

By Senator Farmer

34-01340-18

20181416__

1 A bill to be entitled
2 An act relating to the death penalty; amending s.
3 775.082, F.S.; deleting provisions providing for the
4 death penalty for capital felonies; deleting
5 provisions relating to the effect of a declaration by
6 a court of last resort that the death penalty in a
7 capital felony is unconstitutional; amending ss. 27.51
8 and 27.511, F.S.; deleting provisions relating to
9 representation in death penalty cases; amending s.
10 27.5304, F.S.; conforming provisions to changes made
11 by the act; repealing ss. 27.7001, 27.7002, 27.701,
12 27.702, 27.703, 27.704, 27.7045, 27.705, 27.706,
13 27.707, 27.708, 27.7081, 27.7091, 27.710, 27.711, and
14 27.715, F.S., relating to legislative intent and
15 findings; limitations on collateral representation,
16 lawyer disqualification, and use of state funds for
17 excess fees not authorized; the capital collateral
18 regional counsel; the duties of the capital collateral
19 regional counsel and filing reports; conflicts of
20 interest and substitute counsel; appointment of
21 assistants and other staff; capital case proceedings
22 and constitutionally deficient representation; the
23 salaries of capital collateral regional counsel and
24 assistant capital collateral counsel; private practice
25 of law prohibited; investigators and service of
26 process; access to prisoners, compliance with the
27 Florida Rules of Criminal Procedure, and records
28 requests; capital postconviction public records
29 production; legislative recommendations to the Supreme

34-01340-18

20181416__

30 Court, postconviction proceedings, and pro bono
31 service credit; the registry of attorneys applying to
32 represent persons in postconviction capital collateral
33 proceedings, certification of minimum requirements,
34 and appointment by trial court; the terms and
35 conditions of appointment of attorneys as counsel in
36 postconviction capital collateral proceedings; and the
37 Capital Collateral Regional Counsel Trust Fund,
38 respectively; amending s. 119.071, F.S.; deleting a
39 public records exemption relating to capital
40 collateral proceedings; amending s. 282.201, F.S.;
41 conforming a provision to changes made by the act;
42 amending ss. 775.15 and 790.161, F.S.; deleting
43 provisions relating to the effect of a declaration by
44 a court of last resort declaring that the death
45 penalty in a capital felony is unconstitutional;
46 repealing ss. 913.13, 921.137, 921.141, and 921.142,
47 F.S., relating to jurors in capital cases, prohibiting
48 the imposition of the death sentence upon a defendant
49 with an intellectual disability, the determination of
50 whether to impose a sentence of death or life
51 imprisonment for a capital felony, and the
52 determination of whether to impose a sentence of death
53 or life imprisonment for a capital drug trafficking
54 felony, respectively; amending ss. 394.912, 775.021,
55 782.04, 775.30, 782.065, 794.011, 893.135, 944.275,
56 and 948.012, F.S.; conforming provisions to changes
57 made by the act; repealing ss. 922.052, 922.06,
58 922.07, 922.08, 922.095, 922.10, 922.105, 922.108,

34-01340-18

20181416__

59 922.11, 922.111, 922.12, 922.14, 922.15, 924.055,
60 924.056, and 924.057, F.S., relating to issuance of a
61 warrant of execution, stay of execution of a death
62 sentence, proceedings when the person under a sentence
63 of death appears to be insane, proceedings when the
64 person under a sentence of death appears to be
65 pregnant, pursuit of collateral remedies, execution of
66 a death sentence and prohibition against reduction of
67 a death sentence as a result of determination that a
68 method of execution is unconstitutional, sentencing
69 orders in capital cases, regulation of execution,
70 transfer to state prison for safekeeping before death
71 warrant issued, return of warrant of execution issued
72 by the Governor, sentence of death unexecuted for
73 unjustifiable reasons, return of a warrant of
74 execution issued by the Supreme Court, legislative
75 findings and intent concerning appeals and
76 postconviction proceedings in death penalty cases,
77 capital postconviction proceedings and reporting
78 requirements, and legislative intent regarding capital
79 postconviction proceedings, respectively; amending s.
80 925.11, F.S.; deleting provisions relating to
81 preservation of DNA evidence in death penalty cases;
82 amending s. 945.10, F.S.; deleting a public records
83 exemption for the identities of executioners;
84 providing an effective date.

85

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

87

34-01340-18

20181416__

88 Section 1. Paragraph (a) of subsection (1) and subsection
89 (2) of section 775.082, Florida Statutes, are amended to read:

90 775.082 Penalties; applicability of sentencing structures;
91 mandatory minimum sentences for certain reoffenders previously
92 released from prison.—

93 (1) (a) ~~Except as provided in paragraph (b),~~ A person who
94 has been convicted of a capital felony shall be punished by
95 death ~~if the proceeding held to determine sentence according to~~
96 ~~the procedure set forth in s. 921.141 results in a determination~~
97 ~~that such person shall be punished by death, otherwise such~~
98 ~~person shall be punished by life imprisonment and shall be~~
99 ineligible for parole.

100 (2) ~~In the event the death penalty in a capital felony is~~
101 ~~held to be unconstitutional by the Florida Supreme Court or the~~
102 ~~United States Supreme Court, the court having jurisdiction over~~
103 ~~a person previously sentenced to death for a capital felony~~
104 ~~shall cause such person to be brought before the court, and the~~
105 ~~court shall sentence such person to life imprisonment as~~
106 ~~provided in subsection (1). No sentence of death shall be~~
107 ~~reduced as a result of a determination that a method of~~
108 ~~execution is held to be unconstitutional under the State~~
109 ~~Constitution or the Constitution of the United States.~~

110 Section 2. Subsection (1) of section 27.51, Florida
111 Statutes, is amended to read:

112 27.51 Duties of public defender.—

113 (1) The public defender shall represent, without additional
114 compensation, any person determined to be indigent under s.
115 27.52 and:

116 (a) Under arrest for, or charged with, a felony;

34-01340-18

20181416__

117 (b) Under arrest for, or charged with:

- 118 1. A misdemeanor authorized for prosecution by the state
119 attorney;
- 120 2. A violation of chapter 316 punishable by imprisonment;
- 121 3. Criminal contempt; or
- 122 4. A violation of a special law or county or municipal
123 ordinance ancillary to a state charge, or if not ancillary to a
124 state charge, only if the public defender contracts with the
125 county or municipality to provide representation pursuant to ss.
126 27.54 and 125.69.

127

128 The public defender may ~~shall~~ not provide representation
129 pursuant to this paragraph if the court, before ~~prior to~~ trial,
130 files in the cause an order of no imprisonment as provided in s.
131 27.512;

132 (c) Alleged to be a delinquent child pursuant to a petition
133 filed before a circuit court;

134 (d) Sought by petition filed in such court to be
135 involuntarily placed as a mentally ill person under part I of
136 chapter 394, involuntarily committed as a sexually violent
137 predator under part V of chapter 394, or involuntarily admitted
138 to residential services as a person with developmental
139 disabilities under chapter 393. A public defender may ~~shall~~ not
140 represent any plaintiff in a civil action brought under the
141 Florida Rules of Civil Procedure, the Federal Rules of Civil
142 Procedure, or the federal statutes, or represent a petitioner in
143 a rule challenge under chapter 120, unless specifically
144 authorized by statute; or

145 ~~(e) Convicted and sentenced to death, for purposes of~~

34-01340-18

20181416__

146 ~~handling an appeal to the Supreme Court; or~~

147 (e)~~(f)~~ Is appealing a matter in a case arising under
148 paragraphs (a)-(d).

149 Section 3. Subsections (5) and (8) of section 27.511,
150 Florida Statutes, are amended to read:

151 27.511 Offices of criminal conflict and civil regional
152 counsel; legislative intent; qualifications; appointment;
153 duties.—

154 (5) When the Office of the Public Defender, at any time
155 during the representation of two or more defendants, determines
156 that the interests of those accused are so adverse or hostile
157 that they cannot all be counseled by the public defender or his
158 or her staff without a conflict of interest, or that none can be
159 counseled by the public defender or his or her staff because of
160 a conflict of interest, and the court grants the public
161 defender's motion to withdraw, the office of criminal conflict
162 and civil regional counsel shall be appointed and shall provide
163 legal services, without additional compensation, to any person
164 determined to be indigent under s. 27.52, who is:

165 (a) Under arrest for, or charged with, a felony;

166 (b) Under arrest for, or charged with:

167 1. A misdemeanor authorized for prosecution by the state
168 attorney;

169 2. A violation of chapter 316 punishable by imprisonment;

170 3. Criminal contempt; or

171 4. A violation of a special law or county or municipal
172 ordinance ancillary to a state charge or, if not ancillary to a
173 state charge, only if the office of criminal conflict and civil
174 regional counsel contracts with the county or municipality to

34-01340-18

20181416__

175 provide representation pursuant to ss. 27.54 and 125.69.

