)3. does not preclude a court from imposing a  
20 longer sentence of incarceration as authorized by law in  
21 addition to the minimum mandatory sentence, or from imposing a  
22 sentence of death pursuant to other applicable law.

23 Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3.  
24 does not authorize a court to impose a lesser sentence than  
25 otherwise required by law.

26  
27 Notwithstanding s. 948.01, adjudication of guilt or imposition  
28 of sentence shall not be suspended, deferred, or withheld, and  
29 the defendant is not eligible for statutory gain-time under s.  
30 944.275 or any form of discretionary early release, other than  
31

1 pardon or executive clemency, or conditional medical release  
2 under s. 947.149, prior to serving the minimum sentence.

3 (c) If the minimum mandatory terms of imprisonment  
4 imposed pursuant to this section exceed the maximum sentences  
5 authorized by s. 775.082, s. 775.084, or the Criminal  
6 Punishment Code under chapter 921, the mandatory minimum  
7 sentence must be imposed. If the mandatory minimum terms of  
8 imprisonment pursuant to this section are less than the  
9 sentences that could be imposed as authorized by s. 775.082,  
10 s. 775.084, or the Criminal Punishment Code under chapter 921,  
11 the sentence imposed by the court must include the mandatory  
12 minimum term of imprisonment as authorized in this section.

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

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

24 a.1. Murder;

25 b.2. Sexual battery;

26 c.3. Robbery;

27 d.4. Burglary;

28 e.5. Arson;

29 f.6. Aggravated assault;

30 g.7. Aggravated battery;

31 h.8. Kidnapping;

1            ~~i.9.~~ Escape;

2            ~~j.10.~~ Sale, manufacture, delivery, or intent to sell,  
3 manufacture, or deliver any controlled substance;

4            ~~k.11.~~ Aircraft piracy;

5            ~~l.12.~~ Aggravated child abuse;

6            ~~m.13.~~ Aggravated abuse of an elderly person or  
7 disabled adult;

8            ~~n.14.~~ Unlawful throwing, placing, or discharging of a  
9 destructive device or bomb;

10           ~~o.15.~~ Carjacking;

11           ~~p.16.~~ Home-invasion robbery; ~~or~~

12           ~~q.17.~~ Aggravated stalking;

13           r. Possession of a firearm by a convicted felon; or

14           s. Trafficking in cannabis, trafficking in cocaine,  
15 capital importation of cocaine, trafficking in illegal drugs,  
16 capital importation of illegal drugs, trafficking in  
17 phencyclidine, capital importation of phencyclidine,  
18 trafficking in methaqualone, capital importation of  
19 methaqualone, trafficking in amphetamine, capital importation  
20 of amphetamine, trafficking in flunitrazepam, or other  
21 violation of s. 893.135(1);

22

23 and during the commission of the offense, such person  
24 possessed a semiautomatic firearm and its high-capacity  
25 detachable box magazine or a machine gun as defined in s.  
26 790.001, shall be sentenced to a minimum term of imprisonment  
27 of 15 & years, except that a person who is convicted of the  
28 commission or attempted commission of possession of a firearm  
29 by a convicted felon shall be sentenced to a minimum mandatory  
30 term of imprisonment of 8 years.

31

1           2. Whenever a person is convicted of any of the  
2 felonies delineated in subparagraph (a)1., 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 possessing,  
8 carrying, displaying, using, threatening to use, or attempting  
9 to use 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 delineated in subparagraph (a)1., 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 possessing,  
18 carrying, displaying, using, threatening to use, or attempting  
19 to use it and, as the result of the discharge, death or great  
20 bodily harm was inflicted upon any person, the convicted  
21 person shall be sentenced to a minimum term of imprisonment of  
22 not less than 25 years and not more than a term of  
23 imprisonment of life in prison.

24           (b) Subparagraph (a)1., subparagraph (a)2., or  
25 subparagraph (a)3. does not prevent a court from imposing a  
26 longer sentence of incarceration as authorized by law in  
27 addition to the minimum mandatory sentence, or from imposing a  
28 sentence of death pursuant to other applicable law.  
29 Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3.  
30 does not authorize a court to impose a lesser sentence than  
31 otherwise required by law.

