

By Senator Margolis

35-00372-08

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1 A bill to be entitled

2 An act relating to weapons and firearms; amending s.
3 775.087, F.S.; increasing the minimum terms of
4 imprisonment imposed for possessing, discharging, or
5 seriously harming another with a semiautomatic firearm and
6 its high-capacity detachable box magazine or with a
7 machine gun; amending s. 790.065, F.S.; providing that any
8 potential buyer or transferee of a firearm who willfully
9 and knowingly provides false information or false or
10 fraudulent identification by using the identity of a
11 victim of identity theft commits a felony of the second
12 degree; providing criminal penalties; authorizing the
13 court to impose an additional fine against a person using
14 the identity of a victim of identity theft; amending s.
15 790.07, F.S.; providing that it is a felony of the first
16 degree to possess a semiautomatic firearm or machine gun
17 while committing or attempting to commit a felony;
18 amending s. 921.0022, F.S., relating to the offense
19 severity ranking chart of the Criminal Punishment Code;
20 conforming a cross-reference; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsection (3) of section 775.087, Florida
25 Statutes, is amended to read:

26 775.087 Possession or use of weapon; aggravated battery;
27 felony reclassification; minimum sentence.--

28 (3)(a)1. Any person who is convicted of a felony or an
29 attempt to commit a felony, regardless of whether the use of a

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30 firearm is an element of the felony, and the conviction was for:
31 a. Murder;
32 b. Sexual battery;
33 c. Robbery;
34 d. Burglary;
35 e. Arson;
36 f. Aggravated assault;
37 g. Aggravated battery;
38 h. Kidnapping;
39 i. Escape;
40 j. Sale, manufacture, delivery, or intent to sell,
41 manufacture, or deliver any controlled substance;
42 k. Aircraft piracy;
43 l. Aggravated child abuse;
44 m. Aggravated abuse of an elderly person or disabled adult;
45 n. Unlawful throwing, placing, or discharging of a
46 destructive device or bomb;
47 o. Carjacking;
48 p. Home-invasion robbery;
49 q. Aggravated stalking; or
50 r. Trafficking in cannabis, trafficking in cocaine, capital
51 importation of cocaine, trafficking in illegal drugs, capital
52 importation of illegal drugs, trafficking in phencyclidine,
53 capital importation of phencyclidine, trafficking in
54 methaqualone, capital importation of methaqualone, trafficking in
55 amphetamine, capital importation of amphetamine, trafficking in
56 flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB),
57 trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or
58 other violation of s. 893.135(1);

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59 |
60 | and during the commission of the offense, the ~~such~~ person
61 | possessed a semiautomatic firearm and its high-capacity
62 | detachable box magazine or a machine gun as defined in s.
63 | 790.001, shall be sentenced to a minimum term of imprisonment of
64 | 20 ~~15~~ years.

65 | 2. Any person who is convicted of a felony or an attempt to
66 | commit a felony listed in subparagraph (a)1., regardless of
67 | whether the use of a weapon is an element of the felony, and
68 | during the course of the commission of the felony the ~~such~~ person
69 | discharged a semiautomatic firearm and its high-capacity box
70 | magazine or a "machine gun" as defined in s. 790.001 shall be
71 | sentenced to a minimum term of imprisonment of 25 ~~20~~ years.

72 | 3. Any person who is convicted of a felony or an attempt to
73 | commit a felony listed in subparagraph (a)1., regardless of
74 | whether the use of a weapon is an element of the felony, and
75 | during the course of the commission of the felony the ~~such~~ person
76 | discharged a semiautomatic firearm and its high-capacity box
77 | magazine or a "machine gun" as defined in s. 790.001 and, as the
78 | result of the discharge, death or great bodily harm was inflicted
79 | upon any person, the convicted person shall be sentenced to a
80 | minimum term of imprisonment ~~of not less than 25 years and not~~
81 | ~~more than a term of imprisonment~~ of life in prison and is
82 | ineligible for parole.

83 | (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
84 | (a)3. does not prevent a court from imposing a longer sentence of
85 | incarceration as authorized by law in addition to the minimum
86 | mandatory sentence, or from imposing a sentence of death pursuant
87 | to other applicable law. Subparagraph (a)1., subparagraph (a)2.,

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88 or subparagraph (a)3. does not authorize a court to impose a
89 lesser sentence than otherwise required by law.

90

91 Notwithstanding s. 948.01, adjudication of guilt or imposition of
92 sentence shall not be suspended, deferred, or withheld, and the
93 defendant is not eligible for statutory gain-time under s.
94 944.275 or any form of discretionary early release, other than
95 pardon or executive clemency, or conditional medical release
96 under s. 947.149, prior to serving the minimum sentence.

