

## CHAMBER ACTION

1 The Committee on Public Safety & Crime Prevention recommends the  
2 following:

3  
4 **Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to controlled substances; amending s.

8 893.033, F.S.; revising the chemicals defined as "listed  
9 precursor chemicals" to include benzaldehyde, hydriodic

10 acid, and nitroethane, and to remove anhydrous ammonia and

11 benzyl chloride; revising the chemicals defined as "listed

12 essential chemicals" to include anhydrous ammonia, benzyl

13 chloride, hydrochloric gas, and iodine; amending s.

14 893.13, F.S.; prohibiting a person from manufacturing

15 methamphetamine or phencyclidine or from possessing listed

16 chemicals with the intent to manufacture methamphetamine

17 or phencyclidine; providing criminal penalties; providing

18 for minimum terms of imprisonment in circumstances where a

19 person commits or attempts to commit such crime in a

20 structure or conveyance where a child is present and in

21 circumstances where a child suffers great bodily harm;

22 providing criminal penalties in circumstances where a

23 person fails to store anhydrous ammonia as required;

24 providing criminal penalties in circumstances involving a  
25 violation of ch. 893, F.S., which results in serious  
26 injury to a state, local, or federal law enforcement  
27 officer; increasing the criminal penalties if such  
28 violation results in death or great bodily harm to such  
29 officer; amending s. 893.135, F.S.; including offenses  
30 involving pseudoephedrine within the offense of  
31 trafficking in amphetamine; providing criminal penalties;  
32 providing that it is a capital offense to manufacture or  
33 import pseudoephedrine knowing that the probable result  
34 will be death; amending s. 893.149, F.S., relating to the  
35 prohibition against possessing listed chemicals; providing  
36 an exception to such prohibition for a person authorized  
37 to clean up or dispose of hazardous waste or toxic  
38 substances pursuant to ch. 893, F.S.; providing that  
39 damages arising out of the unlawful possession of, storage  
40 of, or tampering with a listed chemical is the sole  
41 responsibility of the person unlawfully possessing,  
42 storing, or tampering with the chemical; providing that  
43 the lawful owner, installer, maintainer, designer,  
44 manufacturer, possessor, or seller is immune from  
45 liability in the absence of negligent misconduct or  
46 failure to abide by laws governing possession or storage;  
47 reenacting s. 893.02(12), F.S., relating to the definition  
48 of the term "listed chemical," for the purpose of  
49 incorporating the amendment to s. 893.033, F.S., in a  
50 reference thereto; reenacting ss. 435.07(2), 921.187(1),  
51 938.25, and 948.034(1) and (2), F.S., relating to

52 | exemptions from disqualification for certain employment,  
53 | disposition, and sentencing, the assessment of fees for  
54 | purposes of funding the Operating Trust Fund of the  
55 | Department of Law Enforcement, and the terms and  
56 | conditions of probation, respectively, for the purpose of  
57 | incorporating the amendment to s. 893.13, F.S., in  
58 | references thereto; reenacting ss. 311.12(3)(c),  
59 | 414.095(1), 775.087(2)(a) and (3)(a), 782.04(1)(a),  
60 | (3)(a), and (4)(a), 893.13(8)(d), 907.041(4)(c),  
61 | 921.0022(3)(g) and (i), 921.0024(1), 921.142(2), 943.0585,  
62 | and 943.059, F.S., relating to seaport security standards,  
63 | eligibility for temporary cash assistance, mandatory  
64 | sentencing in circumstances involving the possession of  
65 | use of a weapon, specified offenses that may be charged as  
66 | murder if death results, prohibited acts by prescribing  
67 | practitioners, circumstances in which the court may order  
68 | pretrial detention, the offense severity ranking chart of  
69 | the Criminal Punishment Code, worksheet computations and  
70 | scoresheets under the Criminal Punishment Code, sentencing  
71 | in capital drug trafficking cases, limitations on  
72 | circumstances in which a criminal history record may be  
73 | expunged, and limitations on circumstances in which a  
74 | criminal history record may be sealed, respectively, for  
75 | the purpose of incorporating the amendment to s. 895.135,  
76 | F.S., in references thereto; reenacting ss. 397.451(4)(b)  
77 | and (6), 772.12(2)(a), 893.1351(1), and 903.133, F.S.,  
78 | relating to background checks of service provider  
79 | personnel, the Drug Dealer Liability Act, the prohibition

HB 1815

2004  
CS

80 |       against leasing or renting for the purpose of trafficking  
81 |       in a controlled substance, and the limitation of admission  
82 |       to bail, respectively, for the purpose of incorporating  
83 |       the amendments to ss. 893.13 and 893.135, F.S., in  
84 |       references thereto; providing applicability; providing an  
85 |       effective date.

86

87 | Be It Enacted by the Legislature of the State of Florida:

88

89 |       Section 1. Section 893.033, Florida Statutes, is amended  
90 |       to read:

91 |       893.033 Listed chemicals.--The chemicals listed in this  
92 |       section are included by whatever official, common, usual,  
93 |       chemical, or trade name designated.