1  
2 Notwithstanding s. 948.01, adjudication of guilt or imposition  
3 of sentence shall not be suspended, deferred, or withheld, and  
4 the defendant is not eligible for statutory gain-time under s.  
5 944.275 or any form of discretionary early release, other than  
6 pardon or executive clemency, or conditional medical release  
7 under s. 947.149, prior to serving the minimum sentence.

8 (c) If the minimum mandatory terms of imprisonment  
9 imposed pursuant to this section exceed the maximum sentences  
10 authorized by s. 775.082, s. 775.084, or the Criminal  
11 Punishment Code under chapter 921, the mandatory minimum  
12 sentence must be imposed. If the mandatory minimum terms of  
13 imprisonment pursuant to this section are less than the  
14 sentences that could be imposed as authorized by s. 775.082,  
15 s. 775.084, or the Criminal Punishment code under chapter 921,  
16 the sentence imposed by the court must include the mandatory  
17 minimum term of imprisonment as authorized in this section.

18 (d) It is the intent of the Legislature that offenders  
19 who possess, carry, display, use, threaten to use, or attempt  
20 to use semiautomatic firearms and their high-capacity box  
21 magazines or machine guns be punished to the fullest extent of  
22 the law, and that the minimum terms of imprisonment imposed  
23 pursuant to this subsection shall be imposed for each  
24 qualifying felony count for which the person is convicted. The  
25 court shall impose any term of imprisonment provided for in  
26 this subsection consecutively to any other term of  
27 imprisonment imposed for any other felony offense.

28 (e)(b) As used in this subsection, the term:

29 1. "High-capacity detachable box magazine" means any  
30 detachable box magazine, for use in a semiautomatic firearm,  
31

1 which is capable of being loaded with more than 20 centerfire  
2 cartridges.

3           2. "Semiautomatic firearm" means a firearm which is  
4 capable of firing a series of rounds by separate successive  
5 depressions of the trigger and which uses the energy of  
6 discharge to perform a portion of the operating cycle.

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

18           Section 2. For the purpose of incorporating the  
19 amendment to section 775.087, Florida Statutes, in references  
20 thereto, subsection (2) of section 921.0022, Florida Statutes,  
21 1998 Supplement, is reenacted to read:

22           921.0022 Criminal Punishment Code; offense severity  
23 ranking chart.--

24           (2) The offense severity ranking chart has 10 offense  
25 levels, ranked from least severe, which are level 1 offenses,  
26 to most severe, which are level 10 offenses, and each felony  
27 offense is assigned to a level according to the severity of  
28 the offense. For purposes of determining which felony offenses  
29 are specifically listed in the offense severity ranking chart  
30 and which severity level has been assigned to each of these  
31 offenses, the numerical statutory references in the left

1 column of the chart and the felony degree designations in the  
2 middle column of the chart are controlling; the language in  
3 the right column of the chart is provided solely for  
4 descriptive purposes. Reclassification of the degree of the  
5 felony through the application of s. 775.0845, s. 775.087, s.  
6 775.0875, s. 794.023, or any other law that provides an  
7 enhanced penalty for a felony offense, to any offense listed  
8 in the offense severity ranking chart in this section shall  
9 not cause the offense to become unlisted and is not subject to  
10 the provisions of s. 921.0023.

11 Section 3. For the purpose of incorporating the  
12 amendment to section 775.087, Florida Statutes, in references  
13 thereto, paragraph (b) of subsection (1) of section 921.0024,  
14 Florida Statutes, 1998 Supplement, is reenacted to read:

15 921.0024 Criminal Punishment Code; worksheet  
16 computations; scoresheets.--

17 (1)

18

19 (b) WORKSHEET KEY:

20

21 Legal status points are assessed when any form of legal status  
22 existed at the time the offender committed an offense before  
23 the court for sentencing. Four (4) sentence points are  
24 assessed for an offender's legal status.

25

26 Community sanction violation points are assessed when a  
27 community sanction violation is before the court for  
28 sentencing. Six (6) sentence points are assessed for each  
29 community sanction violation, and each successive community  
30 sanction violation; however, if the community sanction  
31 violation includes a new felony conviction before the

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

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

21  
22 Prior capital felony points: If the offender has one or more  
23 prior capital felonies in the offender's criminal record,  
24 points shall be added to the subtotal sentence points of the  
25 offender equal to twice the number of points the offender  
26 receives for the primary offense and any additional offense.  
27 A prior capital felony in the offender's criminal record is a  
28 previous capital felony offense for which the offender has  
29 entered a plea of nolo contendere or guilty or has been found  
30 guilty; or a felony in another jurisdiction which is a capital  
31



1 felony in that jurisdiction, or would be a capital felony if  
2 the offense were committed in this state.

