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LEGISLATIVE ACTION

Senate

.

House

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Senator Farmer moved the following:

1 **Senate Amendment to Amendment (234288) (with title**
2 **amendment)**

3
4 Between lines 437 and 438
5 insert:

6 Section 13. Effective January 1, 2019, section 790.30,
7 Florida Statutes, is created to read:

8 790.30 Large-capacity magazines.-

9 (1) DEFINITIONS.-As used in this section, the term:

10 (a) "Large-capacity magazine" means any ammunition feeding
11 device with the capacity to accept more than 10 rounds, or any



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12 conversion kit, part, or combination of parts from which such a
13 device can be assembled if those parts are in the possession or
14 under the control of the same person, but does not include any
15 of the following:

16 1. A feeding device that has been permanently altered so
17 that it cannot accommodate more than 7 rounds;

18 2. A .22 caliber tube ammunition feeding device; or

19 3. A tubular magazine that is contained in a lever-action
20 firearm.

21 (b) "Licensed gun dealer" means a person who has a federal
22 firearms license.

23 (2) SALE OR TRANSFER.—

24 (a) A person may not import into the state or, within this
25 state, distribute, transport, sell, keep for sale, offer or
26 expose for sale, or give a large-capacity magazine. Except as
27 provided in paragraph (b), any person who violates this
28 paragraph commits a felony of the third degree, punishable as
29 provided in s. 775.082, s. 775.083, or s. 775.084, with a
30 mandatory minimum term of imprisonment of 2 years.

31 (b) A person may not transfer, sell, or give a large-
32 capacity magazine to a person under 18 years of age. Any person
33 who violates this paragraph commits a felony of the second
34 degree, punishable as provided in s. 775.082, s. 775.083, or s.
35 775.084, with a mandatory minimum term of imprisonment of 6
36 years.

37 (c) Paragraph (a) does not apply to:

38 1. The sale of large-capacity magazines to the Department
39 of Law Enforcement, to a law enforcement agency as defined in s.
40 934.02, to the Department of Corrections, or to the military,



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41 air, or naval forces of this state or the United States for use
42 in the discharge of their official duties.

43 2. A person who is the executor or administrator of an
44 estate that includes a large-capacity magazine for which a
45 certificate of possession has been issued under subsection (4)
46 which is disposed of as authorized by the probate court, if the
47 disposition is otherwise authorized under this section.

48 3. The transfer by bequest or intestate succession of a
49 large-capacity magazine for which a certificate of possession
50 has been issued under subsection (4).

51 (3) POSSESSION.—

52 (a) Except as provided in subsection (5) or otherwise
53 provided in this section or authorized by any other law, a
54 person may not, within this state, possess a large-capacity
55 magazine. Any person who violates this paragraph commits a
56 felony of the third degree, punishable as provided in s.
57 775.082, s. 775.083, or s. 775.084, with a mandatory minimum
58 term of imprisonment of 1 year.

59 (b) Paragraph (a) does not apply to the possession of a
60 large-capacity magazine by a member or employee of the
61 Department of Law Enforcement, a law enforcement agency as
62 defined in s. 934.02, the Department of Corrections, or the
63 military, air, or naval forces of this state or of the United
64 States for use in the discharge of his or her official duties;
65 nor does this section prohibit the possession or use of a large-
66 capacity magazine by a sworn member of one of these agencies
67 when on duty and the use is within the scope of his or her
68 duties.

69 (c) Paragraph (a) does not apply to the possession of a



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70 large-capacity magazine by any person before July 1, 2019, if
71 all of the following are applicable:

72 1. The person is eligible to apply for a certificate of
73 possession for the large-capacity magazine by July 1, 2019;

74 2. The person lawfully possessed the large-capacity
75 magazine before October 1, 2018; and

76 3. The person is otherwise in compliance with this section
77 and the applicable requirements of this chapter for possession
78 of a firearm.

79 (d) Paragraph (a) does not apply to a person who is the
80 executor or administrator of an estate that includes a large-
81 capacity magazine for which a certificate of possession has been
82 issued under subsection (4), if the large-capacity magazine is
83 possessed at a place set forth in subparagraph (4)(c)1. or as
84 authorized by the probate court.