176

177 The office of criminal conflict and civil regional counsel may
178 not provide representation pursuant to this paragraph if the
179 court, before ~~prior to~~ trial, files in the cause an order of no
180 imprisonment as provided in s. 27.512;

181 (c) Alleged to be a delinquent child pursuant to a petition
182 filed before a circuit court;

183 (d) Sought by petition filed in such court to be
184 involuntarily placed as a mentally ill person under part I of
185 chapter 394, involuntarily committed as a sexually violent
186 predator under part V of chapter 394, or involuntarily admitted
187 to residential services as a person with developmental
188 disabilities under chapter 393;

189 ~~(e) Convicted and sentenced to death, for purposes of~~
190 ~~handling an appeal to the Supreme Court;~~

191 (e) ~~(f)~~ Appealing a matter in a case arising under
192 paragraphs (a)-(d); or

193 (f) ~~(g)~~ Seeking correction, reduction, or modification of a
194 sentence under Rule 3.800, Florida Rules of Criminal Procedure,
195 or seeking postconviction relief under Rule 3.850, Florida Rules
196 of Criminal Procedure, if, in either case, the court determines
197 that appointment of counsel is necessary to protect a person's
198 due process rights.

199 (8) The public defender for the judicial circuit specified
200 in s. 27.51(4) shall, after the record on appeal is transmitted
201 to the appellate court by the office of criminal conflict and
202 civil regional counsel which handled the trial and if requested
203 by the regional counsel for the indicated appellate district,

34-01340-18

20181416__

204 handle all circuit court appeals authorized pursuant to
205 paragraph (5) (e) ~~(5) (f)~~ within the state courts system and any
206 authorized appeals to the federal courts required of the
207 official making the request. If the public defender certifies to
208 the court that the public defender has a conflict consistent
209 with the criteria prescribed in s. 27.5303 and moves to
210 withdraw, the regional counsel shall handle the appeal, unless
211 the regional counsel has a conflict, in which case the court
212 shall appoint private counsel pursuant to s. 27.40.

213 Section 4. Subsection (13) of section 27.5304, Florida
214 Statutes, is amended to read:

215 27.5304 Private court-appointed counsel; compensation;
216 notice.—

217 (13) Notwithstanding the limitation set forth in subsection
218 (5) and for the 2017-2018 fiscal year only, the compensation for
219 representation in a criminal proceeding may not exceed the
220 following:

221 (a) For misdemeanors and juveniles represented at the trial
222 level: \$1,000.

223 (b) For noncapital, nonlife felonies represented at the
224 trial level: \$15,000.

225 (c) For life felonies represented at the trial level:
226 \$15,000.

227 ~~(d) For capital cases represented at the trial level:
228 \$25,000. For purposes of this paragraph, a "capital case" is any
229 offense for which the potential sentence is death and the state
230 has not waived seeking the death penalty.~~

231 (d) (e) For representation on appeal: \$9,000.

232 (e) (f) This subsection expires July 1, 2018.

34-01340-18

20181416__

233 Section 5. Sections 27.7001, 27.7002, 27.701, 27.702,
234 27.703, 27.704, 27.7045, 27.705, 27.706, 27.707, 27.708,
235 27.7081, 27.7091, 27.710, 27.711, and 27.715, Florida Statutes,
236 are repealed.

237 Section 6. Paragraph (d) of subsection (1) of section
238 119.071, Florida Statutes, is amended to read:

239 119.071 General exemptions from inspection or copying of
240 public records.—

241 (1) AGENCY ADMINISTRATION.—

242 (d)1. A public record that was prepared by an agency
243 attorney (including an attorney employed or retained by the
244 agency or employed or retained by another public officer or
245 agency to protect or represent the interests of the agency
246 having custody of the record) or prepared at the attorney's
247 express direction, that reflects a mental impression,
248 conclusion, litigation strategy, or legal theory of the attorney
249 or the agency, and that was prepared exclusively for civil or
250 criminal litigation or for adversarial administrative
251 proceedings, or that was prepared in anticipation of imminent
252 civil or criminal litigation or imminent adversarial
253 administrative proceedings, is exempt from s. 119.07(1) and s.
254 24(a), Art. I of the State Constitution until the conclusion of
255 the litigation or adversarial administrative proceedings. ~~For~~
256 ~~purposes of capital collateral litigation as set forth in s.~~
257 ~~27.7001, the Attorney General's office is entitled to claim this~~
258 ~~exemption for those public records prepared for direct appeal as~~
259 ~~well as for all capital collateral litigation after direct~~
260 ~~appeal until execution of sentence or imposition of a life~~
261 ~~sentence.~~

34-01340-18

20181416__

262 2. This exemption is not waived by the release of such
263 public record to another public employee or officer of the same
264 agency or any person consulted by the agency attorney. When
265 asserting the right to withhold a public record pursuant to this
266 paragraph, the agency shall identify the potential parties to
267 any such criminal or civil litigation or adversarial
268 administrative proceedings. If a court finds that the document
269 or other record has been improperly withheld under this
270 paragraph, the party seeking access to such document or record
271 shall be awarded reasonable attorney ~~attorney's~~ fees and costs
272 in addition to any other remedy ordered by the court.

273 Section 7. Paragraph (c) of subsection (4) of section
274 282.201, Florida Statutes, is amended to read:

275 282.201 State data center.—The state data center is
276 established within the Agency for State Technology and shall
277 provide data center services that are hosted on premises or
278 externally through a third-party provider as an enterprise
279 information technology service. The provision of services must
280 comply with applicable state and federal laws, regulations, and
281 policies, including all applicable security, privacy, and
282 auditing requirements.

283 (4) SCHEDULE FOR CONSOLIDATIONS OF AGENCY DATA CENTERS.—

284 (c) The following are exempt from state data center
285 consolidation under this section: the Department of Law
286 Enforcement, the Department of the Lottery's Gaming System,
287 Systems Design and Development in the Office of Policy and
288 Budget, the regional traffic management centers as described in
289 s. 335.14(2) and the Office of Toll Operations of the Department
290 of Transportation, the State Board of Administration, state

34-01340-18

20181416__

291 attorneys, public defenders, criminal conflict and civil
292 regional counsel, ~~capital collateral regional counsel~~, and the
293 Florida Housing Finance Corporation.

294 Section 8. Subsection (1) of section 775.15, Florida
295 Statutes, is amended to read:

296 775.15 Time limitations; general time limitations;
297 exceptions.—

298 (1) A prosecution for a capital felony, a life felony, or a
299 felony that resulted in a death may be commenced at any time. ~~If~~
300 ~~the death penalty is held to be unconstitutional by the Florida~~
301 ~~Supreme Court or the United States Supreme Court, all crimes~~
302 ~~designated as capital felonies shall be considered life felonies~~
303 ~~for the purposes of this section, and prosecution for such~~
304 ~~crimes may be commenced at any time.~~

305 Section 9. Subsection (4) of section 790.161, Florida
306 Statutes, is amended to read:

307 790.161 Making, possessing, throwing, projecting, placing,
308 or discharging any destructive device or attempt so to do,
309 felony; penalties.—A person who willfully and unlawfully makes,
310 possesses, throws, projects, places, discharges, or attempts to
311 make, possess, throw, project, place, or discharge any
312 destructive device:

313 (4) If the act results in the death of another person,
314 commits a capital felony, punishable as provided in s. 775.082.
315 ~~In the event the death penalty in a capital felony is held to be~~
316 ~~unconstitutional by the Florida Supreme Court or the United~~
317 ~~States Supreme Court, the court having jurisdiction over a~~
318 ~~person previously sentenced to death for a capital felony shall~~
319 ~~cause such person to be brought before the court, and the court~~

34-01340-18

20181416__

320 ~~shall sentence such person to life imprisonment if convicted of~~
321 ~~murder in the first degree or of a capital felony under this~~
322 ~~subsection, and such person shall be ineligible for parole. No~~
323 ~~sentence of death shall be reduced as a result of a~~
324 ~~determination that a method of execution is held to be~~
325 ~~unconstitutional under the State Constitution or the~~
326 ~~Constitution of the United States.~~

327 Section 10. Sections 913.13, 921.137, 921.141, and 921.142,
328 Florida Statutes, are repealed.

329 Section 11. Subsection (9) of section 394.912, Florida
330 Statutes, is amended to read:

331 394.912 Definitions.—As used in this part, the term:

332 (9) "Sexually violent offense" means:

333 (a) Murder of a human being while engaged in sexual battery
334 in violation of s. 782.04(1)(b) ~~782.04(1)(a)2.~~;

335 (b) Kidnapping of a child under the age of 13 and, in the
336 course of that offense, committing:

337 1. Sexual battery; or

338 2. A lewd, lascivious, or indecent assault or act upon or
339 in the presence of the child;

340 (c) Committing the offense of false imprisonment upon a
341 child under the age of 13 and, in the course of that offense,
342 committing:

343 1. Sexual battery; or

344 2. A lewd, lascivious, or indecent assault or act upon or
345 in the presence of the child;

346 (d) Sexual battery in violation of s. 794.011;

347 (e) Lewd, lascivious, or indecent assault or act upon or in
348 presence of the child in violation of s. 800.04 or s.