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

15  
16 Sentencing multipliers:

17  
18 Drug trafficking: If the primary offense is drug trafficking  
19 under s. 893.135, the subtotal sentence points are multiplied,  
20 at the discretion of the court, for a level 7 or level 8  
21 offense, by 1.5. The state attorney may move the sentencing  
22 court to reduce or suspend the sentence of a person convicted  
23 of a level 7 or level 8 offense, if the offender provides  
24 substantial assistance as described in s. 893.135(4).

25  
26 Law enforcement protection: If the primary offense is a  
27 violation of the Law Enforcement Protection Act under s.  
28 775.0823(2), the subtotal sentence points are multiplied by  
29 2.5. If the primary offense is a violation of s. 775.0823(3),  
30 (4), (5), (6), (7), or (8), the subtotal sentence points are  
31 multiplied by 2.0. If the primary offense is a violation of s.

1 784.07(3) or s. 775.0875(1), or of the Law Enforcement  
2 Protection Act under s. 775.0823(9) or (10), the subtotal  
3 sentence points are multiplied by 1.5.

4  
5 Grand theft of a motor vehicle: If the primary offense is  
6 grand theft of the third degree involving a motor vehicle and  
7 in the offender's prior record, there are three or more grand  
8 thefts of the third degree involving a motor vehicle, the  
9 subtotal sentence points are multiplied by 1.5.

10  
11 Criminal street gang member: If the offender is convicted of  
12 the primary offense and is found to have been a member of a  
13 criminal street gang at the time of the commission of the  
14 primary offense pursuant to s. 874.04, the subtotal sentence  
15 points are multiplied by 1.5.

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

24 Section 4. For the purpose of incorporating the  
25 amendment to section 775.087, Florida Statutes, in references  
26 thereto, subsection (3) of section 947.146, Florida Statutes,  
27 1998 Supplement, is reenacted to read:

28 947.146 Control Release Authority.--

29 (3) Within 120 days prior to the date the state  
30 correctional system is projected pursuant to s. 216.136 to  
31 exceed 99 percent of total capacity, the authority shall

1 determine eligibility for and establish a control release date  
2 for an appropriate number of parole ineligible inmates  
3 committed to the department and incarcerated within the state  
4 who have been determined by the authority to be eligible for  
5 discretionary early release pursuant to this section. In  
6 establishing control release dates, it is the intent of the  
7 Legislature that the authority prioritize consideration of  
8 eligible inmates closest to their tentative release date. The  
9 authority shall rely upon commitment data on the offender  
10 information system maintained by the department to initially  
11 identify inmates who are to be reviewed for control release  
12 consideration. The authority may use a method of objective  
13 risk assessment in determining if an eligible inmate should be  
14 released. Such assessment shall be a part of the department's  
15 management information system. However, the authority shall  
16 have sole responsibility for determining control release  
17 eligibility, establishing a control release date, and  
18 effectuating the release of a sufficient number of inmates to  
19 maintain the inmate population between 99 percent and 100  
20 percent of total capacity. Inmates who are ineligible for  
21 control release are inmates who are parole eligible or inmates  
22 who:

23 (a) Are serving a sentence that includes a mandatory  
24 minimum provision for a capital offense or drug trafficking  
25 offense and have not served the number of days equal to the  
26 mandatory minimum term less any jail-time credit awarded by  
27 the court;

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

30 (c) Are convicted, or have been previously convicted,  
31 of committing or attempting to commit sexual battery, incest,

1 or any of the following lewd or indecent assaults or acts:  
2 masturbating in public; exposing the sexual organs in a  
3 perverted manner; or nonconsensual handling or fondling of the  
4 sexual organs of another person;

5 (d) Are convicted, or have been previously convicted,  
6 of committing or attempting to commit assault, aggravated  
7 assault, battery, or aggravated battery, and a sex act was  
8 attempted or completed during commission of such offense;

