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Bill No. CS/HB 955

Amendment No. ____ (for drafter's use only)

| | <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
|---|---------------|----------------|--------------|
| 1 | | . | |
| 2 | | . | |
| 3 | | . | |
| 4 | | . | |

ORIGINAL STAMP BELOW

Representative(s) Stafford offered the following:

Amendment to Senate Amendment (693068) (with title amendment)

On page 21, lines 12 through 14, of the amendment
Remove from the amendment, all of said lines

and insert:

Section 4. Effective October 1, 2000, section 782.04,
Florida Statutes, is amended to read:

782.04 Murder.--

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to
effect the death of the person killed or any human being;

2. When committed by a person engaged in the
perpetration of, or in the attempt to perpetrate, any:

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

b. Arson,

c. Sexual battery,

d. Robbery,

e. Burglary,

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- 1 f. Kidnapping,
- 2 g. Escape,
- 3 h. Aggravated child abuse,
- 4 i. Aggravated abuse of an elderly person or disabled
- 5 adult,
- 6 j. Aircraft piracy,
- 7 k. Unlawful throwing, placing, or discharging of a
- 8 destructive device or bomb,
- 9 l. Carjacking,
- 10 m. Home-invasion robbery,
- 11 n. Aggravated stalking,
- 12 o. Murder of another human being, ~~or~~
- 13 p. Resisting an officer with violence to his or her
- 14 person; or

15 3. Which resulted from the unlawful distribution of
 16 any substance controlled under s. 893.03(1), cocaine as
 17 described in s. 893.03(2)(a)4., or opium or any synthetic or
 18 natural salt, compound, derivative, or preparation of opium by
 19 a person 18 years of age or older, when such drug is proven to
 20 be the proximate cause of the death of the user,

21
 22 is murder in the first degree and constitutes a capital
 23 felony, punishable as provided in s. 775.082.

24 (b) In all cases under this section, the procedure set
 25 forth in s. 921.141 shall be followed in order to determine
 26 sentence of death or life imprisonment.

27 (2) The unlawful killing of a human being, when
 28 perpetrated by any act imminently dangerous to another and
 29 evincing a depraved mind regardless of human life, although
 30 without any premeditated design to effect the death of any
 31 particular individual, is murder in the second degree and

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1 constitutes a felony of the first degree, punishable by
2 imprisonment for a term of years not exceeding life or as
3 provided in s. 775.082, s. 775.083, or s. 775.084.

4 (3) When a person is killed in the perpetration of, or
5 in the attempt to perpetrate, any:

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

7 (b) Arson,

8 (c) Sexual battery,

9 (d) Robbery,

10 (e) Burglary,

11 (f) Kidnapping,

12 (g) Escape,

13 (h) Aggravated child abuse,

14 (i) Aggravated abuse of an elderly person or disabled
15 adult,

16 (j) Aircraft piracy,

17 (k) Unlawful throwing, placing, or discharging of a
18 destructive device or bomb,

19 (l) Carjacking,

20 (m) Home-invasion robbery,

21 (n) Aggravated stalking, or

22 (o) Murder of another human being, or

23 (p) Resisting an officer with violence to his or her
24 person,

25
26 by a person other than the person engaged in the perpetration
27 of or in the attempt to perpetrate such felony, the person
28 perpetrating or attempting to perpetrate such felony is guilty
29 of murder in the second degree, which constitutes a felony of
30 the first degree, punishable by imprisonment for a term of
31 years not exceeding life or as provided in s. 775.082, s.

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1 775.083, or s. 775.084.

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

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

7 (b) Arson,

8 (c) Sexual battery,

9 (d) Robbery,

10 (e) Burglary,

11 (f) Kidnapping,

12 (g) Escape,

13 (h) Aggravated child abuse,

14 (i) Aggravated abuse of an elderly person or disabled
15 adult,

16 (j) Aircraft piracy,

17 (k) Unlawful throwing, placing, or discharging of a
18 destructive device or bomb,

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

25 (m) Carjacking,

26 (n) Home-invasion robbery,

27 (o) Aggravated stalking, ~~or~~

28 (p) Murder of another human being, or

29 (q) Resisting an officer with violence to his or her
30 person,

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1 is murder in the third degree and constitutes a felony of the
2 second degree, punishable as provided in s. 775.082, s.
3 775.083, or s. 775.084.