97 (c) If the minimum mandatory terms of imprisonment imposed
98 pursuant to this section exceed the maximum sentences authorized
99 by s. 775.082, s. 775.084, or the Criminal Punishment Code under
100 chapter 921, then the mandatory minimum sentence must be imposed.
101 If the mandatory minimum terms of imprisonment pursuant to this
102 section are less than the sentences that could be imposed as
103 authorized by s. 775.082, s. 775.084, or the Criminal Punishment
104 Code under chapter 921, then the sentence imposed by the court
105 must include the mandatory minimum term of imprisonment as
106 required in this section.

107 (d) It is the intent of the Legislature that offenders who
108 possess, carry, display, use, threaten to use, or attempt to use
109 a semiautomatic firearm and its high-capacity detachable box
110 magazine or a machine gun as defined in s. 790.001 be punished to
111 the fullest extent of the law, and the minimum terms of
112 imprisonment imposed pursuant to this subsection shall be imposed
113 for each qualifying felony count for which the person is
114 convicted. The court shall impose any term of imprisonment
115 provided for in this subsection consecutively to any other term
116 of imprisonment imposed for any other felony offense.

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

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

122 2. "Semiautomatic firearm" means a firearm which is capable
123 of firing a series of rounds by separate successive depressions
124 of the trigger and which uses the energy of discharge to perform
125 a portion of the operating cycle.

126 Section 2. Subsection (12) of section 790.065, Florida
127 Statutes, is amended to read:

128 790.065 Sale and delivery of firearms.--

129 (12) (a) 1. Any potential buyer or transferee who willfully
130 and knowingly provides false information or false or fraudulent
131 identification commits a felony of the third degree, punishable
132 as provided in s. 775.082 or s. 775.083.

133 2. Any potential buyer or transferee who willfully and
134 knowingly provides false information or false or fraudulent
135 identification by using the identity of a victim of identity
136 theft commits a felony of the second degree, punishable as
137 provided in s. 775.082 or by a fine of up to \$25,000, or both.

138 (b) Any licensed importer, licensed manufacturer, or
139 licensed dealer who violates the provisions of subsection (1)
140 commits a felony of the third degree, punishable as provided in
141 s. 775.082 or s. 775.083.

142 (c) Any employee or agency of a licensed importer, licensed
143 manufacturer, or licensed dealer who violates the provisions of
144 subsection (1) commits a felony of the third degree, punishable
145 as provided in s. 775.082 or s. 775.083.

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146 (d) Any person who knowingly acquires a firearm through
147 purchase or transfer intended for the use of a person who is
148 prohibited by state or federal law from possessing or receiving a
149 firearm commits a felony of the third degree, punishable as
150 provided in s. 775.082 or s. 775.083.

151 Section 3. Section 790.07, Florida Statutes, is amended to
152 read:

153 790.07 Persons engaged in criminal offense, having
154 weapons.--

155 (1) Whoever, while committing or attempting to commit any
156 felony or while under indictment, displays, uses, threatens, or
157 attempts to use any weapon or electric weapon or device or
158 carries a concealed weapon commits ~~is guilty of~~ a felony of the
159 third degree, punishable as provided in s. 775.082, s. 775.083,
160 or s. 775.084.

161 (2) Whoever, while committing or attempting to commit any
162 felony, possesses, displays, uses, threatens, or attempts to use
163 any firearm or carries a concealed firearm commits ~~is guilty of~~ a
164 felony of the second degree, punishable as provided in s.
165 775.082, s. 775.083, or ~~and~~ s. 775.084.

166 (3) Whoever, while committing or attempting to commit any
167 felony, possesses, displays, uses, threatens, or attempts to use
168 a semiautomatic firearm and its high-capacity detachable box
169 magazine, as defined in s. 775.087(3), or a machine gun, as
170 defined in s. 790.001, or carries a concealed semiautomatic
171 firearm commits a felony of the first degree, punishable as
172 provided in s. 775.082, s. 775.083, or s. 775.084.

173 (4)~~(3)~~ The following crimes are excluded from application
174 of this section: Antitrust violations, unfair trade practices,

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175 restraints of trade, nonsupport of dependents, bigamy, or other
 176 similar offenses.