34-01340-18

20181416__

349 847.0135(5);

350 (f) An attempt, criminal solicitation, or conspiracy, in
351 violation of s. 777.04, of a sexually violent offense;352 (g) Any conviction for a felony offense in effect at any
353 time before October 1, 1998, which is comparable to a sexually
354 violent offense under paragraphs (a)-(f) or any federal
355 conviction or conviction in another state for a felony offense
356 that in this state would be a sexually violent offense;357 (h) Any criminal act that, either at the time of sentencing
358 for the offense or subsequently during civil commitment
359 proceedings under this part, has been determined beyond a
360 reasonable doubt to have been sexually motivated; or361 (i) A criminal offense in which the state attorney refers a
362 person to the department for civil commitment proceedings
363 pursuant to s. 394.9125.364 Section 12. Paragraph (c) of subsection (5) of section
365 775.021, Florida Statutes, is amended to read:

366 775.021 Rules of construction.—

367 (5) Whoever commits an act that violates a provision of
368 this code or commits a criminal offense defined by another
369 statute and thereby causes the death of, or bodily injury to, an
370 unborn child commits a separate offense if the provision or
371 statute does not otherwise specifically provide a separate
372 offense for such death or injury to an unborn child.373 ~~(c) Notwithstanding any other provision of law, the death~~
374 ~~penalty may not be imposed for an offense under this subsection.~~375 Section 13. Subsection (1) of section 782.04, Florida
376 Statutes, is amended to read:

377 782.04 Murder.—

34-01340-18

20181416__

378 (1) ~~(a)~~ The unlawful killing of a human being:
 379 (a)1. When perpetrated from a premeditated design to effect
 380 the death of the person killed or any human being;
 381 (b)2. When committed by a person engaged in the
 382 perpetration of, or in the attempt to perpetrate, any:
 383 1.a. Trafficking offense prohibited by s. 893.135(1),
 384 2.b. Arson,
 385 3.e. Sexual battery,
 386 4.d. Robbery,
 387 5.e. Burglary,
 388 6.f. Kidnapping,
 389 7.g. Escape,
 390 8.h. Aggravated child abuse,
 391 9.i. Aggravated abuse of an elderly person or disabled
 392 adult,
 393 10.j. Aircraft piracy,
 394 11.k. Unlawful throwing, placing, or discharging of a
 395 destructive device or bomb,
 396 12.l. Carjacking,
 397 13.m. Home-invasion robbery,
 398 14.n. Aggravated stalking,
 399 15.o. Murder of another human being,
 400 16.p. Resisting an officer with violence to his or her
 401 person,
 402 17.q. Aggravated fleeing or eluding with serious bodily
 403 injury or death,
 404 18.r. Felony that is an act of terrorism or is in
 405 furtherance of an act of terrorism, including a felony under s.
 406 775.30, s. 775.32, s. 775.33, s. 775.34, or s. 775.35, or

34-01340-18

20181416__

407 19.s. Human trafficking; or
 408 (c)3. Which resulted from the unlawful distribution by a
 409 person 18 years of age or older of any of the following
 410 substances, or mixture containing any of the following
 411 substances, when such substance or mixture is proven to be the
 412 proximate cause of the death of the user:

413 1.a. A substance controlled under s. 893.03(1);
 414 2.b. Cocaine, as described in s. 893.03(2)(a)4.;
 415 3.e. Opium or any synthetic or natural salt, compound,
 416 derivative, or preparation of opium;
 417 4.d. Methadone;
 418 5.e. Alfentanil, as described in s. 893.03(2)(b)1.;
 419 6.f. Carfentanil, as described in s. 893.03(2)(b)6.;
 420 7.g. Fentanyl, as described in s. 893.03(2)(b)9.;
 421 8.h. Sufentanil, as described in s. 893.03(2)(b)29.; or
 422 9.i. A controlled substance analog, as described in s.
 423 893.0356, of any substance specified in sub-subparagraphs a.-h.,
 424
 425 is murder in the first degree and constitutes a capital felony,
 426 punishable as provided in s. 775.082.

427 ~~(b) In all cases under this section, the procedure set~~
 428 ~~forth in s. 921.141 shall be followed in order to determine~~
 429 ~~sentence of death or life imprisonment. If the prosecutor~~
 430 ~~intends to seek the death penalty, the prosecutor must give~~
 431 ~~notice to the defendant and file the notice with the court~~
 432 ~~within 45 days after arraignment. The notice must contain a list~~
 433 ~~of the aggravating factors the state intends to prove and has~~
 434 ~~reason to believe it can prove beyond a reasonable doubt. The~~
 435 ~~court may allow the prosecutor to amend the notice upon a~~

34-01340-18

20181416__

436 ~~showing of good cause.~~

437 Section 14. Subsection (2) of section 775.30, Florida
438 Statutes, is amended to read:

439 775.30 Terrorism; defined; penalties.—

440 (2) A person who violates s. 782.04(1)(a) ~~782.04(1)(a)1.~~ or
441 (2), s. 782.065, s. 782.07(1), s. 782.09, s. 784.045, s. 784.07,
442 s. 787.01, s. 787.02, s. 787.07, s. 790.115, s. 790.15, s.
443 790.16, s. 790.161, s. 790.1615, s. 790.162, s. 790.166, s.
444 790.19, s. 806.01, s. 806.031, s. 806.111, s. 815.06, s.
445 815.061, s. 859.01, or s. 876.34, in furtherance of intimidating
446 or coercing the policy of a government, or in furtherance of
447 affecting the conduct of a government by mass destruction,
448 assassination, or kidnapping, commits the crime of terrorism, a
449 felony of the first degree, punishable as provided in s.
450 775.082, s. 775.083, or s. 775.084.

451 Section 15. Section 782.065, Florida Statutes, is amended
452 to read:

453 782.065 Murder; law enforcement officer, correctional
454 officer, correctional probation officer.—Notwithstanding ss.
455 775.082, 775.0823, 782.04, 782.051, and chapter 921, a defendant
456 shall be sentenced to life imprisonment without eligibility for
457 release upon findings by the trier of fact that, beyond a
458 reasonable doubt:

459 (1) The defendant committed murder in the first degree in
460 violation of s. 782.04(1) and a death sentence was not imposed;
461 murder in the second or third degree in violation of s.
462 782.04(2), (3), or (4); attempted murder in the first or second
463 degree in violation of s. 782.04(1)(a) ~~782.04(1)(a)1.~~ or (2); or
464 attempted felony murder in violation of s. 782.051; and

34-01340-18

20181416__

465 (2) The victim of any offense described in subsection (1)
466 was a law enforcement officer, part-time law enforcement
467 officer, auxiliary law enforcement officer, correctional
468 officer, part-time correctional officer, auxiliary correctional
469 officer, correctional probation officer, part-time correctional
470 probation officer, or auxiliary correctional probation officer,
471 as those terms are defined in s. 943.10, engaged in the lawful
472 performance of a legal duty.

473 Section 16. Paragraph (a) of subsection (2) of section
474 794.011, Florida Statutes, is amended to read:

475 794.011 Sexual battery.—

476 (2) (a) A person 18 years of age or older who commits sexual
477 battery upon, or in an attempt to commit sexual battery injures
478 the sexual organs of, a person less than 12 years of age commits
479 a capital felony, punishable as provided in s. ss. 775.082 and
480 ~~921.141~~.