4 Section 5. For the purpose of incorporating the
5 amendment to section 782.04, Florida Statutes, in references
6 thereto, the sections or subdivisions of Florida Statutes set
7 forth below are reenacted to read:

8 775.0823 Violent offenses committed against law
9 enforcement officers, correctional officers, state attorneys,
10 assistant state attorneys, justices, or judges.--Any provision
11 of law to the contrary notwithstanding, the Legislature does
12 hereby provide for an increase and certainty of penalty for
13 any person convicted of a violent offense against any law
14 enforcement or correctional officer, as defined in s.
15 943.10(1), (2), (3), (6), (7), (8), or (9); against any state
16 attorney elected pursuant to s. 27.01 or assistant state
17 attorney appointed under s. 27.181; or against any justice or
18 judge of a court described in Art. V of the State
19 Constitution, which offense arises out of or in the scope of
20 the officer's duty as a law enforcement or correctional
21 officer, the state attorney's or assistant state attorney's
22 duty as a prosecutor or investigator, or the justice's or
23 judge's duty as a judicial officer, as follows:

24 (1) For murder in the first degree as described in s.
25 782.04(1), if the death sentence is not imposed, a sentence of
26 imprisonment for life without eligibility for release.

27 (2) For attempted murder in the first degree as
28 described in s. 782.04(1), a sentence pursuant to the Criminal
29 Punishment Code.

30 (3) For murder in the second degree as described in s.
31 782.04(2) and (3), a sentence pursuant to the Criminal

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1 Punishment Code.

2 (4) For attempted murder in the second degree as
3 described in s. 782.04(2) and (3), a sentence pursuant to the
4 Criminal Punishment Code.

5 (5) For murder in the third degree as described in s.
6 782.04(4), a sentence pursuant to the Criminal Punishment
7 Code.

8 (6) For attempted murder in the third degree as
9 described in s. 782.04(4), a sentence pursuant to the Criminal
10 Punishment Code.

11

12 Notwithstanding the provisions of s. 948.01, with respect to
13 any person who is found to have violated this section,
14 adjudication of guilt or imposition of sentence shall not be
15 suspended, deferred, or withheld.

16 782.051 Attempted felony murder.--

17 (1) Any person who perpetrates or attempts to
18 perpetrate any felony enumerated in s. 782.04(3) and who
19 commits, aids, or abets an intentional act that is not an
20 essential element of the felony and that could, but does not,
21 cause the death of another commits a felony of the first
22 degree, punishable by imprisonment for a term of years not
23 exceeding life, or as provided in s. 775.082, s. 775.083, or
24 s. 775.084, which is an offense ranked in level 9 of the
25 Criminal Punishment Code. Victim injury points shall be scored
26 under this subsection.

27 (2) Any person who perpetrates or attempts to
28 perpetrate any felony other than a felony enumerated in s.
29 782.04(3) and who commits, aids, or abets an intentional act
30 that is not an essential element of the felony and that could,
31 but does not, cause the death of another commits a felony of

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1 the first degree, punishable as provided in s. 775.082, s.
2 775.083, or s. 775.084, which is an offense ranked in level 8
3 of the Criminal Punishment Code. Victim injury points shall be
4 scored under this subsection.

5 (3) When a person is injured during the perpetration
6 of or the attempt to perpetrate any felony enumerated in s.
7 782.04(3) by a person other than the person engaged in the
8 perpetration of or the attempt to perpetrate such felony, the
9 person perpetrating or attempting to perpetrate such felony
10 commits a felony of the second degree, punishable as provided
11 in s. 775.082, s. 775.083, or s. 775.084, which is an offense
12 ranked in level 7 of the Criminal Punishment Code. Victim
13 injury points shall be scored under this subsection.