85 (4) CERTIFICATE OF POSSESSION.—

86 (a) Any person who lawfully possesses a large-capacity
87 magazine before October 1, 2018, shall apply by October 1, 2019,
88 or, if such person is a member of the military or naval forces
89 of this state or of the United States and cannot apply by
90 October 1, 2019, because he or she is or was on official duty
91 outside this state, shall apply within 90 days after returning
92 to the state, to the Department of Law Enforcement for a
93 certificate of possession with respect to such large-capacity
94 magazine. The certificate must contain a description of the
95 large-capacity magazine which identifies the large-capacity
96 magazine uniquely, including all identification marks; the full
97 name, address, date of birth, and thumbprint of the owner; and
98 any other information as the department may deem appropriate.



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99 The department shall adopt rules no later than January 1, 2019,
100 to establish procedures with respect to the application for, and
101 issuance of, certificates of possession under this section.

102 (b)1. A large-capacity magazine lawfully possessed in
103 accordance with this section may not be sold or transferred on
104 or after January 1, 2019, to any person within this state other
105 than to a licensed gun dealer, as provided in subsection (5), or
106 by a bequest or intestate succession.

107 2. A person who obtains title to a large-capacity magazine
108 for which a certificate of possession has been issued under this
109 subsection shall, within 90 days after obtaining title, apply to
110 the Department of Law Enforcement for a certificate of
111 possession, render the large-capacity magazine permanently
112 inoperable, sell the large-capacity magazine to a licensed gun
113 dealer, or remove the large-capacity magazine from the state.

114 3. A person who moves into the state and who is in lawful
115 possession of a large-capacity magazine, shall, within 90 days,
116 either render the large-capacity magazine permanently
117 inoperable, sell the large-capacity magazine to a licensed gun
118 dealer, or remove the large-capacity magazine from this state,
119 unless the person is a member of the military, air, or naval
120 forces of this state or of the United States, is in lawful
121 possession of a large-capacity magazine, and has been
122 transferred into the state after October 1, 2019.

123 (c) A person who has been issued a certificate of
124 possession for a large-capacity magazine under this subsection
125 may possess it only if the person is:

126 1. At the residence, the place of business, or any other
127 property owned by that person, or on a property owned by another



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128 person with the owner's express permission;
129 2. On the premises of a target range of a public or private
130 club or organization organized for the purpose of practicing
131 shooting at targets;
132 3. On a target range that holds a regulatory or business
133 license for the purpose of practicing shooting at that target
134 range;
135 4. On the premises of a licensed shooting club;
136 5. Attending an exhibition, display, or educational project
137 on firearms which is sponsored by, conducted under the auspices
138 of, or approved by a law enforcement agency or a nationally or
139 state-recognized entity that fosters proficiency in, or promotes
140 education about, firearms; or
141 6. Transporting the large-capacity magazine between any of
142 the places mentioned in this paragraph, or from or to any
143 licensed gun dealer for servicing or repair pursuant to
144 paragraph (7) (b), provided the large-capacity magazine is
145 transported as required by subsection (7).
146 (5) CERTIFICATE OF TRANSFER.—If an owner of a large-
147 capacity magazine sells or transfers the magazine to a licensed
148 gun dealer, he or she shall, at the time of delivery of the
149 magazine, execute a certificate of transfer and cause the
150 certificate to be mailed or delivered to the Department of Law
151 Enforcement. The certificate must contain:
152 (a) The date of sale or transfer.
153 (b) The name and address of the seller or transferor and
154 the licensed gun dealer and their social security numbers or
155 driver license numbers.
156 (c) The licensed gun dealer's federal firearms license



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157 number.

158 (d) Any other information the Department of Law Enforcement
159 prescribes.

160
161 The licensed gun dealer shall present his or her driver license
162 or social security card and federal firearms license to the
163 seller or transferor for inspection at the time of purchase or
164 transfer. The Department of Law Enforcement shall maintain a
165 file of all certificates of transfer at its headquarters.