481 Section 17. Paragraphs (b) through (l) of subsection (1) of
482 section 893.135, Florida Statutes, are amended to read:

483 893.135 Trafficking; mandatory sentences; suspension or
484 reduction of sentences; conspiracy to engage in trafficking.—

485 (1) Except as authorized in this chapter or in chapter 499
486 and notwithstanding the provisions of s. 893.13:

487 (b)1. Any person who knowingly sells, purchases,
488 manufactures, delivers, or brings into this state, or who is
489 knowingly in actual or constructive possession of, 28 grams or
490 more of cocaine, as described in s. 893.03(2)(a)4., or of any
491 mixture containing cocaine, but less than 150 kilograms of
492 cocaine or any such mixture, commits a felony of the first
493 degree, which felony shall be known as "trafficking in cocaine,"

34-01340-18

20181416__

494 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

495 If the quantity involved:

496 a. Is 28 grams or more, but less than 200 grams, such
497 person shall be sentenced to a mandatory minimum term of
498 imprisonment of 3 years, and the defendant shall be ordered to
499 pay a fine of \$50,000.

500 b. Is 200 grams or more, but less than 400 grams, such
501 person shall be sentenced to a mandatory minimum term of
502 imprisonment of 7 years, and the defendant shall be ordered to
503 pay a fine of \$100,000.

504 c. Is 400 grams or more, but less than 150 kilograms, such
505 person shall be sentenced to a mandatory minimum term of
506 imprisonment of 15 calendar years and pay a fine of \$250,000.

507 2. Any person who knowingly sells, purchases, manufactures,
508 delivers, or brings into this state, or who is knowingly in
509 actual or constructive possession of, 150 kilograms or more of
510 cocaine, as described in s. 893.03(2)(a)4., commits the first
511 degree felony of trafficking in cocaine. A person who has been
512 convicted of the first degree felony of trafficking in cocaine
513 under this subparagraph shall be punished by life imprisonment
514 and is ineligible for any form of discretionary early release
515 except pardon or executive clemency or conditional medical
516 release under s. 947.149. However, if the court determines that,
517 in addition to committing any act specified in this paragraph:

518 a. The person intentionally killed an individual or
519 counseled, commanded, induced, procured, or caused the
520 intentional killing of an individual and such killing was the
521 result; or

522 b. The person's conduct in committing that act led to a

34-01340-18

20181416__

523 natural, though not inevitable, lethal result,

524

525 such person commits the capital felony of trafficking in
526 cocaine, punishable as provided in s. ~~ss.~~ 775.082 and ~~921.142~~.
527 Any person sentenced for a capital felony under this paragraph
528 shall also be sentenced to pay the maximum fine provided under
529 subparagraph 1.

530 3. Any person who knowingly brings into this state 300
531 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,
532 and who knows that the probable result of such importation would
533 be the death of any person, commits capital importation of
534 cocaine, a capital felony punishable as provided in s. ~~ss.~~
535 775.082 and ~~921.142~~. Any person sentenced for a capital felony
536 under this paragraph shall also be sentenced to pay the maximum
537 fine provided under subparagraph 1.

538 (c)1. A person who knowingly sells, purchases,
539 manufactures, delivers, or brings into this state, or who is
540 knowingly in actual or constructive possession of, 4 grams or
541 more of any morphine, opium, hydromorphone, or any salt,
542 derivative, isomer, or salt of an isomer thereof, including
543 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or
544 (3)(c)4., or 4 grams or more of any mixture containing any such
545 substance, but less than 30 kilograms of such substance or
546 mixture, commits a felony of the first degree, which felony
547 shall be known as "trafficking in illegal drugs," punishable as
548 provided in s. 775.082, s. 775.083, or s. 775.084. If the
549 quantity involved:

550 a. Is 4 grams or more, but less than 14 grams, such person
551 shall be sentenced to a mandatory minimum term of imprisonment

34-01340-18

20181416__

552 of 3 years and shall be ordered to pay a fine of \$50,000.

553 b. Is 14 grams or more, but less than 28 grams, such person
554 shall be sentenced to a mandatory minimum term of imprisonment
555 of 15 years and shall be ordered to pay a fine of \$100,000.

556 c. Is 28 grams or more, but less than 30 kilograms, such
557 person shall be sentenced to a mandatory minimum term of
558 imprisonment of 25 years and shall be ordered to pay a fine of
559 \$500,000.

560 2. A person who knowingly sells, purchases, manufactures,
561 delivers, or brings into this state, or who is knowingly in
562 actual or constructive possession of, 14 grams or more of
563 hydrocodone, as described in s. 893.03(2)(a)1.j., codeine, as
564 described in s. 893.03(2)(a)1.g., or any salt thereof, or 14
565 grams or more of any mixture containing any such substance,
566 commits a felony of the first degree, which felony shall be
567 known as "trafficking in hydrocodone," punishable as provided in
568 s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

569 a. Is 14 grams or more, but less than 28 grams, such person
570 shall be sentenced to a mandatory minimum term of imprisonment
571 of 3 years and shall be ordered to pay a fine of \$50,000.

572 b. Is 28 grams or more, but less than 50 grams, such person
573 shall be sentenced to a mandatory minimum term of imprisonment
574 of 7 years and shall be ordered to pay a fine of \$100,000.

575 c. Is 50 grams or more, but less than 200 grams, such
576 person shall be sentenced to a mandatory minimum term of
577 imprisonment of 15 years and shall be ordered to pay a fine of
578 \$500,000.

579 d. Is 200 grams or more, but less than 30 kilograms, such
580 person shall be sentenced to a mandatory minimum term of

34-01340-18

20181416__

581 imprisonment of 25 years and shall be ordered to pay a fine of
582 \$750,000.

583 3. A person who knowingly sells, purchases, manufactures,
584 delivers, or brings into this state, or who is knowingly in
585 actual or constructive possession of, 7 grams or more of
586 oxycodone, as described in s. 893.03(2)(a)1.o., or any salt
587 thereof, or 7 grams or more of any mixture containing any such
588 substance, commits a felony of the first degree, which felony
589 shall be known as "trafficking in oxycodone," punishable as
590 provided in s. 775.082, s. 775.083, or s. 775.084. If the
591 quantity involved:

592 a. Is 7 grams or more, but less than 14 grams, such person
593 shall be sentenced to a mandatory minimum term of imprisonment
594 of 3 years and shall be ordered to pay a fine of \$50,000.

595 b. Is 14 grams or more, but less than 25 grams, such person
596 shall be sentenced to a mandatory minimum term of imprisonment
597 of 7 years and shall be ordered to pay a fine of \$100,000.

598 c. Is 25 grams or more, but less than 100 grams, such
599 person shall be sentenced to a mandatory minimum term of
600 imprisonment of 15 years and shall be ordered to pay a fine of
601 \$500,000.

602 d. Is 100 grams or more, but less than 30 kilograms, such
603 person shall be sentenced to a mandatory minimum term of
604 imprisonment of 25 years and shall be ordered to pay a fine of
605 \$750,000.

606 4.a. A person who knowingly sells, purchases, manufactures,
607 delivers, or brings into this state, or who is knowingly in
608 actual or constructive possession of, 4 grams or more of:

609 (I) Alfentanil, as described in s. 893.03(2)(b)1.;

34-01340-18

20181416__

610 (II) Carfentanil, as described in s. 893.03(2)(b)6.;

611 (III) Fentanyl, as described in s. 893.03(2)(b)9.;

612 (IV) Sufentanil, as described in s. 893.03(2)(b)29.;

613 (V) A fentanyl derivative, as described in s.

614 893.03(1)(a)62.;

615 (VI) A controlled substance analog, as described in s.

616 893.0356, of any substance described in sub-sub-subparagraphs

617 (I)-(V); or

618 (VII) A mixture containing any substance described in sub-

619 sub-subparagraphs (I)-(VI),

620

621 commits a felony of the first degree, which felony shall be

622 known as "trafficking in fentanyl," punishable as provided in s.

623 775.082, s. 775.083, or s. 775.084.

624 b. If the quantity involved under sub-subparagraph a.:

625 (I) Is 4 grams or more, but less than 14 grams, such person

626 shall be sentenced to a mandatory minimum term of imprisonment

627 of 3 years, and shall be ordered to pay a fine of \$50,000.

628 (II) Is 14 grams or more, but less than 28 grams, such

629 person shall be sentenced to a mandatory minimum term of

630 imprisonment of 15 years, and shall be ordered to pay a fine of

631 \$100,000.