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

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

23 (3) OFFENSE SEVERITY RANKING CHART

| 25 Florida Statute | Felony Degree | Description |
|--------------------|---------------|--------------------------|
| 26 | | |
| 27 | | |
| 28 | | (h) LEVEL 8 |
| 29 316.193 | | |
| 30 (3)(c)3.a. | 2nd | DUI manslaughter. |
| 31 327.35(3)(c)3. | 2nd | Vessel BUI manslaughter. |

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| | | | |
|----|--------------|---------|-----------------------------------|
| 1 | 777.03(2)(a) | 1st | Accessory after the fact, capital |
| 2 | | | felony. |
| 3 | 782.04(4) | 2nd | Killing of human without design |
| 4 | | | when engaged in act or attempt of |
| 5 | | | any felony other than arson, |
| 6 | | | sexual battery, robbery, |
| 7 | | | burglary, kidnapping, aircraft |
| 8 | | | piracy, or unlawfully discharging |
| 9 | | | bomb. |
| 10 | 782.051(2) | 1st | Attempted felony murder while |
| 11 | | | perpetrating or attempting to |
| 12 | | | perpetrate a felony not |
| 13 | | | enumerated in s. 782.04(3). |
| 14 | 782.071(2) | 1st | Committing vehicular homicide and |
| 15 | | | failing to render aid or give |
| 16 | | | information. |
| 17 | 782.072(2) | 1st | Committing vessel homicide and |
| 18 | | | failing to render aid or give |
| 19 | | | information. |
| 20 | 790.161(3) | 1st | Discharging a destructive device |
| 21 | | | which results in bodily harm or |
| 22 | | | property damage. |
| 23 | 794.011(5) | 2nd | Sexual battery, victim 12 years |
| 24 | | | or over, offender does not use |
| 25 | | | physical force likely to cause |
| 26 | | | serious injury. |
| 27 | 800.04(4) | 2nd | Lewd or lascivious battery. |
| 28 | 806.01(1) | 1st | Maliciously damage dwelling or |
| 29 | | | structure by fire or explosive, |
| 30 | | | believing person in structure. |
| 31 | 810.02(2)(a) | 1st,PBL | Burglary with assault or battery. |

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| | | | |
|----|---------------|---------|------------------------------------|
| 1 | 810.02(2)(b) | 1st,PBL | Burglary; armed with explosives |
| 2 | | | or dangerous weapon. |
| 3 | 810.02(2)(c) | 1st | Burglary of a dwelling or |
| 4 | | | structure causing structural |
| 5 | | | damage or \$1,000 or more property |
| 6 | | | damage. |
| 7 | 812.13(2)(b) | 1st | Robbery with a weapon. |
| 8 | 812.135(2) | 1st | Home-invasion robbery. |
| 9 | 825.102(2) | 2nd | Aggravated abuse of an elderly |
| 10 | | | person or disabled adult. |
| 11 | 825.103(2)(a) | 1st | Exploiting an elderly person or |
| 12 | | | disabled adult and property is |
| 13 | | | valued at \$100,000 or more. |
| 14 | 837.02(2) | 2nd | Perjury in official proceedings |
| 15 | | | relating to prosecution of a |
| 16 | | | capital felony. |
| 17 | 837.021(2) | 2nd | Making contradictory statements |
| 18 | | | in official proceedings relating |
| 19 | | | to prosecution of a capital |
| 20 | | | felony. |
| 21 | 860.121(2)(c) | 1st | Shooting at or throwing any |
| 22 | | | object in path of railroad |
| 23 | | | vehicle resulting in great bodily |
| 24 | | | harm. |
| 25 | 860.16 | 1st | Aircraft piracy. |
| 26 | 893.13(1)(b) | 1st | Sell or deliver in excess of 10 |
| 27 | | | grams of any substance specified |
| 28 | | | in s. 893.03(1)(a) or (b). |
| 29 | 893.13(2)(b) | 1st | Purchase in excess of 10 grams of |
| 30 | | | any substance specified in s. |
| 31 | | | 893.03(1)(a) or (b). |