94 |       (1) PRECURSOR CHEMICALS.--The term "listed precursor  
95 |       chemical" means a chemical that may be used in manufacturing a  
96 |       controlled substance in violation of this chapter and is  
97 |       critical to the creation of the controlled substance, and such  
98 |       term includes any salt, optical isomer, or salt of an optical  
99 |       isomer, whenever the existence of such salt, optical isomer, or  
100 |       salt of optical isomer is possible within the specific chemical  
101 |       designation. The following are "listed precursor chemicals":

102 |       ~~(a) Anhydrous ammonia.~~

103 |       (a)~~(b)~~ Anthranilic acid.

104 |       (b) Benzaldehyde.

105 |       ~~(c) Benzyl chloride.~~

106 |       (c)~~(d)~~ Benzyl cyanide.

107 |       (d)~~(e)~~ Chloroephedrine.

HB 1815

2004  
CS

- 108 |        (e)~~(f)~~ Chloropseudoephedrine.
- 109 |        (f)~~(g)~~ Ephedrine.
- 110 |        (g)~~(h)~~ Ergonovine.
- 111 |        (h)~~(i)~~ Ergotamine.
- 112 |        (i)~~(j)~~ Ethylamine.
- 113 |        (j) Hydriodic acid.
- 114 |        (k) Isosafrole.
- 115 |        (l) Methylamine.
- 116 |        (m) 3, 4-Methylenedioxyphenyl-2-propanone.
- 117 |        (n) N-acetylanthranilic acid.
- 118 |        (o) N-ethylephedrine.
- 119 |        (p) N-ethylpseudoephedrine.
- 120 |        (q) N-methylephedrine.
- 121 |        (r) N-methylpseudoephedrine.
- 122 |        (s) Nitroethane.
- 123 |        (t)~~(s)~~ Norpseudoephedrine.
- 124 |        (u)~~(t)~~ Phenylacetic acid.
- 125 |        (v)~~(u)~~ Phenylpropanolamine.
- 126 |        (w)~~(v)~~ Piperidine.
- 127 |        (x)~~(w)~~ Piperonal.
- 128 |        (y)~~(x)~~ Propionic anhydride.
- 129 |        (z)~~(y)~~ Pseudoephedrine.
- 130 |        (aa)~~(z)~~ Safrole.
- 131 |        (2) ESSENTIAL CHEMICALS.--The term "listed essential
- 132 | chemical" means a chemical that may be used as a solvent,
- 133 | reagent, or catalyst in manufacturing a controlled substance in
- 134 | violation of this chapter. The following are "listed essential
- 135 | chemicals":

HB 1815

2004  
CS

- 136 (a) Acetic anhydride.
- 137 (b) Acetone.
- 138 (c) Anhydrous ammonia.
- 139 (d) Benzyl chloride.
- 140 (e)(e) 2-Butanone.
- 141 (f)(d) Ethyl ether.
- 142 (g) Hydrochloric gas.
- 143 (h)(e) Hydriodic acid.
- 144 (i) Iodine.
- 145 (j)(f) Potassium permanganate.
- 146 (k)(g) Toluene.

147 Section 2. Paragraph (g) is added to subsection (1) of  
 148 section 893.13, Florida Statutes, paragraphs (a) and (c) of  
 149 subsection (7) of said section are amended, subsection (12) is  
 150 added to said section, and paragraph (d) of subsection (8) of  
 151 said section is reenacted for purpose of incorporating the  
 152 amendment to section 893.135, Florida Statutes, in a reference  
 153 thereto, to read:

154 893.13 Prohibited acts; penalties.--

155 (1)

156 (g) Except as authorized by this chapter, it is unlawful  
 157 for any person to manufacture methamphetamine or phencyclidine,  
 158 or possess any listed chemical as defined in s. 893.033 in  
 159 violation of s. 893.149 and with intent to manufacture  
 160 methamphetamine or phencyclidine. If any person violates this  
 161 paragraph and:

162 1. The commission or attempted commission of the crime  
 163 occurs in a structure or conveyance where any child under 16

164 years of age is present, the person commits a felony of the  
 165 first degree, punishable as provided in s. 775.082, s. 775.083,  
 166 or s. 775.084. In addition, the defendant must be sentenced to a  
 167 minimum term of imprisonment of 5 calendar years.

168 2. The commission of the crime causes any child under 16  
 169 years of age to suffer great bodily harm, the person commits a  
 170 felony of the first degree, punishable as provided in s.  
 171 775.082, s. 775.083, or s. 775.084. In addition, the defendant  
 172 must be sentenced to a minimum term of imprisonment of 10  
 173 calendar years.

174 (7)(a) It is unlawful for any person:

175 1. To distribute or dispense a controlled substance in  
 176 violation of this chapter.

177 2. To refuse or fail to make, keep, or furnish any record,  
 178 notification, order form, statement, invoice, or information  
 179 required under this chapter.

180 3. To refuse an entry into any premises for any inspection  
 181 or to refuse to allow any inspection authorized by this chapter.