9 (e) Are convicted, or have been previously convicted,  
10 of committing or attempting to commit kidnapping, burglary, or  
11 murder, and the offense was committed with the intent to  
12 commit sexual battery or a sex act was attempted or completed  
13 during commission of the offense;

14 (f) Are convicted, or have been previously convicted,  
15 of committing or attempting to commit false imprisonment upon  
16 a child under the age of 13 and, in the course of committing  
17 the offense, the inmate committed aggravated child abuse,  
18 sexual battery against the child, or a lewd, lascivious, or  
19 indecent assault or act upon or in the presence of the child;

20 (g) Are sentenced, have previously been sentenced, or  
21 have been sentenced at any time under s. 775.084, or have been  
22 sentenced at any time in another jurisdiction as a habitual  
23 offender;

24 (h) Are convicted, or have been previously convicted,  
25 of committing or attempting to commit assault, aggravated  
26 assault, battery, aggravated battery, kidnapping,  
27 manslaughter, or murder against an officer as defined in s.  
28 943.10(1), (2), (3), (6), (7), (8), or (9); against a state  
29 attorney or assistant state attorney; or against a justice or  
30 judge of a court described in Art. V of the State  
31 Constitution; or against an officer, judge, or state attorney

1 employed in a comparable position by any other jurisdiction;  
2 or

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

8 (j) Are convicted, or have been previously convicted,  
9 of DUI manslaughter under s. 316.193(3)(c)3., and are  
10 sentenced, or have been sentenced at any time, as a habitual  
11 offender for such offense, or have been sentenced at any time  
12 in another jurisdiction as a habitual offender for such  
13 offense;

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

19 2. Are serving a sentence for an offense committed on  
20 or after October 1, 1995, for a violation of the Law  
21 Enforcement Protection Act under s. 775.0823(2), (3), (4),  
22 (5), (6), (7), or (8), and the subtotal of the offender's  
23 sentence points is multiplied pursuant to former s. 921.0014  
24 or s. 921.0024;

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

30 (m) Are convicted, or have been previously convicted,  
31 of committing or attempting to commit manslaughter,

1 kidnapping, robbery, carjacking, home-invasion robbery, or a  
2 burglary under s. 810.02(2).

3

4 In making control release eligibility determinations under  
5 this subsection, the authority may rely on any document  
6 leading to or generated during the course of the criminal  
7 proceedings, including, but not limited to, any presentence or  
8 postsentence investigation or any information contained in  
9 arrest reports relating to circumstances of the offense.

10 Section 5. In order to inform the public and to deter  
11 and prevent crime in the state, the Executive Office of the  
12 Governor shall place public service announcements in visible  
13 local media throughout the state explaining the penalties  
14 provided in this act.

15 Section 6. This act shall take effect upon becoming a  
16 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 Senate Bill 194

- 4 - Adds the offense of possession of a firearm by a  
5 convicted felon to the list of felonies under subsections  
6 (2) and (3) of s. 775.087, F.S.  
7  
8 - Creates a minimum mandatory term of imprisonment of 3  
9 years for the offense of possession of a firearm by a  
10 convicted felon.  
11  
12 - Creates a minimum mandatory term of imprisonment of 8  
13 years for the offense of possession of a firearm by a  
14 convicted felon that is a machine gun or semiautomatic  
15 firearm with a high-capacity detachable box magazine.  
16  
17 - Deletes the lengthy reporting requirements for state  
18 attorneys concerning the charging and sentencing of  
19 offenders who allegedly would fall within the scope of  
20 any firearms minimum mandatory sentence.  
21  
22 - Deletes the requirement and procedure for state attorneys  
23 to submit written memoranda requesting a minimum  
24 mandatory not be imposed if a law enforcement agency  
25 based its arrest charges demonstrating the defendant met  
26 the criteria in s. 775.087, F.S.  
27  
28 - Aligns the reporting requirements of state attorneys,  
29 pertaining to any sentencing deviation from a minimum  
30 mandatory term that is required under s. 775.087, F.S.,  
31 to be substantially similar to the same sentencing  
deviation reporting requirements that currently exist  
under the Prison Releasee Reoffender Act.  
- Clarifies that a judge may impose a sentence longer than  
a minimum mandatory sentence required under 775.087,  
F.S., if it is otherwise authorized by law.