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|----|-----------------|-----|-----------------------------------|
| 1 | 893.13(6)(c) | 1st | Possess in excess of 10 grams of |
| 2 | | | any substance specified in s. |
| 3 | | | 893.03(1)(a) or (b). |
| 4 | 893.135(1)(a)2. | 1st | Trafficking in cannabis, more |
| 5 | | | than 2,000 lbs., less than 10,000 |
| 6 | | | lbs. |
| 7 | 893.135 | | |
| 8 | (1)(b)1.b. | 1st | Trafficking in cocaine, more than |
| 9 | | | 200 grams, less than 400 grams. |
| 10 | 893.135 | | |
| 11 | (1)(c)1.b. | 1st | Trafficking in illegal drugs, |
| 12 | | | more than 14 grams, less than 28 |
| 13 | | | grams. |
| 14 | 893.135 | | |
| 15 | (1)(d)1.b. | 1st | Trafficking in phencyclidine, |
| 16 | | | more than 200 grams, less than |
| 17 | | | 400 grams. |
| 18 | 893.135 | | |
| 19 | (1)(e)1.b. | 1st | Trafficking in methaqualone, more |
| 20 | | | than 5 kilograms, less than 25 |
| 21 | | | kilograms. |
| 22 | 893.135 | | |
| 23 | (1)(f)1.b. | 1st | Trafficking in amphetamine, more |
| 24 | | | than 28 grams, less than 200 |
| 25 | | | grams. |
| 26 | 893.135 | | |
| 27 | (1)(g)1.b. | 1st | Trafficking in flunitrazepam, 14 |
| 28 | | | grams or more, less than 28 |
| 29 | | | grams. |
| 30 | 895.03(1) | 1st | Use or invest proceeds derived |
| 31 | | | from pattern of racketeering |

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| | | | |
|----|----------------|---------|-----------------------------------|
| 1 | | | activity. |
| 2 | 895.03(2) | 1st | Acquire or maintain through |
| 3 | | | racketeering activity any |
| 4 | | | interest in or control of any |
| 5 | | | enterprise or real property. |
| 6 | 895.03(3) | 1st | Conduct or participate in any |
| 7 | | | enterprise through pattern of |
| 8 | | | racketeering activity. |
| 9 | | | (i) LEVEL 9 |
| 10 | 316.193 | | |
| 11 | (3)(c)3.b. | 1st | DUI manslaughter; failing to |
| 12 | | | render aid or give information. |
| 13 | 782.04(1) | 1st | Attempt, conspire, or solicit to |
| 14 | | | commit premeditated murder. |
| 15 | 782.04(3) | 1st,PBL | Accomplice to murder in |
| 16 | | | connection with arson, sexual |
| 17 | | | battery, robbery, burglary, and |
| 18 | | | other specified felonies. |
| 19 | 782.051(1) | 1st | Attempted felony murder while |
| 20 | | | perpetrating or attempting to |
| 21 | | | perpetrate a felony enumerated in |
| 22 | | | s. 782.04(3). |
| 23 | 782.07(2) | 1st | Aggravated manslaughter of an |
| 24 | | | elderly person or disabled adult. |
| 25 | 787.01(1)(a)1. | 1st,PBL | Kidnapping; hold for ransom or |
| 26 | | | reward or as a shield or hostage. |
| 27 | 787.01(1)(a)2. | 1st,PBL | Kidnapping with intent to commit |
| 28 | | | or facilitate commission of any |
| 29 | | | felony. |
| 30 | 787.01(1)(a)4. | 1st,PBL | Kidnapping with intent to |
| 31 | | | interfere with performance of any |

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| | | | |
|----|---------------|---------|-----------------------------------|
| 1 | | | governmental or political |
| 2 | | | function. |
| 3 | 787.02(3)(a) | 1st | False imprisonment; child under |
| 4 | | | age 13; perpetrator also commits |
| 5 | | | aggravated child abuse, sexual |
| 6 | | | battery, or lewd or lascivious |
| 7 | | | battery, molestation, conduct, or |
| 8 | | | exhibition. |
| 9 | 790.161 | 1st | Attempted capital destructive |
| 10 | | | device offense. |
| 11 | 794.011(2) | 1st | Attempted sexual battery; victim |
| 12 | | | less than 12 years of age. |
| 13 | 794.011(2) | Life | Sexual battery; offender younger |
| 14 | | | than 18 years and commits sexual |
| 15 | | | battery on a person less than 12 |
| 16 | | | years. |
| 17 | 794.011(4) | 1st | Sexual battery; victim 12 years |
| 18 | | | or older, certain circumstances. |
| 19 | 794.011(8)(b) | 1st | Sexual battery; engage in sexual |
| 20 | | | conduct with minor 12 to 18 years |
| 21 | | | by person in familial or |
| 22 | | | custodial authority. |
| 23 | 800.04(5)(b) | 1st | Lewd or lascivious molestation; |
| 24 | | | victim less than 12 years; |
| 25 | | | offender 18 years or older. |
| 26 | 812.13(2)(a) | 1st,PBL | Robbery with firearm or other |
| 27 | | | deadly weapon. |
| 28 | 812.133(2)(a) | 1st,PBL | Carjacking; firearm or other |
| 29 | | | deadly weapon. |
| 30 | 827.03(2) | 1st | Aggravated child abuse. |
| 31 | | | |

