

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

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

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

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

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

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

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. However, the court may consider in sentencing
20 the person under this subsection whether or not the offense
21 was committed by a person being threatened with domestic
22 violence. The court shall impose any term of imprisonment
23 provided for in this subsection consecutively to any other
24 term of imprisonment imposed for any other felony offense.

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

27 a.1. Murder;

28 b.2. Sexual battery;

29 c.3. Robbery;

30 d.4. Burglary;

31 e.5. Arson;

1 ~~f.6.~~ Aggravated assault;
2 ~~g.7.~~ Aggravated battery;
3 ~~h.8.~~ Kidnapping;
4 ~~i.9.~~ Escape;
5 ~~j.10.~~ Sale, manufacture, delivery, or intent to sell,
6 manufacture, or deliver any controlled substance;
7 ~~k.11.~~ Aircraft piracy;
8 ~~l.12.~~ Aggravated child abuse;
9 ~~m.13.~~ Aggravated abuse of an elderly person or
10 disabled adult;
11 ~~n.14.~~ Unlawful throwing, placing, or discharging of a
12 destructive device or bomb;
13 ~~o.15.~~ Carjacking;
14 ~~p.16.~~ Home-invasion robbery; ~~or~~
15 ~~q.17.~~ Aggravated stalking;
16 r. Possession of a firearm by a convicted felon; or
17 s. 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, except that a person who is convicted of the
31 commission or attempted commission of possession of a firearm

1 by a convicted felon shall be sentenced to a minimum mandatory
2 term of imprisonment of 8 years.

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

13 3. Whenever a person is convicted of any of the
14 felonies delineated in subparagraph (a)1., regardless of
15 whether the use of a weapon is an element of the felony, and
16 during the course of the commission of the felony or the
17 flight therefrom, a semiautomatic firearm and its
18 high-capacity box magazine or a "machine gun" as defined in s.
19 790.001 was discharged while the person was possessing,
20 carrying, displaying, using, threatening to use, or attempting
21 to use it and, as the result of the discharge, death or great
22 bodily harm was inflicted upon any person, the convicted
23 person shall be sentenced to a minimum term of imprisonment of
24 not less than 25 years and not more than a term of
25 imprisonment of life in prison.

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

31 Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3.

1 does not authorize a court to impose a lesser sentence than
2 otherwise required by law.

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

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

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

30 (e)(b) As used in this subsection, the term:
31

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

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

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

20 (5) For purposes of imposition of minimum mandatory
21 sentencing provisions of this section, with respect to a
22 firearm "possession" is defined as carrying it on the person
23 or having it within immediate physical reach with ready
24 access.

25 Section 2. For the purpose of incorporating the
26 amendment to section 775.087, Florida Statutes, in references
27 thereto, subsection (2) of section 921.0022, Florida Statutes,
28 1998 Supplement, is reenacted to read:

29 921.0022 Criminal Punishment Code; offense severity
30 ranking chart.--

31

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

19 Section 3. For the purpose of incorporating the
20 amendment to section 775.087, Florida Statutes, in references
21 thereto, paragraph (b) of subsection (1) of section 921.0024,
22 Florida Statutes, 1998 Supplement, is reenacted to read:

23 921.0024 Criminal Punishment Code; worksheet
24 computations; scoresheets.--

25 (1)

26
27 (b) WORKSHEET KEY:

28
29 Legal status points are assessed when any form of legal status
30 existed at the time the offender committed an offense before
31

1 the court for sentencing. Four (4) sentence points are
2 assessed for an offender's legal status.

3
4 Community sanction violation points are assessed when a
5 community sanction violation is before the court for
6 sentencing. Six (6) sentence points are assessed for each
7 community sanction violation, and each successive community
8 sanction violation; however, if the community sanction
9 violation includes a new felony conviction before the
10 sentencing court, twelve (12) community sanction violation
11 points are assessed for such violation, and for each
12 successive community sanction violation involving a new felony
13 conviction. Multiple counts of community sanction violations
14 before the sentencing court shall not be a basis for
15 multiplying the assessment of community sanction violation
16 points.

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

30
31

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

12

13 Possession of a firearm, semiautomatic firearm, or machine
14 gun: If the offender is convicted of committing or attempting
15 to commit any felony other than those enumerated in s.
16 775.087(2) while having in his possession: a firearm as
17 defined in s. 790.001(6), an additional 18 sentence points are
18 assessed; or if the offender is convicted of committing or
19 attempting to commit any felony other than those enumerated in
20 s. 775.087(3) while having in his possession a semiautomatic
21 firearm as defined in s. 775.087(3) or a machine gun as
22 defined in s. 790.001(9), an additional 25 sentence points are
23 assessed.

24

25 Sentencing multipliers:

26

27 Drug trafficking: If the primary offense is drug trafficking
28 under s. 893.135, the subtotal sentence points are multiplied,
29 at the discretion of the court, for a level 7 or level 8
30 offense, by 1.5. The state attorney may move the sentencing
31 court to reduce or suspend the sentence of a person convicted

1 of a level 7 or level 8 offense, if the offender provides
2 substantial assistance as described in s. 893.135(4).