177 ~~(5)-(4)~~ Whoever, having previously been convicted of a
 178 violation of subsection (1) or subsection (2) and, subsequent to
 179 such conviction, possesses, displays, uses, threatens, or
 180 attempts to use any weapon, firearm, or electric weapon or
 181 device, carries a concealed weapon, or carries a concealed
 182 firearm while committing or attempting to commit any felony or
 183 while under indictment commits ~~is guilty of~~ a felony of the first
 184 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 185 775.084. Sentence may ~~shall~~ not be suspended or deferred under
 186 the provisions of this subsection.

187 Section 4. Paragraph (g) of subsection (3) of section
 188 921.0022, Florida Statutes, is amended to read:

189 921.0022 Criminal Punishment Code; offense severity ranking
 190 chart.--

191 (3) OFFENSE SEVERITY RANKING CHART

192 (g) LEVEL 7

193

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.

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197	316.1935 (3) (b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
198	327.35 (3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.
199	402.319 (2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
200	409.920 (2)	3rd	Medicaid provider fraud.
201	456.065 (2)	3rd	Practicing a health care profession without a license.
201	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.

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202	458.327 (1)	3rd	Practicing medicine without a license.
203	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
204	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
205	461.012 (1)	3rd	Practicing podiatric medicine without a license.
206	462.17	3rd	Practicing naturopathy without a license.
207	463.015 (1)	3rd	Practicing optometry without a license.
208	464.016 (1)	3rd	Practicing nursing without a license.
209	465.015 (2)	3rd	Practicing pharmacy without a license.
210	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a license.
211	467.201	3rd	Practicing midwifery without a

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			license.
212	468.366	3rd	Delivering respiratory care services without a license.
213	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
214	483.901 (9)	3rd	Practicing medical physics without a license.
215	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
216	484.053	3rd	Dispensing hearing aids without a license.
217	494.0018 (2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
218	560.123 (8) (b) 1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by

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219	560.125 (5) (a)	3rd	<p>money transmitter.</p> <p>Money transmitter business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.</p>
220	655.50 (10) (b) 1.	3rd	<p>Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.</p>
221	775.21 (10) (a)	3rd	<p>Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.</p>
222	775.21 (10) (b)	3rd	<p>Sexual predator working where children regularly congregate.</p>
223	775.21 (10) (g)	3rd	<p>Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.</p>
224	782.051 (3)	2nd	<p>Attempted felony murder of a person by a person other than</p>

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			the perpetrator or the perpetrator of an attempted felony.
225	782.07 (1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
226	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
227	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
228	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
229	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
230	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim

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			pregnant.
231	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
232	784.048 (7)	3rd	Aggravated stalking; violation of court order.
233	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
234	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
235	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
236	784.081 (1)	1st	Aggravated battery on specified official or employee.
237	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
238	784.083 (1)	1st	Aggravated battery on code inspector.
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240	790.07 <u>(5)</u> (4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
241	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
242	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
243	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
244	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
245	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial

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			authority to a victim younger than 18 years of age.
246	796.03	2nd	Procuring any person under 16 years for prostitution.
247	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
248	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
249	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
250	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
251	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
252	810.02 (3) (d)	2nd	Burglary of occupied

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			conveyance; unarmed; no assault or battery.
253	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
254	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
255	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
256	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
257	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
258	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
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260	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
261	812.131 (2) (a)	2nd	Robbery by sudden snatching.
262	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
263	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
264	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
265	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that

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			entity.
266	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
267	825.103 (2) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
268	827.03 (3) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
269	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
270	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
271	838.015	2nd	Bribery.
272	838.016	2nd	Unlawful compensation or reward for official behavior.
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274	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
275	838.22	2nd	Bid tampering.
276	847.0135 (3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
277	847.0135 (4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
278	872.06	2nd	Abuse of a dead human body.
279	893.13 (1) (c) 1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
	893.13 (1) (e) 1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s.

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280	893.13(4)(a)	1st	893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
281	893.135(1)(a)1.	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
282	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
283	893.135(1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
284	893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
285	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than

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			5 kilograms.
286	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
287	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
288	893.135 (1) (h) 1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
289	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
290	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
291	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
292	896.104 (4) (a) 1.	3rd	Structuring transactions to evade reporting or

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293	943.0435(4)(c)	2nd	registration requirements, financial transactions exceeding \$300 but less than \$20,000.
294	943.0435(8)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
295	943.0435(9)(a)	3rd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
296	943.0435(13)	3rd	Sexual offender; failure to comply with reporting requirements.
297	943.0435(14)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
298			Sexual offender; failure to report and reregister; failure to respond to address verification.

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299	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
300	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
301	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
302	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
303	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
304	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure

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to respond to address
verification.

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Section 5. This act shall take effect July 1, 2008.