182 4. To distribute a controlled substance named or described  
 183 in s. 893.03(1) or (2) except pursuant to an order form as  
 184 required by s. 893.06.

185 5. To keep or maintain any store, shop, warehouse,  
 186 dwelling, building, vehicle, boat, aircraft, or other structure  
 187 or place which is resorted to by persons using controlled  
 188 substances in violation of this chapter for the purpose of using  
 189 these substances, or which is used for keeping or selling them  
 190 in violation of this chapter.

191           6. To use to his or her own personal advantage, or to  
192 reveal, any information obtained in enforcement of this chapter  
193 except in a prosecution or administrative hearing for a  
194 violation of this chapter.

195           7. To possess a prescription form which has not been  
196 completed and signed by the practitioner whose name appears  
197 printed thereon, unless the person is that practitioner, is an  
198 agent or employee of that practitioner, is a pharmacist, or is a  
199 supplier of prescription forms who is authorized by that  
200 practitioner to possess those forms.

201           8. To withhold information from a practitioner from whom  
202 the person seeks to obtain a controlled substance or a  
203 prescription for a controlled substance that the person making  
204 the request has received a controlled substance or a  
205 prescription for a controlled substance of like therapeutic use  
206 from another practitioner within the previous 30 days.

207           9. To acquire or obtain, or attempt to acquire or obtain,  
208 possession of a controlled substance by misrepresentation,  
209 fraud, forgery, deception, or subterfuge.

210           10. To affix any false or forged label to a package or  
211 receptacle containing a controlled substance.

212           11. To furnish false or fraudulent material information  
213 in, or omit any material information from, any report or other  
214 document required to be kept or filed under this chapter or any  
215 record required to be kept by this chapter.

216           12. To store anhydrous ammonia in a container that is not  
217 approved by the United States Department of Transportation to



HB 1815

2004  
CS

218 hold anhydrous ammonia or is not constructed in accordance with  
 219 sound engineering, agricultural, or commercial practices.

220 (c) Any person who violates the provisions of  
 221 subparagraphs (a)8.-12. ~~(a)8.-11.~~ commits a felony of the third  
 222 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 223 775.084.

224 (8)

225 (d) Notwithstanding paragraph (c), if a prescribing  
 226 practitioner has violated paragraph (a) and received \$1,000 or  
 227 more in payment for writing one or more prescriptions or, in the  
 228 case of a prescription written for a controlled substance  
 229 described in s. 893.135, has written one or more prescriptions  
 230 for a quantity of a controlled substance which, individually or  
 231 in the aggregate, meets the threshold for the offense of  
 232 trafficking in a controlled substance under s. 893.15, the  
 233 violation is reclassified as a felony of the second degree and  
 234 ranked in level 4 of the Criminal Punishment Code.

235 (12) If a person violates any provision of this chapter  
 236 and such violation results in a serious injury to a state,  
 237 local, or federal law enforcement officer, the person commits a  
 238 felony of the third degree, punishable as provided in s.  
 239 775.082, s. 775.083, or s. 775.084. If the injury sustained  
 240 results in death or great bodily harm, the person commits a  
 241 felony of the second degree, punishable as provided in s.  
 242 775.082, s. 775.083, or s. 775.084.

243 Section 3. Paragraph (f) of subsection (1) of section  
 244 893.135, Florida Statutes, is amended to read:

HB 1815

2004  
CS

245 893.135 Trafficking; mandatory sentences; suspension or  
246 reduction of sentences; conspiracy to engage in trafficking.--

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

249 (f)1. Any person who knowingly sells, purchases,  
250 manufactures, delivers, or brings into this state, or who is  
251 knowingly in actual or constructive possession of, 14 grams or  
252 more of amphetamine, as described in s. 893.03(2)(c)2., or  
253 methamphetamine, as described in s. 893.03(2)(c)4., or of any  
254 mixture containing amphetamine or methamphetamine, or  
255 phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine  
256 in conjunction with other chemicals and equipment utilized in  
257 the manufacture of amphetamine or methamphetamine, commits a  
258 felony of the first degree, which felony shall be known as  
259 "trafficking in amphetamine," punishable as provided in s.  
260 775.082, s. 775.083, or s. 775.084. If the quantity involved:

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

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

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

HB 1815

2004  
CS

272           2. Any person who knowingly manufactures or brings into  
 273 this state 400 grams or more of amphetamine, as described in s.  
 274 893.03(2)(c)2., or methamphetamine, as described in s.  
 275 893.03(2)(c)4., or of any mixture containing amphetamine or  
 276 methamphetamine, or phenylacetone, phenylacetic acid,  
 277 pseudoephedrine, or ephedrine in conjunction with other  
 278 chemicals and equipment used in the manufacture of amphetamine  
 279 or methamphetamine, and who knows that the probable result of  
 280 such manufacture or importation would be the death of any person  
 281 commits capital manufacture or importation of amphetamine, a  
 282 capital felony punishable as provided in ss. 775.082 and  
 283 921.142. Any person sentenced for a capital felony under this  
 284 paragraph shall also be sentenced to pay the maximum fine  
 285 provided under subparagraph 1.

