

By the Committee on Criminal Justice; and Senator Margolis

591-05292-08

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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 display, use, threaten, or attempt to use a
17 semiautomatic firearm or machine gun while committing or
18 attempting to commit a felony; amending s. 921.0022, F.S.,
19 relating to the offense severity ranking chart of the
20 Criminal Punishment Code; conforming a cross-reference;
21 providing an effective date.

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

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

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

29 (3)(a)1. Any person who is convicted of a felony or an

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30 attempt to commit a felony, regardless of whether the use of a
31 firearm is an element of the felony, and the conviction was for:

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

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59 | other violation of s. 893.135(1);

60 |
61 | and during the commission of the offense, the ~~such~~ person
62 | possessed a semiautomatic firearm and its high-capacity
63 | detachable box magazine or a machine gun as defined in s.
64 | 790.001, shall be sentenced to a minimum term of imprisonment of
65 | 20 ~~15~~ years.

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

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

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

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88 | to other applicable law. Subparagraph (a)1., subparagraph (a)2.,
89 | or subparagraph (a)3. does not authorize a court to impose a
90 | lesser sentence than otherwise required by law.

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

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

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

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117 of imprisonment imposed for any other felony offense.

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

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

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

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

129 790.065 Sale and delivery of firearms.--

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

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

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

143 (c) Any employee or agency of a licensed importer, licensed
144 manufacturer, or licensed dealer who violates the provisions of
145 subsection (1) commits a felony of the third degree, punishable

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146 as provided in s. 775.082 or s. 775.083.

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

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

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

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

162 (2) Whoever, while committing or attempting to commit any
163 felony, displays, uses, threatens, or attempts to use any firearm
164 or carries a concealed firearm commits ~~is guilty of~~ a felony of
165 the second degree, punishable as provided in s. 775.082, s.
166 775.083, or ~~and~~ s. 775.084.

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

174 (4)-(3)- The following crimes are excluded from application

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175 of this section: Antitrust violations, unfair trade practices,
 176 restraints of trade, nonsupport of dependents, bigamy, or other
 177 similar offenses.

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

188 Section 4. Paragraph (g) of subsection (3) of section
 189 921.0022, Florida Statutes, is amended to read:

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

192 (3) OFFENSE SEVERITY RANKING CHART

193 (g) LEVEL 7

194

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 disfigurement, 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.
202	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious

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			bodily injury.
203	458.327 (1)	3rd	Practicing medicine without a license.
204	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
205	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
206	461.012 (1)	3rd	Practicing podiatric medicine without a license.
207	462.17	3rd	Practicing naturopathy without a license.
208	463.015 (1)	3rd	Practicing optometry without a license.
209	464.016 (1)	3rd	Practicing nursing without a license.
210	465.015 (2)	3rd	Practicing pharmacy without a license.
211	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a license.
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213	467.201	3rd	Practicing midwifery without a license.
214	468.366	3rd	Delivering respiratory care services without a license.
215	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
216	483.901 (9)	3rd	Practicing medical physics without a license.
217	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
218	484.053	3rd	Dispensing hearing aids without a license.
219	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.
	560.123 (8) (b) 1.	3rd	Failure to report currency or payment instruments exceeding

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220	560.125 (5) (a)	3rd	\$300 but less than \$20,000 by money transmitter.
221	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
222	775.21 (10) (a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
223	775.21 (10) (b)	3rd	Sexual predator working where children regularly congregate.
224	775.21 (10) (g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
225	782.051 (3)	2nd	Attempted felony murder of a

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226	782.07(1)	2nd	<p>person by a person other than the perpetrator or the perpetrator of an attempted felony.</p>
227	782.071	2nd	<p>Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).</p>
228	782.072	2nd	<p>Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).</p>
229	784.045(1)(a)1.	2nd	<p>Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).</p>
230	784.045(1)(a)2.	2nd	<p>Aggravated battery; intentionally causing great bodily harm or disfigurement.</p>
231	784.045(1)(b)	2nd	<p>Aggravated battery; using deadly weapon.</p>

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			perpetrator aware victim pregnant.
232	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
233	784.048 (7)	3rd	Aggravated stalking; violation of court order.
234	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
235	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
236	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
237	784.081 (1)	1st	Aggravated battery on specified official or employee.
238	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
239	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.
246	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian,

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			or a person in custodial authority to a victim younger than 18 years of age.
247	796.03	2nd	Procuring any person under 16 years for prostitution.
248	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
249	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.
250	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
251	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
252	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
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254	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
255	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
256	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.
257	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
258	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
259	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
	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.
266	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

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			of the insolvency of that entity.
267	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
268	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.
269	827.03 (3) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
270	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
271	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
272	838.015	2nd	Bribery.
273	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.
280	893.13 (1) (e) 1.	1st	Sell, manufacture, or deliver cocaine or other drug

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prohibited under s.
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	893.13(4)(a)	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.
286	893.135(1)(e)1.	1st	Trafficking in methaqualone,

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			more than 200 grams, less than 5 kilograms.
287	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
288	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
289	893.135 (1) (h) 1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
290	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
291	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
292	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
293	896.104 (4) (a) 1.	3rd	Structuring transactions to

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294	943.0435 (4) (c)	2nd	evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
295	943.0435 (8)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
296	943.0435 (9) (a)	3rd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
297	943.0435 (13)	3rd	Sexual offender; failure to comply with reporting requirements.
298	943.0435 (14)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
			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.
305	985.4815 (13)	3rd	Sexual offender; failure to

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report and reregister; failure
to respond to address
verification.

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