166 (6) RELINQUISHMENT.—An individual may arrange in advance to
167 relinquish a large-capacity magazine to a law enforcement agency
168 as defined in s. 934.02 or the Department of Law Enforcement.
169 The large-capacity magazine shall be transported in accordance
170 with subsection (7).

171 (7) TRANSPORTATION.—

172 (a) A licensed gun dealer who lawfully purchases for resale
173 a large-capacity magazine under this section may transport the
174 large-capacity magazine between licensed gun dealers or out of
175 this state, but a person may not carry a large-capacity magazine
176 concealed from public view, unless such large-capacity magazine
177 is kept in the trunk of such vehicle or in a case or other
178 container that is inaccessible to the operator of or any
179 passenger in such vehicle. Any person who violates this
180 paragraph commits a misdemeanor of the second degree, punishable
181 as provided in s. 775.082 or s. 775.083. Any licensed gun dealer
182 may display the large-capacity magazine at any gun show or sell
183 it to a resident outside this state.

184 (b) Any licensed gun dealer may transfer possession of any
185 large-capacity magazine received pursuant to paragraph (a) to a



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186 gunsmith for purposes of accomplishing service or repair of the
187 same. Transfers are permissible only to a gunsmith who is:

188 1. In the licensed gun dealer's employ; or

189 2. Contracted by the licensed gun dealer for gunsmithing
190 services, provided the gunsmith holds a dealer's license issued
191 pursuant to chapter 44 of Title 18 the United States Code, 18
192 U.S.C. ss. 921 et seq., and the regulations issued pursuant
193 thereto.

194 (8) CIRCUMSTANCES IN WHICH MANUFACTURE OR TRANSPORTATION
195 NOT PROHIBITED.—This section does not prohibit any person, firm,
196 or corporation engaged in the business of manufacturing large-
197 capacity magazines in this state from manufacturing or
198 transporting large-capacity magazines in this state for sale
199 within this state in accordance with subparagraph (2) (c)1. or
200 for sale outside this state.

201 (9) EXCEPTION.—This section does not apply to any magazine
202 modified to render it permanently inoperable.

203 Section 14. Effective January 1, 2019, paragraph (a) of
204 subsection (3) of section 775.087, Florida Statutes, is amended
205 to read:

206 775.087 Possession or use of weapon; aggravated battery;
207 felony reclassification; minimum sentence.—

208 (3) (a)1. Any person who is convicted of a felony or an
209 attempt to commit a felony, regardless of whether the use of a
210 firearm is an element of the felony, and the conviction was for:

- 211 a. Murder;
- 212 b. Sexual battery;
- 213 c. Robbery;
- 214 d. Burglary;



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215 e. Arson;
216 f. Aggravated battery;
217 g. Kidnapping;
218 h. Escape;
219 i. Sale, manufacture, delivery, or intent to sell,
220 manufacture, or deliver any controlled substance;
221 j. Aircraft piracy;
222 k. Aggravated child abuse;
223 l. Aggravated abuse of an elderly person or disabled adult;
224 m. Unlawful throwing, placing, or discharging of a
225 destructive device or bomb;
226 n. Carjacking;
227 o. Home-invasion robbery;
228 p. Aggravated stalking; or
229 q. Trafficking in cannabis, trafficking in cocaine, capital
230 importation of cocaine, trafficking in illegal drugs, capital
231 importation of illegal drugs, trafficking in phencyclidine,
232 capital importation of phencyclidine, trafficking in
233 methaqualone, capital importation of methaqualone, trafficking
234 in amphetamine, capital importation of amphetamine, trafficking
235 in flunitrazepam, trafficking in gamma-hydroxybutyric acid
236 (GHB), trafficking in 1,4-Butanediol, trafficking in
237 Phenethylamines, or other violation of s. 893.135(1);
238
239 and during the commission of the offense, such person possessed
240 a semiautomatic firearm and its high-capacity detachable box
241 magazine, or a large-capacity magazine as defined in s. 790.30,
242 or a machine gun as defined in s. 790.001, shall be sentenced to
243 a minimum term of imprisonment of 15 years.