632 (III) Is 28 grams or more, such person shall be sentenced

633 to a mandatory minimum term of imprisonment of 25 years, and

634 shall be ordered to pay a fine of \$500,000.

635 5. A person who knowingly sells, purchases, manufactures,

636 delivers, or brings into this state, or who is knowingly in

637 actual or constructive possession of, 30 kilograms or more of

638 any morphine, opium, oxycodone, hydrocodone, codeine,

34-01340-18

20181416__

639 hydromorphone, or any salt, derivative, isomer, or salt of an
640 isomer thereof, including heroin, as described in s.
641 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
642 more of any mixture containing any such substance, commits the
643 first degree felony of trafficking in illegal drugs. A person
644 who has been convicted of the first degree felony of trafficking
645 in illegal drugs under this subparagraph shall be punished by
646 life imprisonment and is ineligible for any form of
647 discretionary early release except pardon or executive clemency
648 or conditional medical release under s. 947.149. However, if the
649 court determines that, in addition to committing any act
650 specified in this paragraph:

651 a. The person intentionally killed an individual or
652 counseled, commanded, induced, procured, or caused the
653 intentional killing of an individual and such killing was the
654 result; or

655 b. The person's conduct in committing that act led to a
656 natural, though not inevitable, lethal result,
657
658 such person commits the capital felony of trafficking in illegal
659 drugs, punishable as provided in s. ss. 775.082 ~~and 921.142~~. A
660 person sentenced for a capital felony under this paragraph shall
661 also be sentenced to pay the maximum fine provided under
662 subparagraph 1.

663 6. A person who knowingly brings into this state 60
664 kilograms or more of any morphine, opium, oxycodone,
665 hydrocodone, codeine, hydromorphone, or any salt, derivative,
666 isomer, or salt of an isomer thereof, including heroin, as
667 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or

34-01340-18

20181416__

668 60 kilograms or more of any mixture containing any such
669 substance, and who knows that the probable result of such
670 importation would be the death of a person, commits capital
671 importation of illegal drugs, a capital felony punishable as
672 provided in s. ss. 775.082 and 921.142. A person sentenced for a
673 capital felony under this paragraph shall also be sentenced to
674 pay the maximum fine provided under subparagraph 1.

675 (d)1. Any person who knowingly sells, purchases,
676 manufactures, delivers, or brings into this state, or who is
677 knowingly in actual or constructive possession of, 28 grams or
678 more of phencyclidine, as described in s. 893.03(2)(b)23., a
679 substituted phenylcyclohexylamine, as described in s.
680 893.03(1)(c)195., or a substance described in s.
681 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture
682 containing phencyclidine, as described in s. 893.03(2)(b)23., a
683 substituted phenylcyclohexylamine, as described in s.
684 893.03(1)(c)195., or a substance described in s.
685 893.03(1)(c)13., 32., 38., 103., or 146., commits a felony of
686 the first degree, which felony shall be known as "trafficking in
687 phencyclidine," punishable as provided in s. 775.082, s.
688 775.083, or s. 775.084. If the quantity involved:

689 a. Is 28 grams or more, but less than 200 grams, such
690 person shall be sentenced to a mandatory minimum term of
691 imprisonment of 3 years, and the defendant shall be ordered to
692 pay a fine of \$50,000.

693 b. Is 200 grams or more, but less than 400 grams, such
694 person shall be sentenced to a mandatory minimum term of
695 imprisonment of 7 years, and the defendant shall be ordered to
696 pay a fine of \$100,000.

34-01340-18

20181416__

697 c. Is 400 grams or more, such person shall be sentenced to
698 a mandatory minimum term of imprisonment of 15 calendar years
699 and pay a fine of \$250,000.

700 2. Any person who knowingly brings into this state 800
701 grams or more of phencyclidine, as described in s.
702 893.03(2)(b)23., a substituted phenylcyclohexylamine, as
703 described in s. 893.03(1)(c)195., or a substance described in s.
704 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture
705 containing phencyclidine, as described in s. 893.03(2)(b)23., a
706 substituted phenylcyclohexylamine, as described in s.
707 893.03(1)(c)195., or a substance described in s.
708 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the
709 probable result of such importation would be the death of any
710 person commits capital importation of phencyclidine, a capital
711 felony punishable as provided in s. ss. 775.082 and 921.142. Any
712 person sentenced for a capital felony under this paragraph shall
713 also be sentenced to pay the maximum fine provided under
714 subparagraph 1.

715 (e)1. Any person who knowingly sells, purchases,
716 manufactures, delivers, or brings into this state, or who is
717 knowingly in actual or constructive possession of, 200 grams or
718 more of methaqualone or of any mixture containing methaqualone,
719 as described in s. 893.03(1)(d), commits a felony of the first
720 degree, which felony shall be known as "trafficking in
721 methaqualone," punishable as provided in s. 775.082, s. 775.083,
722 or s. 775.084. If the quantity involved:

723 a. Is 200 grams or more, but less than 5 kilograms, such
724 person shall be sentenced to a mandatory minimum term of
725 imprisonment of 3 years, and the defendant shall be ordered to

34-01340-18

20181416__

726 pay a fine of \$50,000.

727 b. Is 5 kilograms or more, but less than 25 kilograms, such
728 person shall be sentenced to a mandatory minimum term of
729 imprisonment of 7 years, and the defendant shall be ordered to
730 pay a fine of \$100,000.

731 c. Is 25 kilograms or more, such person shall be sentenced
732 to a mandatory minimum term of imprisonment of 15 calendar years
733 and pay a fine of \$250,000.

734 2. Any person who knowingly brings into this state 50
735 kilograms or more of methaqualone or of any mixture containing
736 methaqualone, as described in s. 893.03(1)(d), and who knows
737 that the probable result of such importation would be the death
738 of any person commits capital importation of methaqualone, a
739 capital felony punishable as provided in s. ~~ss.~~ 775.082 and
740 ~~921.142~~. Any person sentenced for a capital felony under this
741 paragraph shall also be sentenced to pay the maximum fine
742 provided under subparagraph 1.

743 (f)1. Any person who knowingly sells, purchases,
744 manufactures, delivers, or brings into this state, or who is
745 knowingly in actual or constructive possession of, 14 grams or
746 more of amphetamine, as described in s. 893.03(2)(c)2., or
747 methamphetamine, as described in s. 893.03(2)(c)4., or of any
748 mixture containing amphetamine or methamphetamine, or
749 phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine
750 in conjunction with other chemicals and equipment utilized in
751 the manufacture of amphetamine or methamphetamine, commits a
752 felony of the first degree, which felony shall be known as
753 "trafficking in amphetamine," punishable as provided in s.
754 775.082, s. 775.083, or s. 775.084. If the quantity involved:

34-01340-18

20181416__

755 a. Is 14 grams or more, but less than 28 grams, such person
756 shall be sentenced to a mandatory minimum term of imprisonment
757 of 3 years, and the defendant shall be ordered to pay a fine of
758 \$50,000.

759 b. Is 28 grams or more, but less than 200 grams, such
760 person shall be sentenced to a mandatory minimum term of
761 imprisonment of 7 years, and the defendant shall be ordered to
762 pay a fine of \$100,000.

763 c. Is 200 grams or more, such person shall be sentenced to
764 a mandatory minimum term of imprisonment of 15 calendar years
765 and pay a fine of \$250,000.

766 2. Any person who knowingly manufactures or brings into
767 this state 400 grams or more of amphetamine, as described in s.
768 893.03(2)(c)2., or methamphetamine, as described in s.
769 893.03(2)(c)4., or of any mixture containing amphetamine or
770 methamphetamine, or phenylacetone, phenylacetic acid,
771 pseudoephedrine, or ephedrine in conjunction with other
772 chemicals and equipment used in the manufacture of amphetamine
773 or methamphetamine, and who knows that the probable result of
774 such manufacture or importation would be the death of any person
775 commits capital manufacture or importation of amphetamine, a
776 capital felony punishable as provided in s. ss. 775.082 and
777 921.142. Any person sentenced for a capital felony under this
778 paragraph shall also be sentenced to pay the maximum fine
779 provided under subparagraph 1.

780 (g)1. Any person who knowingly sells, purchases,
781 manufactures, delivers, or brings into this state, or who is
782 knowingly in actual or constructive possession of, 4 grams or
783 more of flunitrazepam or any mixture containing flunitrazepam as

34-01340-18

20181416__

784 described in s. 893.03(1)(a) commits a felony of the first
785 degree, which felony shall be known as "trafficking in
786 flunitrazepam," punishable as provided in s. 775.082, s.
787 775.083, or s. 775.084. If the quantity involved:

788 a. Is 4 grams or more but less than 14 grams, such person
789 shall be sentenced to a mandatory minimum term of imprisonment
790 of 3 years, and the defendant shall be ordered to pay a fine of
791 \$50,000.