286           Section 4. Section 893.149, Florida Statutes, is amended  
 287 to read:

288           893.149 Unlawful possession of listed chemical.--

289           (1) It is unlawful for any person to knowingly or  
 290 intentionally:

291           (a) Possess a listed chemical with the intent to  
 292 unlawfully manufacture a controlled substance;

293           (b) Possess or distribute a listed chemical knowing, or  
 294 having reasonable cause to believe, that the listed chemical  
 295 will be used to unlawfully manufacture a controlled substance.

296           (2) Any person who violates this section commits ~~is guilty~~  
 297 ~~of~~ a felony of the second degree, punishable as provided in s.  
 298 775.082, s. 775.083, or s. 775.084.

HB 1815

2004  
CS

299       (3) This section does not apply to a public employee or  
 300 private contractor authorized to clean up or dispose of  
 301 hazardous waste or toxic substances pursuant to the provisions  
 302 of this chapter.

303       (4) Any damages arising out of the unlawful possession of,  
 304 storage of, or tampering with a listed chemical, as defined in  
 305 s. 893.033, shall be the sole responsibility of the person or  
 306 persons unlawfully possessing, storing, or tampering with the  
 307 listed chemical. In no case shall liability for damages arising  
 308 out of the unlawful possession of, storage of, or tampering with  
 309 a listed chemical extend to the lawful owner, installer,  
 310 maintainer, designer, manufacturer, possessor, or seller of the  
 311 listed chemical, unless such damages arise out of the acts or  
 312 omissions of the owner, installer, maintainer, designer,  
 313 manufacturer, possessor, or seller which constitute negligent  
 314 misconduct or failure to abide by the laws regarding the  
 315 possession or storage of a listed chemical.

316       Section 5. For the purpose of incorporating the amendment  
 317 to section 893.135, Florida Statutes, in a reference thereto,  
 318 paragraph (c) of subsection (3) of section 311.12, Florida  
 319 Statutes, is reenacted to read:

320       311.12 Seaport security standards.--

321       (3)

322       (c) In addition to other requirements for employment or  
 323 access established by each seaport pursuant to its seaport  
 324 security plan, each seaport security plan shall provide that:

325       1. Any person who has within the past 7 years been  
 326 convicted, regardless of whether adjudication was withheld, for

HB 1815

2004  
CS

327 a forcible felony as defined in s. 776.08; an act of terrorism  
 328 as defined in s. 775.30; planting of a hoax bomb as provided in  
 329 s. 790.165; any violation involving the manufacture, possession,  
 330 sale, delivery, display, use, or attempted or threatened use of  
 331 a weapon of mass destruction or hoax weapon of mass destruction  
 332 as provided in s. 790.166; dealing in stolen property; any  
 333 violation of s. 893.135; any violation involving the sale,  
 334 manufacturing, delivery, or possession with intent to sell,  
 335 manufacture, or deliver a controlled substance; burglary;  
 336 robbery; any felony violation of s. 812.014; any violation of s.  
 337 790.07; any crime an element of which includes use or possession  
 338 of a firearm; any conviction for any similar offenses under the  
 339 laws of another jurisdiction; or conviction for conspiracy to  
 340 commit any of the listed offenses shall not be qualified for  
 341 initial employment within or regular access to a seaport or  
 342 restricted access area; and

343 2. Any person who has at any time been convicted for any  
 344 of the listed offenses shall not be qualified for initial  
 345 employment within or authorized regular access to a seaport or  
 346 restricted access area unless, after release from incarceration  
 347 and any supervision imposed as a sentence, the person remained  
 348 free from a subsequent conviction, regardless of whether  
 349 adjudication was withheld, for any of the listed offenses for a  
 350 period of at least 7 years prior to the employment or access  
 351 date under consideration.

352 Section 6. For the purpose of incorporating the amendments  
 353 to sections 893.13 and 893.135, Florida Statutes, in references

HB 1815

2004  
CS

354 thereto, paragraph (b) of subsection (4) and subsection (6) of  
355 section 397.451, Florida Statutes, are reenacted to read:

356 397.451 Background checks of service provider personnel.--

357 (4) EXEMPTIONS FROM DISQUALIFICATION.--

358 (b) Since rehabilitated substance abuse impaired persons  
359 are effective in the successful treatment and rehabilitation of  
360 substance abuse impaired adolescents, for service providers  
361 which treat adolescents 13 years of age and older, service  
362 provider personnel whose background checks indicate crimes under  
363 s. 817.563, s. 893.13, or s. 893.147 may be exempted from  
364 disqualification from employment pursuant to this paragraph.