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| | | | |
|----|-----------------|-----|-----------------------------------|
| 1 | 847.0145(1) | 1st | Selling, or otherwise |
| 2 | | | transferring custody or control, |
| 3 | | | of a minor. |
| 4 | 847.0145(2) | 1st | Purchasing, or otherwise |
| 5 | | | obtaining custody or control, of |
| 6 | | | a minor. |
| 7 | 859.01 | 1st | Poisoning food, drink, medicine, |
| 8 | | | or water with intent to kill or |
| 9 | | | injure another person. |
| 10 | 893.135 | 1st | Attempted capital trafficking |
| 11 | | | offense. |
| 12 | 893.135(1)(a)3. | 1st | Trafficking in cannabis, more |
| 13 | | | than 10,000 lbs. |
| 14 | 893.135 | | |
| 15 | (1)(b)1.c. | 1st | Trafficking in cocaine, more than |
| 16 | | | 400 grams, less than 150 |
| 17 | | | kilograms. |
| 18 | 893.135 | | |
| 19 | (1)(c)1.c. | 1st | Trafficking in illegal drugs, |
| 20 | | | more than 28 grams, less than 30 |
| 21 | | | kilograms. |
| 22 | 893.135 | | |
| 23 | (1)(d)1.c. | 1st | Trafficking in phencyclidine, |
| 24 | | | more than 400 grams. |
| 25 | 893.135 | | |
| 26 | (1)(e)1.c. | 1st | Trafficking in methaqualone, more |
| 27 | | | than 25 kilograms. |
| 28 | 893.135 | | |
| 29 | (1)(f)1.c. | 1st | Trafficking in amphetamine, more |
| 30 | | | than 200 grams. |
| 31 | | | (j) LEVEL 10 |

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1 782.04(2) 1st,PBL Unlawful killing of human; act is
2 homicide, unpremeditated.

3 787.01(1)(a)3. 1st,PBL Kidnapping; inflict bodily harm
4 upon or terrorize victim.

5 787.01(3)(a) Life Kidnapping; child under age 13,
6 perpetrator also commits
7 aggravated child abuse, sexual
8 battery, or lewd or lascivious
9 battery, molestation, conduct, or
10 exhibition.

11 782.07(3) 1st Aggravated manslaughter of a
12 child.

13 794.011(3) Life Sexual battery; victim 12 years
14 or older, offender uses or
15 threatens to use deadly weapon or
16 physical force to cause serious
17 injury.

18 876.32 1st Treason against the state.

19 947.146 Control Release Authority.--

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

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

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

19

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

26 Section 6. This act shall take effect upon becoming a
27 law, except that sections 2 and 3 of this act shall take
28 effect July 1, 2000, and sections 4 and 5 of this act shall
29 take effect October 1, 2000.

30

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 22, line 20, of the amendment

4

5 after the semicolon insert:

6 amending s. 782.04, F.S.; making it a capital
7 felony to commit the unlawful killing of a
8 human being while perpetrating or attempting to
9 perpetrate the act of resisting an officer with
10 violence to his or her person; providing
11 penalties for specified murders involving the
12 perpetration of or the attempt to perpetrate
13 the act of resisting an officer with violence
14 to his or her person; reenacting ss.
15 775.0823(1), (2), (3), (4), (5), and (6),
16 782.051, 903.133, 921.0022(3)(h), (i), and (j),
17 and 947.146(3)(i), F.S., relating to violent
18 offenses committed against law enforcement
19 officers, correctional officers, state
20 attorneys, assistant state attorneys, justices,
21 or judges, attempted felony murder, bail on
22 appeal prohibited for certain felony
23 convictions, Criminal Punishment Code offense
24 severity ranking chart, Control Release
25 Authority;

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