792 b. Is 14 grams or more but less than 28 grams, such person
793 shall be sentenced to a mandatory minimum term of imprisonment
794 of 7 years, and the defendant shall be ordered to pay a fine of
795 \$100,000.

796 c. Is 28 grams or more but less than 30 kilograms, such
797 person shall be sentenced to a mandatory minimum term of
798 imprisonment of 25 calendar years and pay a fine of \$500,000.

799 2. Any person who knowingly sells, purchases, manufactures,
800 delivers, or brings into this state or who is knowingly in
801 actual or constructive possession of 30 kilograms or more of
802 flunitrazepam or any mixture containing flunitrazepam as
803 described in s. 893.03(1)(a) commits the first degree felony of
804 trafficking in flunitrazepam. A person who has been convicted of
805 the first degree felony of trafficking in flunitrazepam under
806 this subparagraph shall be punished by life imprisonment and is
807 ineligible for any form of discretionary early release except
808 pardon or executive clemency or conditional medical release
809 under s. 947.149. However, if the court determines that, in
810 addition to committing any act specified in this paragraph:

811 a. The person intentionally killed an individual or
812 counseled, commanded, induced, procured, or caused the

34-01340-18

20181416__

813 intentional killing of an individual and such killing was the
814 result; or

815 b. The person's conduct in committing that act led to a
816 natural, though not inevitable, lethal result,

817

818 such person commits the capital felony of trafficking in
819 flunitrazepam, punishable as provided in s. ss. 775.082 ~~and~~
820 ~~921.142~~. Any person sentenced for a capital felony under this
821 paragraph shall also be sentenced to pay the maximum fine
822 provided under subparagraph 1.

823 (h)1. Any person who knowingly sells, purchases,
824 manufactures, delivers, or brings into this state, or who is
825 knowingly in actual or constructive possession of, 1 kilogram or
826 more of gamma-hydroxybutyric acid (GHB), as described in s.
827 893.03(1)(d), or any mixture containing gamma-hydroxybutyric
828 acid (GHB), commits a felony of the first degree, which felony
829 shall be known as "trafficking in gamma-hydroxybutyric acid
830 (GHB)," punishable as provided in s. 775.082, s. 775.083, or s.
831 775.084. If the quantity involved:

832 a. Is 1 kilogram or more but less than 5 kilograms, such
833 person shall be sentenced to a mandatory minimum term of
834 imprisonment of 3 years, and the defendant shall be ordered to
835 pay a fine of \$50,000.

836 b. Is 5 kilograms or more but less than 10 kilograms, such
837 person shall be sentenced to a mandatory minimum term of
838 imprisonment of 7 years, and the defendant shall be ordered to
839 pay a fine of \$100,000.

840 c. Is 10 kilograms or more, such person shall be sentenced
841 to a mandatory minimum term of imprisonment of 15 calendar years

34-01340-18

20181416__

842 and pay a fine of \$250,000.

843 2. Any person who knowingly manufactures or brings into
844 this state 150 kilograms or more of gamma-hydroxybutyric acid
845 (GHB), as described in s. 893.03(1)(d), or any mixture
846 containing gamma-hydroxybutyric acid (GHB), and who knows that
847 the probable result of such manufacture or importation would be
848 the death of any person commits capital manufacture or
849 importation of gamma-hydroxybutyric acid (GHB), a capital felony
850 punishable as provided in s. ss. 775.082 and 921.142. Any person
851 sentenced for a capital felony under this paragraph shall also
852 be sentenced to pay the maximum fine provided under subparagraph
853 1.

854 (i)1. Any person who knowingly sells, purchases,
855 manufactures, delivers, or brings into this state, or who is
856 knowingly in actual or constructive possession of, 1 kilogram or
857 more of gamma-butyrolactone (GBL), as described in s.
858 893.03(1)(d), or any mixture containing gamma-butyrolactone
859 (GBL), commits a felony of the first degree, which felony shall
860 be known as "trafficking in gamma-butyrolactone (GBL),"
861 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
862 If the quantity involved:

863 a. Is 1 kilogram or more but less than 5 kilograms, such
864 person shall be sentenced to a mandatory minimum term of
865 imprisonment of 3 years, and the defendant shall be ordered to
866 pay a fine of \$50,000.

867 b. Is 5 kilograms or more but less than 10 kilograms, such
868 person shall be sentenced to a mandatory minimum term of
869 imprisonment of 7 years, and the defendant shall be ordered to
870 pay a fine of \$100,000.

34-01340-18

20181416__

871 c. Is 10 kilograms or more, such person shall be sentenced
872 to a mandatory minimum term of imprisonment of 15 calendar years
873 and pay a fine of \$250,000.

874 2. Any person who knowingly manufactures or brings into the
875 state 150 kilograms or more of gamma-butyrolactone (GBL), as
876 described in s. 893.03(1)(d), or any mixture containing gamma-
877 butyrolactone (GBL), and who knows that the probable result of
878 such manufacture or importation would be the death of any person
879 commits capital manufacture or importation of gamma-
880 butyrolactone (GBL), a capital felony punishable as provided in
881 s. ss. 775.082 and 921.142. Any person sentenced for a capital
882 felony under this paragraph shall also be sentenced to pay the
883 maximum fine provided under subparagraph 1.

884 (j)1. Any person who knowingly sells, purchases,
885 manufactures, delivers, or brings into this state, or who is
886 knowingly in actual or constructive possession of, 1 kilogram or
887 more of 1,4-Butanediol as described in s. 893.03(1)(d), or of
888 any mixture containing 1,4-Butanediol, commits a felony of the
889 first degree, which felony shall be known as "trafficking in
890 1,4-Butanediol," punishable as provided in s. 775.082, s.
891 775.083, or s. 775.084. If the quantity involved:

892 a. Is 1 kilogram or more, but less than 5 kilograms, such
893 person shall be sentenced to a mandatory minimum term of
894 imprisonment of 3 years, and the defendant shall be ordered to
895 pay a fine of \$50,000.

896 b. Is 5 kilograms or more, but less than 10 kilograms, such
897 person shall be sentenced to a mandatory minimum term of
898 imprisonment of 7 years, and the defendant shall be ordered to
899 pay a fine of \$100,000.

34-01340-18

20181416__

900 c. Is 10 kilograms or more, such person shall be sentenced
901 to a mandatory minimum term of imprisonment of 15 calendar years
902 and pay a fine of \$500,000.

903 2. Any person who knowingly manufactures or brings into
904 this state 150 kilograms or more of 1,4-Butanediol as described
905 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,
906 and who knows that the probable result of such manufacture or
907 importation would be the death of any person commits capital
908 manufacture or importation of 1,4-Butanediol, a capital felony
909 punishable as provided in s. ss. 775.082 and ~~921.142~~. Any person
910 sentenced for a capital felony under this paragraph shall also
911 be sentenced to pay the maximum fine provided under subparagraph
912 1.

913 (k)1. A person who knowingly sells, purchases,
914 manufactures, delivers, or brings into this state, or who is
915 knowingly in actual or constructive possession of, 10 grams or
916 more of a:

917 a. Substance described in s. 893.03(1)(c)4., 5., 10., 11.,
918 15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86.,
919 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163.,
920 165., or 187.-189., a substituted cathinone, as described in s.
921 893.03(1)(c)191., or substituted phenethylamine, as described in
922 s. 893.03(1)(c)192.;

923 b. Mixture containing any substance described in sub-
924 subparagraph a.; or

925 c. Salt, isomer, ester, or ether or salt of an isomer,
926 ester, or ether of a substance described in sub-subparagraph a.,
927

928 commits a felony of the first degree, which felony shall be

34-01340-18

20181416__

929 known as "trafficking in phenethylamines," punishable as
930 provided in s. 775.082, s. 775.083, or s. 775.084.

931 2. If the quantity involved under subparagraph 1.:

932 a. Is 10 grams or more, but less than 200 grams, such
933 person shall be sentenced to a mandatory minimum term of
934 imprisonment of 3 years and shall be ordered to pay a fine of
935 \$50,000.