365 (6) DISQUALIFICATION FROM RECEIVING STATE FUNDS.--State  
366 funds may not be disseminated to any service provider owned or  
367 operated by an owner, director, or chief financial officer who  
368 has been convicted of, has entered a plea of guilty or nolo  
369 contendere to, or has had adjudication withheld for, a violation  
370 of s. 893.135 pertaining to trafficking in controlled  
371 substances, or a violation of the law of another state, the  
372 District of Columbia, the United States or any possession or  
373 territory thereof, or any foreign jurisdiction which is  
374 substantially similar in elements and penalties to a trafficking  
375 offense in this state, unless the owner's or director's civil  
376 rights have been restored.

377 Section 7. For the purpose of incorporating the amendment  
378 to section 893.135, Florida Statutes, in a reference thereto,  
379 subsection (1) of section 414.095, Florida Statutes, is  
380 reenacted to read:

HB 1815

2004  
CS

381           414.095 Determining eligibility for temporary cash  
 382 assistance.--  
 383           (1) ELIGIBILITY.--An applicant must meet eligibility  
 384 requirements of this section before receiving services or  
 385 temporary cash assistance under this chapter, except that an  
 386 applicant shall be required to register for work and engage in  
 387 work activities in accordance with s. 445.024, as designated by  
 388 the regional workforce board, and may receive support services  
 389 or child care assistance in conjunction with such requirement.  
 390 The department shall make a determination of eligibility based  
 391 on the criteria listed in this chapter. The department shall  
 392 monitor continued eligibility for temporary cash assistance  
 393 through periodic reviews consistent with the food stamp  
 394 eligibility process. Benefits shall not be denied to an  
 395 individual solely based on a felony drug conviction, unless the  
 396 conviction is for trafficking pursuant to s. 893.135. To be  
 397 eligible under this section, an individual convicted of a drug  
 398 felony must be satisfactorily meeting the requirements of the  
 399 temporary cash assistance program, including all substance abuse  
 400 treatment requirements. Within the limits specified in this  
 401 chapter, the state opts out of the provision of Pub. L. No. 104-  
 402 193, s. 115, that eliminates eligibility for temporary cash  
 403 assistance and food stamps for any individual convicted of a  
 404 controlled substance felony.

405           Section 8. For the purpose of incorporating the amendment  
 406 to section 893.13, Florida Statutes, in a reference thereto,  
 407 subsection (2) of section 435.07, Florida Statutes, is reenacted  
 408 to read:

HB 1815

2004  
CS

409           435.07 Exemptions from disqualification.--Unless otherwise  
410 provided by law, the provisions of this section shall apply to  
411 exemptions from disqualification.

412           (2) Persons employed by treatment providers who treat  
413 adolescents 13 years of age and older who are disqualified from  
414 employment solely because of crimes under s. 817.563, s. 893.13,  
415 or s. 893.147 may be exempted from disqualification from  
416 employment pursuant to this section without the 3-year waiting  
417 period.

418           Section 9. For the purpose of incorporating the amendments  
419 to sections 893.13 and 893.135, Florida Statutes, in references  
420 thereto, paragraph (a) of subsection (2) of section 772.12,  
421 Florida Statutes, is reenacted to read:

422           772.12 Drug Dealer Liability Act.--

423           (2) A person, including any governmental entity, has a  
424 cause of action for threefold the actual damages sustained and  
425 is entitled to minimum damages in the amount of \$1,000 and  
426 reasonable attorney's fees and court costs in the trial and  
427 appellate courts, if the person proves by the greater weight of  
428 the evidence that:

429           (a) The person was injured because of the defendant's  
430 actions that resulted in the defendant's conviction for:

- 431           1. A violation of s. 893.13, except for a violation of s.  
432 893.13(2)(a) or (b), (3), (5), (6)(a), (b), or (c), (7); or  
433           2. A violation of s. 893.135; and

434           Section 10. For the purpose of incorporating the amendment  
435 to section 893.135, Florida Statutes, in references thereto,



HB 1815

2004  
CS

436 paragraph (a) of subsection (2) and paragraph (a) of subsection  
437 (3) of section 775.087, Florida Statutes, are reenacted to read:

438 775.087 Possession or use of weapon; aggravated battery;  
439 felony reclassification; minimum sentence.--

440 (2)(a)1. Any person who is convicted of a felony or an  
441 attempt to commit a felony, regardless of whether the use of a  
442 weapon is an element of the felony, and the conviction was for:

- 443 a. Murder;
- 444 b. Sexual battery;
- 445 c. Robbery;
- 446 d. Burglary;
- 447 e. Arson;
- 448 f. Aggravated assault;
- 449 g. Aggravated battery;
- 450 h. Kidnapping;
- 451 i. Escape;
- 452 j. Aircraft piracy;
- 453 k. Aggravated child abuse;
- 454 l. Aggravated abuse of an elderly person or disabled  
455 adult;
- 456 m. Unlawful throwing, placing, or discharging of a  
457 destructive device or bomb;
- 458 n. Carjacking;
- 459 o. Home-invasion robbery;
- 460 p. Aggravated stalking;
- 461 q. Trafficking in cannabis, trafficking in cocaine,  
462 capital importation of cocaine, trafficking in illegal drugs,  
463 capital importation of illegal drugs, trafficking in