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244 2. Any person who is convicted of a felony or an attempt to
245 commit a felony listed in subparagraph (a)1., regardless of
246 whether the use of a weapon is an element of the felony, and
247 during the course of the commission of the felony such person
248 discharged a semiautomatic firearm and its high-capacity box
249 magazine, or a large-capacity magazine as defined in s. 790.30,
250 or a "machine gun" as defined in s. 790.001 shall be sentenced
251 to a minimum term of imprisonment of 20 years.

252 3. Any person who is convicted of a felony or an attempt to
253 commit a felony listed in subparagraph (a)1., regardless of
254 whether the use of a weapon is an element of the felony, and
255 during the course of the commission of the felony such person
256 discharged a semiautomatic firearm and its high-capacity box
257 magazine, or a large-capacity magazine as defined in s. 790.30,
258 or a "machine gun" as defined in s. 790.001 and, as the result
259 of the discharge, death or great bodily harm was inflicted upon
260 any person, the convicted person shall be sentenced to a minimum
261 term of imprisonment of not less than 25 years and not more than
262 a term of imprisonment of life in prison.

263 Section 15. For the purpose of incorporating the amendment
264 made by this act to section 775.087, Florida Statutes, in a
265 reference thereto, section 27.366, Florida Statutes, is
266 reenacted to read:

267 27.366 Legislative intent and policy in cases meeting
268 criteria of s. 775.087(2) and (3).—It is the intent of the
269 Legislature that convicted criminal offenders who meet the
270 criteria in s. 775.087(2) and (3) be sentenced to the minimum
271 mandatory prison terms provided therein. It is the intent of the
272 Legislature to establish zero tolerance of criminals who use,



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273 threaten to use, or avail themselves of firearms in order to
274 commit crimes and thereby demonstrate their lack of value for
275 human life. It is also the intent of the Legislature that
276 prosecutors should appropriately exercise their discretion in
277 those cases in which the offenders' possession of the firearm is
278 incidental to the commission of a crime and not used in
279 furtherance of the crime, used in order to commit the crime, or
280 used in preparation to commit the crime. For every case in which
281 the offender meets the criteria in this act and does not receive
282 the mandatory minimum prison sentence, the state attorney must
283 explain the sentencing deviation in writing and place such
284 explanation in the case file maintained by the state attorney.

285 Section 16. For the purpose of incorporating the amendment
286 made by this act to section 775.087, Florida Statutes, in a
287 reference thereto, paragraph (b) of subsection (1) of section
288 921.0024, Florida Statutes, is reenacted to read:

289 921.0024 Criminal Punishment Code; worksheet computations;
290 scoresheets.-

291 (1)

292 (b) WORKSHEET KEY:

293
294 Legal status points are assessed when any form of legal status
295 existed at the time the offender committed an offense before the
296 court for sentencing. Four (4) sentence points are assessed for
297 an offender's legal status.

298
299 Community sanction violation points are assessed when a
300 community sanction violation is before the court for sentencing.
301 Six (6) sentence points are assessed for each community sanction



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302 violation and each successive community sanction violation,
303 unless any of the following apply:

304 1. If the community sanction violation includes a new
305 felony conviction before the sentencing court, twelve (12)
306 community sanction violation points are assessed for the
307 violation, and for each successive community sanction violation
308 involving a new felony conviction.

309 2. If the community sanction violation is committed by a
310 violent felony offender of special concern as defined in s.
311 948.06:

312 a. Twelve (12) community sanction violation points are
313 assessed for the violation and for each successive violation of
314 felony probation or community control where:

315 I. The violation does not include a new felony conviction;
316 and

317 II. The community sanction violation is not based solely on
318 the probationer or offender's failure to pay costs or fines or
319 make restitution payments.

320 b. Twenty-four (24) community sanction violation points are
321 assessed for the violation and for each successive violation of
322 felony probation or community control where the violation
323 includes a new felony conviction.

324
325 Multiple counts of community sanction violations before the
326 sentencing court shall not be a basis for multiplying the
327 assessment of community sanction violation points.