936 b. Is 200 grams or more, but less than 400 grams, such
937 person shall be sentenced to a mandatory minimum term of
938 imprisonment of 7 years and shall be ordered to pay a fine of
939 \$100,000.

940 c. Is 400 grams or more, such person shall be sentenced to
941 a mandatory minimum term of imprisonment of 15 years and shall
942 be ordered to pay a fine of \$250,000.

943 3. A person who knowingly manufactures or brings into this
944 state 30 kilograms or more of a substance described in sub-
945 subparagraph 1.a., a mixture described in sub-subparagraph 1.b.,
946 or a salt, isomer, ester, or ether or a salt of an isomer,
947 ester, or ether described in sub-subparagraph 1.c., and who
948 knows that the probable result of such manufacture or
949 importation would be the death of any person commits capital
950 manufacture or importation of phenethylamines, a capital felony
951 punishable as provided in s. ss. 775.082 ~~and 921.142~~. A person
952 sentenced for a capital felony under this paragraph shall also
953 be sentenced to pay the maximum fine under subparagraph 2.

954 (1)1. Any person who knowingly sells, purchases,
955 manufactures, delivers, or brings into this state, or who is
956 knowingly in actual or constructive possession of, 1 gram or
957 more of lysergic acid diethylamide (LSD) as described in s.

34-01340-18

20181416__

958 893.03(1)(c), or of any mixture containing lysergic acid
959 diethylamide (LSD), commits a felony of the first degree, which
960 felony shall be known as "trafficking in lysergic acid
961 diethylamide (LSD)," punishable as provided in s. 775.082, s.
962 775.083, or s. 775.084. If the quantity involved:

963 a. Is 1 gram or more, but less than 5 grams, such person
964 shall be sentenced to a mandatory minimum term of imprisonment
965 of 3 years, and the defendant shall be ordered to pay a fine of
966 \$50,000.

967 b. Is 5 grams or more, but less than 7 grams, such person
968 shall be sentenced to a mandatory minimum term of imprisonment
969 of 7 years, and the defendant shall be ordered to pay a fine of
970 \$100,000.

971 c. Is 7 grams or more, such person shall be sentenced to a
972 mandatory minimum term of imprisonment of 15 calendar years and
973 pay a fine of \$500,000.

974 2. Any person who knowingly manufactures or brings into
975 this state 7 grams or more of lysergic acid diethylamide (LSD)
976 as described in s. 893.03(1)(c), or any mixture containing
977 lysergic acid diethylamide (LSD), and who knows that the
978 probable result of such manufacture or importation would be the
979 death of any person commits capital manufacture or importation
980 of lysergic acid diethylamide (LSD), a capital felony punishable
981 as provided in s. ss. 775.082 and ~~921.142~~. Any person sentenced
982 for a capital felony under this paragraph shall also be
983 sentenced to pay the maximum fine provided under subparagraph 1.

984 Section 18. Paragraph (e) of subsection (4) of section
985 944.275, Florida Statutes, is amended to read:

986 944.275 Gain-time.—

34-01340-18

20181416__

987 (4)

988 (e) Notwithstanding subparagraph (b)3., for sentences
 989 imposed for offenses committed on or after October 1, 2014, the
 990 department may not grant incentive gain-time if the offense is a
 991 violation of s. 782.04(1)(b)3. ~~782.04(1)(a)2.e.~~; s.
 992 787.01(3)(a)2. or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011,
 993 excluding s. 794.011(10); s. 800.04; s. 825.1025; or s.
 994 847.0135(5).

995 Section 19. Paragraph (a) of subsection (5) of section
 996 948.012, Florida Statutes, is amended to read:

997 948.012 Split sentence of probation or community control
 998 and imprisonment.—

999 (5) (a) Effective for offenses committed on or after October
 1000 1, 2014, if the court imposes a term of years in accordance with
 1001 s. 775.082 which is less than the maximum sentence for the
 1002 offense, the court must impose a split sentence pursuant to
 1003 subsection (1) for any person who is convicted of a violation
 1004 of:

- 1005 1. Section 782.04(1)(b)3. ~~782.04(1)(a)2.e.~~;
- 1006 2. Section 787.01(3)(a)2. or 3.;
- 1007 3. Section 787.02(3)(a)2. or 3.;
- 1008 4. Section 794.011, excluding s. 794.011(10);
- 1009 5. Section 800.04;
- 1010 6. Section 825.1025; or
- 1011 7. Section 847.0135(5).

1012 Section 20. Sections 922.052, 922.06, 922.07, 922.08,
 1013 922.095, 922.10, 922.105, 922.108, 922.11, 922.111, 922.12,
 1014 922.14, 922.15, 924.055, 924.056, and 924.057, Florida Statutes,
 1015 are repealed.

34-01340-18

20181416__

1016 Section 21. Subsection (4) of section 925.11, Florida
1017 Statutes, is amended to read:

1018 925.11 Postsentencing DNA testing.—

1019 (4) PRESERVATION OF EVIDENCE.—

1020 ~~(a)~~ Governmental entities that may be in possession of any
1021 physical evidence in the case, including, but not limited to,
1022 any investigating law enforcement agency, the clerk of the
1023 court, the prosecuting authority, or the Department of Law
1024 Enforcement shall maintain any physical evidence collected at
1025 the time of the crime for which a postsentencing testing of DNA
1026 may be requested.

1027 ~~(b) In a case in which the death penalty is imposed, the~~
1028 ~~evidence shall be maintained for 60 days after execution of the~~
1029 ~~sentence. In all other cases, a governmental entity may dispose~~
1030 ~~of the physical evidence if the term of the sentence imposed in~~
1031 ~~the case has expired and no other provision of law or rule~~
1032 ~~requires that the physical evidence be preserved or retained.~~

1033 Section 22. Paragraphs (g), (h), and (i) of subsection (1)
1034 and subsection (2) of section 945.10, Florida Statutes, are
1035 amended to read:

1036 945.10 Confidential information.—

1037 (1) Except as otherwise provided by law or in this section,
1038 the following records and information held by the Department of
1039 Corrections are confidential and exempt from the provisions of
1040 s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1041 ~~(g) Information which identifies an executioner, or any~~
1042 ~~person prescribing, preparing, compounding, dispensing, or~~
1043 ~~administering a lethal injection.~~

1044 (g) ~~(h)~~ The identity of any inmate or offender upon whom an

34-01340-18

20181416__

1045 HIV test has been performed and the inmate's or offender's test
1046 results, in accordance with s. 381.004. The term "HIV test" has
1047 the same meaning as provided in s. 381.004. This paragraph is
1048 subject to the Open Government Sunset Review Act of 1995 in
1049 accordance with s. 119.15 and shall stand repealed on October 2,
1050 2022, unless reviewed and saved from repeal through reenactment
1051 by the Legislature.

1052 (h) ~~(i)~~ Records that are otherwise confidential or exempt
1053 from public disclosure by law.

1054 (2) The records and information specified in paragraphs
1055 (1) (a) - (h) ~~(1) (a) - (i)~~ may be released as follows unless
1056 expressly prohibited by federal law:

1057 (a) Information specified in paragraphs (1) (b), (d), and
1058 (f) to the Executive Office of the Governor, the Legislature,
1059 the Florida Commission on Offender Review, the Department of
1060 Children and Families, a private correctional facility or
1061 program that operates under a contract, the Department of Legal
1062 Affairs, a state attorney, the court, or a law enforcement
1063 agency. A request for records or information pursuant to this
1064 paragraph need not be in writing.

1065 (b) Information specified in paragraphs (1) (c), (e), and
1066 (h) ~~(i)~~ to the Executive Office of the Governor, the
1067 Legislature, the Florida Commission on Offender Review, the
1068 Department of Children and Families, a private correctional
1069 facility or program that operates under contract, the Department
1070 of Legal Affairs, a state attorney, the court, or a law
1071 enforcement agency. A request for records or information
1072 pursuant to this paragraph must be in writing and a statement
1073 provided demonstrating a need for the records or information.

34-01340-18

20181416__

1074 (c) Information specified in paragraph (1)(b) to an
1075 attorney representing an inmate under sentence of death, except
1076 those portions of the records containing a victim's statement or
1077 address, or the statement or address of a relative of the
1078 victim. A request for records of information pursuant to this
1079 paragraph must be in writing and a statement provided
1080 demonstrating a need for the records or information.

1081 (d) Information specified in paragraph (1)(b) to a public
1082 defender representing a defendant, except those portions of the
1083 records containing a victim's statement or address, or the
1084 statement or address of a relative of the victim. A request for
1085 records or information pursuant to this paragraph need not be in
1086 writing.