HB 1815

2004  
CS

464 phencyclidine, capital importation of phencyclidine, trafficking  
 465 in methaqualone, capital importation of methaqualone,  
 466 trafficking in amphetamine, capital importation of amphetamine,  
 467 trafficking in flunitrazepam, trafficking in gamma-  
 468 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,  
 469 trafficking in Phenethylamines, or other violation of s.  
 470 893.135(1); or

471 r. Possession of a firearm by a felon  
 472

473 and during the commission of the offense, such person actually  
 474 possessed a "firearm" or "destructive device" as those terms are  
 475 defined in s. 790.001, shall be sentenced to a minimum term of  
 476 imprisonment of 10 years, except that a person who is convicted  
 477 for aggravated assault, possession of a firearm by a felon, or  
 478 burglary of a conveyance shall be sentenced to a minimum term of  
 479 imprisonment of 3 years if such person possessed a "firearm" or  
 480 "destructive device" during the commission of the offense.

481 2. Any person who is convicted of a felony or an attempt  
 482 to commit a felony listed in sub-subparagraphs (a)1.a.-q.,  
 483 regardless of whether the use of a weapon is an element of the  
 484 felony, and during the course of the commission of the felony  
 485 such person discharged a "firearm" or "destructive device" as  
 486 defined in s. 790.001 shall be sentenced to a minimum term of  
 487 imprisonment of 20 years.

488 3. Any person who is convicted of a felony or an attempt  
 489 to commit a felony listed in sub-subparagraphs (a)1.a.-q.,  
 490 regardless of whether the use of a weapon is an element of the  
 491 felony, and during the course of the commission of the felony

HB 1815

2004  
CS

492 such person discharged a "firearm" or "destructive device" as  
 493 defined in s. 790.001 and, as the result of the discharge, death  
 494 or great bodily harm was inflicted upon any person, the  
 495 convicted person shall be sentenced to a minimum term of  
 496 imprisonment of not less than 25 years and not more than a term  
 497 of imprisonment of life in prison.

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

- 501 a. Murder;
- 502 b. Sexual battery;
- 503 c. Robbery;
- 504 d. Burglary;
- 505 e. Arson;
- 506 f. Aggravated assault;
- 507 g. Aggravated battery;
- 508 h. Kidnapping;
- 509 i. Escape;
- 510 j. Sale, manufacture, delivery, or intent to sell,  
 511 manufacture, or deliver any controlled substance;
- 512 k. Aircraft piracy;
- 513 l. Aggravated child abuse;
- 514 m. Aggravated abuse of an elderly person or disabled  
 515 adult;
- 516 n. Unlawful throwing, placing, or discharging of a  
 517 destructive device or bomb;
- 518 o. Carjacking;
- 519 p. Home-invasion robbery;

HB 1815

2004  
CS

520           q. Aggravated stalking; or  
 521           r. Trafficking in cannabis, trafficking in cocaine,  
 522 capital importation of cocaine, trafficking in illegal drugs,  
 523 capital importation of illegal drugs, trafficking in  
 524 phencyclidine, capital importation of phencyclidine, trafficking  
 525 in methaqualone, capital importation of methaqualone,  
 526 trafficking in amphetamine, capital importation of amphetamine,  
 527 trafficking in flunitrazepam, trafficking in gamma-  
 528 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,  
 529 trafficking in Phenethylamines, or other violation of s.  
 530 893.135(1);

531  
 532 and during the commission of the offense, such person possessed  
 533 a semiautomatic firearm and its high-capacity detachable box  
 534 magazine or a machine gun as defined in s. 790.001, shall be  
 535 sentenced to a minimum term of imprisonment of 15 years.

536           2. Any person who is convicted of a felony or an attempt  
 537 to commit a felony listed in subparagraph (a)1., regardless of  
 538 whether the use of a weapon is an element of the felony, and  
 539 during the course of the commission of the felony such person  
 540 discharged a semiautomatic firearm and its high-capacity box  
 541 magazine or a "machine gun" as defined in s. 790.001 shall be  
 542 sentenced to a minimum term of imprisonment of 20 years.

543           3. Any person who is convicted of a felony or an attempt  
 544 to commit a felony listed in subparagraph (a)1., regardless of  
 545 whether the use of a weapon is an element of the felony, and  
 546 during the course of the commission of the felony such person  
 547 discharged a semiautomatic firearm and its high-capacity box

HB 1815

2004  
CS

548 magazine or a "machine gun" as defined in s. 790.001 and, as the  
 549 result of the discharge, death or great bodily harm was  
 550 inflicted upon any person, the convicted person shall be  
 551 sentenced to a minimum term of imprisonment of not less than 25  
 552 years and not more than a term of imprisonment of life in  
 553 prison.