328
329 Prior serious felony points: If the offender has a primary
330 offense or any additional offense ranked in level 8, level 9, or



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331 level 10, and one or more prior serious felonies, a single
332 assessment of thirty (30) points shall be added. For purposes of
333 this section, a prior serious felony is an offense in the
334 offender's prior record that is ranked in level 8, level 9, or
335 level 10 under s. 921.0022 or s. 921.0023 and for which the
336 offender is serving a sentence of confinement, supervision, or
337 other sanction or for which the offender's date of release from
338 confinement, supervision, or other sanction, whichever is later,
339 is within 3 years before the date the primary offense or any
340 additional offense was committed.

341
342 Prior capital felony points: If the offender has one or more
343 prior capital felonies in the offender's criminal record, points
344 shall be added to the subtotal sentence points of the offender
345 equal to twice the number of points the offender receives for
346 the primary offense and any additional offense. A prior capital
347 felony in the offender's criminal record is a previous capital
348 felony offense for which the offender has entered a plea of nolo
349 contendere or guilty or has been found guilty; or a felony in
350 another jurisdiction which is a capital felony in that
351 jurisdiction, or would be a capital felony if the offense were
352 committed in this state.

353
354 Possession of a firearm, semiautomatic firearm, or machine gun:
355 If the offender is convicted of committing or attempting to
356 commit any felony other than those enumerated in s. 775.087(2)
357 while having in his or her possession: a firearm as defined in
358 s. 790.001(6), an additional eighteen (18) sentence points are
359 assessed; or if the offender is convicted of committing or



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360 attempting to commit any felony other than those enumerated in
361 s. 775.087(3) while having in his or her possession a
362 semiautomatic firearm as defined in s. 775.087(3) or a machine
363 gun as defined in s. 790.001(9), an additional twenty-five (25)
364 sentence points are assessed.

365

366 Sentencing multipliers:

367

368 Drug trafficking: If the primary offense is drug trafficking
369 under s. 893.135, the subtotal sentence points are multiplied,
370 at the discretion of the court, for a level 7 or level 8
371 offense, by 1.5. The state attorney may move the sentencing
372 court to reduce or suspend the sentence of a person convicted of
373 a level 7 or level 8 offense, if the offender provides
374 substantial assistance as described in s. 893.135(4).

375

376 Law enforcement protection: If the primary offense is a
377 violation of the Law Enforcement Protection Act under s.
378 775.0823(2), (3), or (4), the subtotal sentence points are
379 multiplied by 2.5. If the primary offense is a violation of s.
380 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
381 are multiplied by 2.0. If the primary offense is a violation of
382 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
383 Protection Act under s. 775.0823(10) or (11), the subtotal
384 sentence points are multiplied by 1.5.

385

386 Grand theft of a motor vehicle: If the primary offense is grand
387 theft of the third degree involving a motor vehicle and in the
388 offender's prior record, there are three or more grand thefts of



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389 the third degree involving a motor vehicle, the subtotal
390 sentence points are multiplied by 1.5.

391
392 Offense related to a criminal gang: If the offender is convicted
393 of the primary offense and committed that offense for the
394 purpose of benefiting, promoting, or furthering the interests of
395 a criminal gang as defined in s. 874.03, the subtotal sentence
396 points are multiplied by 1.5. If applying the multiplier results
397 in the lowest permissible sentence exceeding the statutory
398 maximum sentence for the primary offense under chapter 775, the
399 court may not apply the multiplier and must sentence the
400 defendant to the statutory maximum sentence.

401
402 Domestic violence in the presence of a child: If the offender is
403 convicted of the primary offense and the primary offense is a
404 crime of domestic violence, as defined in s. 741.28, which was
405 committed in the presence of a child under 16 years of age who
406 is a family or household member as defined in s. 741.28(3) with
407 the victim or perpetrator, the subtotal sentence points are
408 multiplied by 1.5.

409
410 Adult-on-minor sex offense: If the offender was 18 years of age
411 or older and the victim was younger than 18 years of age at the
412 time the offender committed the primary offense, and if the
413 primary offense was an offense committed on or after October 1,
414 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
415 violation involved a victim who was a minor and, in the course
416 of committing that violation, the defendant committed a sexual
417 battery under chapter 794 or a lewd act under s. 800.04 or s.