1087 (e) Information specified in paragraph (1)(b) to state or
1088 local governmental agencies. A request for records or
1089 information pursuant to this paragraph must be in writing and a
1090 statement provided demonstrating a need for the records or
1091 information.

1092 (f) Information specified in paragraph (1)(b) to a person
1093 conducting legitimate research. A request for records and
1094 information pursuant to this paragraph must be in writing, the
1095 person requesting the records or information must sign a
1096 confidentiality agreement, and the department must approve the
1097 request in writing.

1098 (g) Protected health information and records specified in
1099 paragraphs (1)(a) and (g) ~~(h)~~ to the Department of Health and
1100 the county health department where an inmate plans to reside if
1101 he or she has tested positive for the presence of the antibody
1102 or antigen to human immunodeficiency virus infection or as

34-01340-18

20181416__

1103 authorized in s. 381.004.

1104 (h) Protected health information and mental health,
1105 medical, or substance abuse records specified in paragraph
1106 (1) (a) to the Executive Office of the Governor, the Correctional
1107 Medical Authority, and the Department of Health for health care
1108 oversight activities authorized by state or federal law,
1109 including audits; civil, administrative, or criminal
1110 investigations; or inspections relating to the provision of
1111 health services, in accordance with 45 C.F.R. part 164, subpart
1112 E.

1113 (i) Protected health information and mental health,
1114 medical, or substance abuse records specified in paragraph
1115 (1) (a) to a state attorney, a state court, or a law enforcement
1116 agency conducting an ongoing criminal investigation, if the
1117 inmate agrees to the disclosure and provides written consent or,
1118 if the inmate refuses to provide written consent, in response to
1119 an order of a court of competent jurisdiction, a subpoena,
1120 including a grand jury, investigative, or administrative
1121 subpoena, a court-ordered warrant, or a statutorily authorized
1122 investigative demand or other process as authorized by law, in
1123 accordance with 45 C.F.R. part 164, subpart E, provided that:

1124 1. The protected health information and records sought are
1125 relevant and material to a legitimate law enforcement inquiry;

1126 2. There is a clear connection between the investigated
1127 incident and the inmate whose protected health information and
1128 records are sought;

1129 3. The request is specific and limited in scope to the
1130 extent reasonably practicable in light of the purpose for which
1131 the information or records are sought; and

34-01340-18

20181416__

1132 4. Deidentified information could not reasonably be used.

1133 (j) Protected health information and mental health,
1134 medical, or substance abuse records specified in paragraph
1135 (1) (a) of an inmate who is or is suspected of being the victim
1136 of a crime, to a state attorney or a law enforcement agency if
1137 the inmate agrees to the disclosure and provides written consent
1138 or if the inmate is unable to agree because of incapacity or
1139 other emergency circumstance, in accordance with 45 C.F.R. part
1140 164, subpart E, provided that:

1141 1. Such protected health information and records are needed
1142 to determine whether a violation of law by a person other than
1143 the inmate victim has occurred;

1144 2. Such protected health information or records are not
1145 intended to be used against the inmate victim;

1146 3. The immediate law enforcement activity that depends upon
1147 the disclosure would be materially and adversely affected by
1148 waiting until the inmate victim is able to agree to the
1149 disclosure; and

1150 4. The disclosure is in the best interests of the inmate
1151 victim, as determined by the department.

1152 (k) Protected health information and mental health,
1153 medical, or substance abuse records specified in paragraph
1154 (1) (a) to a state attorney or a law enforcement agency if the
1155 department believes in good faith that the information and
1156 records constitute evidence of criminal conduct that occurred in
1157 a correctional institution or facility, in accordance with 45
1158 C.F.R. part 164, subpart E, provided that:

1159 1. The protected health information and records disclosed
1160 are specific and limited in scope to the extent reasonably

34-01340-18

20181416__

1161 practicable in light of the purpose for which the information or
1162 records are sought;

1163 2. There is a clear connection between the criminal conduct
1164 and the inmate whose protected health information and records
1165 are sought; and

1166 3. Deidentified information could not reasonably be used.

1167 (l) Protected health information and mental health,
1168 medical, or substance abuse records specified in paragraph
1169 (1) (a) to the Division of Risk Management of the Department of
1170 Financial Services, in accordance with 45 C.F.R. part 164,
1171 subpart E, upon certification by the Division of Risk Management
1172 that such information and records are necessary to investigate
1173 and provide legal representation for a claim against the
1174 Department of Corrections.

1175 (m) Protected health information and mental health,
1176 medical, or substance abuse records specified in paragraph
1177 (1) (a) of an inmate who is bringing a legal action against the
1178 department, to the Department of Legal Affairs or to an attorney
1179 retained to represent the department in a legal proceeding, in
1180 accordance with 45 C.F.R. part 164, subpart E.

1181 (n) Protected health information and mental health,
1182 medical, or substance abuse records of an inmate as specified in
1183 paragraph (1) (a) to another correctional institution or facility
1184 or law enforcement official having lawful custody of the inmate,
1185 in accordance with 45 C.F.R. part 164, subpart E, if the
1186 protected health information or records are necessary for:

- 1187 1. The provision of health care to the inmate;
- 1188 2. The health and safety of the inmate or other inmates;
- 1189 3. The health and safety of the officers, employees, or

34-01340-18

20181416__

1190 others at the correctional institution or facility;

1191 4. The health and safety of the individuals or officers
1192 responsible for transporting the inmate from one correctional
1193 institution, facility, or setting to another;

1194 5. Law enforcement on the premises of the correctional
1195 institution or facility; or

1196 6. The administration and maintenance of the safety,
1197 security, and good order of the correctional institution or
1198 facility.

1199 (o) Protected health information and mental health,
1200 medical, or substance abuse records of an inmate as specified in
1201 paragraph (1)(a) to the Department of Children and Families and
1202 the Florida Commission on Offender Review, in accordance with 45
1203 C.F.R. part 164, subpart E, if the inmate received mental health
1204 treatment while in the custody of the Department of Corrections
1205 and becomes eligible for release under supervision or upon the
1206 end of his or her sentence.

1207 (p) Notwithstanding s. 456.057 and in accordance with 45
1208 C.F.R. part 164, subpart E, protected health information and
1209 mental health, medical, or substance abuse records specified in
1210 paragraph (1)(a) of a deceased inmate or offender to an
1211 individual with authority to act on behalf of the deceased
1212 inmate or offender, upon the individual's request. For purposes
1213 of this section, the following individuals have authority to act
1214 on behalf of a deceased inmate or offender only for the purpose
1215 of requesting access to such protected health information and
1216 records:

1217 1. A person appointed by a court to act as the personal
1218 representative, executor, administrator, curator, or temporary

34-01340-18

20181416__

1219 administrator of the deceased inmate's or offender's estate;

1220 2. If a court has not made a judicial appointment under
1221 subparagraph 1., a person designated by the inmate or offender
1222 to act as his or her personal representative in a last will that
1223 is self-proved under s. 732.503; or

1224 3. If a court has not made a judicial appointment under
1225 subparagraph 1. or if the inmate or offender has not designated
1226 a person in a self-proved last will as provided in subparagraph
1227 2., only the following individuals:

1228 a. A surviving spouse.

1229 b. If there is no surviving spouse, a surviving adult child
1230 of the inmate or offender.

1231 c. If there is no surviving spouse or adult child, a parent
1232 of the inmate or offender.

1233 (q) All requests for access to a deceased inmate's or
1234 offender's protected health information or mental health,
1235 medical, or substance abuse records specified in paragraph
1236 (1)(a) must be in writing and must be accompanied by the
1237 following:

1238 1. If made by a person authorized under subparagraph (p)1.,
1239 a copy of the letter of administration and a copy of the court
1240 order appointing such person as the representative of the
1241 inmate's or offender's estate.

1242 2. If made by a person authorized under subparagraph (p)2.,
1243 a copy of the self-proved last will designating the person as
1244 the inmate's or offender's representative.

1245 3. If made by a person authorized under subparagraph (p)3.,
1246 a letter from the person's attorney verifying the person's
1247 relationship to the inmate or offender and the absence of a

34-01340-18

20181416__

1248 court-appointed representative and self-proved last will.

1249

1250 Records and information released under this subsection remain
1251 confidential and exempt from the provisions of s. 119.07(1) and
1252 s. 24(a), Art. I of the State Constitution when held by the
1253 receiving person or entity.

1254 Section 23. This act shall take effect upon becoming a law.