554 Section 11. For the purpose of incorporating the amendment  
 555 to section 893.135, Florida Statutes, in references thereto,  
 556 paragraph (a) of subsection (1), paragraph (a) of subsection  
 557 (3), and paragraph (a) of subsection (4) of section 782.04,  
 558 Florida Statutes, are reenacted to read:

559 782.04 Murder.--

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

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

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

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

566 b. Arson,

567 c. Sexual battery,

568 d. Robbery,

569 e. Burglary,

570 f. Kidnapping,

571 g. Escape,

572 h. Aggravated child abuse,

573 i. Aggravated abuse of an elderly person or disabled  
 574 adult,

575 j. Aircraft piracy,

HB 1815

2004  
CS

576 k. Unlawful throwing, placing, or discharging of a  
 577 destructive device or bomb,  
 578 l. Carjacking,  
 579 m. Home-invasion robbery,  
 580 n. Aggravated stalking,  
 581 o. Murder of another human being,  
 582 p. Resisting an officer with violence to his or her  
 583 person,  
 584 q. Felony that is an act of terrorism or is in furtherance  
 585 of an act of terrorism; or  
 586 3. Which resulted from the unlawful distribution of any  
 587 substance controlled under s. 893.03(1), cocaine as described in  
 588 s. 893.03(2)(a)4., or opium or any synthetic or natural salt,  
 589 compound, derivative, or preparation of opium by a person 18  
 590 years of age or older, when such drug is proven to be the  
 591 proximate cause of the death of the user,  
 592  
 593 is murder in the first degree and constitutes a capital felony,  
 594 punishable as provided in s. 775.082.  
 595 (3) When a person is killed in the perpetration of, or in  
 596 the attempt to perpetrate, any:  
 597 (a) Trafficking offense prohibited by s. 893.135(1),  
 598  
 599 by a person other than the person engaged in the perpetration of  
 600 or in the attempt to perpetrate such felony, the person  
 601 perpetrating or attempting to perpetrate such felony is guilty  
 602 of murder in the second degree, which constitutes a felony of  
 603 the first degree, punishable by imprisonment for a term of years

HB1815

2004  
CS

604 not exceeding life or as provided in s. 775.082, s. 775.083, or  
605 s. 775.084.

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

610 (a) Trafficking offense prohibited by s. 893.135(1),  
611  
612 is murder in the third degree and constitutes a felony of the  
613 second degree, punishable as provided in s. 775.082, s. 775.083,  
614 or s. 775.084.

615 Section 12. For the purpose of incorporating the amendment  
616 to section 893.033, Florida Statutes, in a reference thereto,  
617 subsection (12) of section 893.02, Florida Statutes, is  
618 reenacted to read:

619 893.02 Definitions.--The following words and phrases as  
620 used in this chapter shall have the following meanings, unless  
621 the context otherwise requires:

622 (12) "Listed chemical" means any precursor chemical or  
623 essential chemical named or described in s. 893.033.

624 Section 13. For the purpose of incorporating the  
625 amendments to sections 893.13 and 893.135, Florida Statutes, in  
626 references thereto, subsection (1) of section 893.1351, Florida  
627 Statutes, is reenacted to read:

628 893.1351 Lease or rent for the purpose of trafficking in a  
629 controlled substance.--

630 (1) A person may not lease or rent any place, structure,  
631 or part thereof, trailer, or other conveyance, with the

HB 1815

2004  
CS

632 knowledge that such place, structure, trailer, or conveyance  
633 will be used for the purpose of trafficking in a controlled  
634 substance, as provided in s. 893.135, or the sale of a  
635 controlled substance, as provided in s. 893.13.

636 Section 14. For the purpose of incorporating the  
637 amendments to sections 893.13 and 893.135, Florida Statutes, in  
638 references thereto, section 903.133, Florida Statutes, is  
639 reenacted to read:

640 903.133 Bail on appeal; prohibited for certain felony  
641 convictions.--Notwithstanding the provisions of s. 903.132, no  
642 person adjudged guilty of a felony of the first degree for a  
643 violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s.  
644 806.01, s. 893.13, or s. 893.135, or adjudged guilty of a  
645 violation of s. 794.011(2) or (3), shall be admitted to bail  
646 pending review either by posttrial motion or appeal.

647 Section 15. For the purpose of incorporating the amendment  
648 to section 893.135, Florida Statutes, in a reference thereto,  
649 paragraph (c) of subsection (4) of section 907.041, Florida  
650 Statutes, is reenacted to read:

651 907.041 Pretrial detention and release.--

652 (4) PRETRIAL DETENTION.--

653 (c) The court may order pretrial detention if it finds a  
654 substantial probability, based on a defendant's past and present  
655 patterns of behavior, the criteria in s. 903.046, and any other  
656 relevant facts, that any of the following circumstances exists:

657 1. The defendant has previously violated conditions of  
658 release and that no further conditions of release are reasonably



659 likely to assure the defendant's appearance at subsequent  
660 proceedings;

661 2. The defendant, with the intent to obstruct the judicial  
662 process, has threatened, intimidated, or injured any victim,  
663 potential witness, juror, or judicial officer, or has attempted  
664 or conspired to do so, and that no condition of release will  
665 reasonably prevent the obstruction of the judicial process;