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418 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
419 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
420 800.04; or s. 847.0135(5), the subtotal sentence points are
421 multiplied by 2.0. If applying the multiplier results in the
422 lowest permissible sentence exceeding the statutory maximum
423 sentence for the primary offense under chapter 775, the court
424 may not apply the multiplier and must sentence the defendant to
425 the statutory maximum sentence.

426 Section 17. For the purpose of incorporating the amendment
427 made by this act to section 775.087, Florida Statutes, in a
428 reference thereto, paragraph (b) of subsection (3) of section
429 947.146, Florida Statutes, is reenacted to read:

430 947.146 Control Release Authority.—

431 (3) Within 120 days prior to the date the state
432 correctional system is projected pursuant to s. 216.136 to
433 exceed 99 percent of total capacity, the authority shall
434 determine eligibility for and establish a control release date
435 for an appropriate number of parole ineligible inmates committed
436 to the department and incarcerated within the state who have
437 been determined by the authority to be eligible for
438 discretionary early release pursuant to this section. In
439 establishing control release dates, it is the intent of the
440 Legislature that the authority prioritize consideration of
441 eligible inmates closest to their tentative release date. The
442 authority shall rely upon commitment data on the offender
443 information system maintained by the department to initially
444 identify inmates who are to be reviewed for control release
445 consideration. The authority may use a method of objective risk
446 assessment in determining if an eligible inmate should be



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447 released. Such assessment shall be a part of the department's
448 management information system. However, the authority shall have
449 sole responsibility for determining control release eligibility,
450 establishing a control release date, and effectuating the
451 release of a sufficient number of inmates to maintain the inmate
452 population between 99 percent and 100 percent of total capacity.
453 Inmates who are ineligible for control release are inmates who
454 are parole eligible or inmates who:

455 (b) Are serving the mandatory minimum portion of a sentence
456 enhanced under s. 775.087(2) or (3), or s. 784.07(3);
457

458 In making control release eligibility determinations under this
459 subsection, the authority may rely on any document leading to or
460 generated during the course of the criminal proceedings,
461 including, but not limited to, any presentence or postsentence
462 investigation or any information contained in arrest reports
463 relating to circumstances of the offense.
464

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

466 And the title is amended as follows:

467 Delete line 2452

468 and insert:

469 criminal penalties; creating s. 790.30, F.S.; defining
470 terms; prohibiting the sale or transfer of a large-
471 capacity magazine; providing criminal penalties;
472 providing exceptions to the prohibition; prohibiting
473 possession of a large-capacity magazine; providing
474 criminal penalties; providing exceptions to the
475 prohibition; requiring a person who lawfully possessed



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476 such a magazine before a specified date to obtain a
477 certificate of possession; providing requirements for
478 the certificate; requiring the Department of Law
479 Enforcement to adopt rules by a certain date; limiting
480 transfers of large-capacity magazines represented by
481 such certificates as of a specified date; providing
482 conditions for continued possession of such magazines;
483 requiring certificates of transfer for the sale or
484 transfer of such magazines; requiring that the
485 department maintain records of such sales or
486 transfers; providing for relinquishment of large-
487 capacity magazines to law enforcement agencies or the
488 department; providing requirements for transportation
489 of large-capacity magazines; providing criminal
490 penalties for violations; specifying circumstances in
491 which the manufacture or transportation of large-
492 capacity magazines is not prohibited; exempting
493 permanently inoperable magazines from all such
494 provisions; amending s. 775.087, F.S.; providing
495 enhanced criminal penalties for certain offenses
496 committed by persons with a large-capacity magazine;
497 reenacting ss. 27.366, 921.0024(1)(b), and
498 947.146(3)(b), F.S., relating to legislative intent
499 and policy in certain cases, the Criminal Punishment
500 Code worksheet key, and the Control Release Authority,
501 respectively, to incorporate the amendment made to s.
502 775.087, F.S., in references thereto; providing
503 legislative intent;