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

13
14 Grand theft of a motor vehicle: If the primary offense is
15 grand theft of the third degree involving a motor vehicle and
16 in the offender's prior record, there are three or more grand
17 thefts of the third degree involving a motor vehicle, the
18 subtotal sentence points are multiplied by 1.5.

19
20 Criminal street gang member: If the offender is convicted of
21 the primary offense and is found to have been a member of a
22 criminal street gang at the time of the commission of the
23 primary offense pursuant to s. 874.04, the subtotal sentence
24 points are multiplied by 1.5.

25
26 Domestic violence in the presence of a child: If the offender
27 is convicted of the primary offense and the primary offense is
28 a crime of domestic violence, as defined in s. 741.28, which
29 was committed in the presence of a child under 16 years of age
30 who is a family household member as defined in s. 741.28(2)

31

1 with the victim or perpetrator, the subtotal sentence points
2 are multiplied, at the discretion of the court, by 1.5.

3 Section 4. For the purpose of incorporating the
4 amendment to section 775.087, Florida Statutes, in references
5 thereto, subsection (3) of section 947.146, Florida Statutes,
6 1998 Supplement, is reenacted to read:

7 947.146 Control Release Authority.--

8 (3) Within 120 days prior to the date the state
9 correctional system is projected pursuant to s. 216.136 to
10 exceed 99 percent of total capacity, the authority shall
11 determine eligibility for and establish a control release date
12 for an appropriate number of parole ineligible inmates
13 committed to the department and incarcerated within the state
14 who have been determined by the authority to be eligible for
15 discretionary early release pursuant to this section. In
16 establishing control release dates, it is the intent of the
17 Legislature that the authority prioritize consideration of
18 eligible inmates closest to their tentative release date. The
19 authority shall rely upon commitment data on the offender
20 information system maintained by the department to initially
21 identify inmates who are to be reviewed for control release
22 consideration. The authority may use a method of objective
23 risk assessment in determining if an eligible inmate should be
24 released. Such assessment shall be a part of the department's
25 management information system. However, the authority shall
26 have sole responsibility for determining control release
27 eligibility, establishing a control release date, and
28 effectuating the release of a sufficient number of inmates to
29 maintain the inmate population between 99 percent and 100
30 percent of total capacity. Inmates who are ineligible for
31

1 control release are inmates who are parole eligible or inmates
2 who:

3 (a) Are serving a sentence that includes a mandatory
4 minimum provision for a capital offense or drug trafficking
5 offense and have not served the number of days equal to the
6 mandatory minimum term less any jail-time credit awarded by
7 the court;

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

10 (c) Are convicted, or have been previously convicted,
11 of committing or attempting to commit sexual battery, incest,
12 or any of the following lewd or indecent assaults or acts:
13 masturbating in public; exposing the sexual organs in a
14 perverted manner; or nonconsensual handling or fondling of the
15 sexual organs of another person;

16 (d) Are convicted, or have been previously convicted,
17 of committing or attempting to commit assault, aggravated
18 assault, battery, or aggravated battery, and a sex act was
19 attempted or completed during commission of such offense;

20 (e) Are convicted, or have been previously convicted,
21 of committing or attempting to commit kidnapping, burglary, or
22 murder, and the offense was committed with the intent to
23 commit sexual battery or a sex act was attempted or completed
24 during commission of the offense;

25 (f) Are convicted, or have been previously convicted,
26 of committing or attempting to commit false imprisonment upon
27 a child under the age of 13 and, in the course of committing
28 the offense, the inmate committed aggravated child abuse,
29 sexual battery against the child, or a lewd, lascivious, or
30 indecent assault or act upon or in the presence of the child;

31

1 (g) Are sentenced, have previously been sentenced, or
2 have been sentenced at any time under s. 775.084, or have been
3 sentenced at any time in another jurisdiction as a habitual
4 offender;

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

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

20 (j) Are convicted, or have been previously convicted,
21 of DUI manslaughter under s. 316.193(3)(c)3., and are
22 sentenced, or have been sentenced at any time, as a habitual
23 offender for such offense, or have been sentenced at any time
24 in another jurisdiction as a habitual offender for such
25 offense;

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

31

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

7 (1) Are serving a sentence for an offense committed on
8 or after January 1, 1994, for possession of a firearm,
9 semiautomatic firearm, or machine gun in which additional
10 points are added to the subtotal of the offender's sentence
11 points pursuant to former s. 921.0014 or s. 921.0024; or

12 (m) Are convicted, or have been previously convicted,
13 of committing or attempting to commit manslaughter,
14 kidnapping, robbery, carjacking, home-invasion robbery, or a
15 burglary under s. 810.02(2).

16
17 In making control release eligibility determinations under
18 this subsection, the authority may rely on any document
19 leading to or generated during the course of the criminal
20 proceedings, including, but not limited to, any presentence or
21 postsentence investigation or any information contained in
22 arrest reports relating to circumstances of the offense.

23 Section 5. In order to inform the public and to deter
24 and prevent crime in the state, the Executive Office of the
25 Governor shall place public service announcements in visible
26 local media throughout the state explaining the penalties
27 provided in this act.

28 Section 6. This act shall take effect upon becoming a
29 law.

30
31