666 3. The defendant is charged with trafficking in controlled  
667 substances as defined by s. 893.135, that there is a substantial  
668 probability that the defendant has committed the offense, and  
669 that no conditions of release will reasonably assure the  
670 defendant's appearance at subsequent criminal proceedings; or

671 4. The defendant is charged with DUI manslaughter, as  
672 defined by s. 316.193, and that there is a substantial  
673 probability that the defendant committed the crime and that the  
674 defendant poses a threat of harm to the community; conditions  
675 that would support a finding by the court pursuant to this  
676 subparagraph that the defendant poses a threat of harm to the  
677 community include, but are not limited to, any of the following:

678 a. The defendant has previously been convicted of any  
679 crime under s. 316.193, or of any crime in any other state or  
680 territory of the United States that is substantially similar to  
681 any crime under s. 316.193;

682 b. The defendant was driving with a suspended driver's  
683 license when the charged crime was committed; or

684 c. The defendant has previously been found guilty of, or  
685 has had adjudication of guilt withheld for, driving while the

HB 1815

2004  
CS

686 | defendant's driver's license was suspended or revoked in  
687 | violation of s. 322.34;

688 |         5. The defendant poses the threat of harm to the  
689 | community. The court may so conclude, if it finds that the  
690 | defendant is presently charged with a dangerous crime, that  
691 | there is a substantial probability that the defendant committed  
692 | such crime, that the factual circumstances of the crime indicate  
693 | a disregard for the safety of the community, and that there are  
694 | no conditions of release reasonably sufficient to protect the  
695 | community from the risk of physical harm to persons.

696 |         6. The defendant was on probation, parole, or other  
697 | release pending completion of sentence or on pretrial release  
698 | for a dangerous crime at the time the current offense was  
699 | committed; or

700 |         7. The defendant has violated one or more conditions of  
701 | pretrial release or bond for the offense currently before the  
702 | court and the violation, in the discretion of the court,  
703 | supports a finding that no conditions of release can reasonably  
704 | protect the community from risk of physical harm to persons or  
705 | assure the presence of the accused at trial.

706 |         Section 16. For the purpose of incorporating the amendment  
707 | to section 893.135, Florida Statutes, in references thereto,  
708 | paragraphs (g) and (i) of subsection (3) of section 921.0022,  
709 | Florida Statutes, are reenacted to read:

710 |             921.0022 Criminal Punishment Code; offense severity  
711 | ranking chart.--

712 |         (3) OFFENSE SEVERITY RANKING CHART

Florida	Felony	Description
---------	--------	-------------

HB 1815

2004  
CS

	Statute	Degree	
713			(g) LEVEL 7
714	316.027(1)(b)	2nd	Accident involving death, failure to stop; leaving scene.
715	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
716	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
717	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
718	409.920(2)	3rd	Medicaid provider fraud.
719	456.065(2)	3rd	Practicing a health care profession without a license.
720	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
721	458.327(1)	3rd	Practicing medicine without a license.
722	459.013(1)	3rd	Practicing osteopathic medicine without a license.
723			

HB 1815

2004  
CS

724	460.411(1)	3rd	Practicing chiropractic medicine without a license.
725	461.012(1)	3rd	Practicing podiatric medicine without a license.
726	462.17	3rd	Practicing naturopathy without a license.
727	463.015(1)	3rd	Practicing optometry without a license.
728	464.016(1)	3rd	Practicing nursing without a license.
729	465.015(2)	3rd	Practicing pharmacy without a license.
730	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
731	467.201	3rd	Practicing midwifery without a license.
732	468.366	3rd	Delivering respiratory care services without a license.
733	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
734	483.901(9)	3rd	Practicing medical physics without a license.
	484.013(1)(c)	3rd	Preparing or dispensing optical

HB 1815

2004  
CS

devices without a prescription.

735	484.053	3rd	Dispensing hearing aids without a license.
736	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
737	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by money transmitter.
738	560.125(5)(a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
739	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
740	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
741	782.07(1)	2nd	Killing of a human being by the act,

HB 1815

2004  
CS

procurement, or culpable negligence of another (manslaughter).

742 782.071 2nd Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).

743 782.072 2nd Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).

744 784.045(1)(a)1. 2nd Aggravated battery; intentionally causing great bodily harm or disfigurement.

745 784.045(1)(a)2. 2nd Aggravated battery; using deadly weapon.

746 784.045(1)(b) 2nd Aggravated battery; perpetrator aware victim pregnant.

747 784.048(4) 3rd Aggravated stalking; violation of injunction or court order.

748 784.07(2)(d) 1st Aggravated battery on law enforcement officer.

749 784.074(1)(a) 1st Aggravated battery on sexually violent predators facility staff.

750

HB 1815

2004  
CS

751	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
752	784.081(1)	1st	Aggravated battery on specified official or employee.
753	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
754	784.083(1)	1st	Aggravated battery on code inspector.
755	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
756	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
757	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
758	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
759	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass

HB 1815

2004  
CS

destruction while committing or attempting to commit a felony.

760	796.03	2nd	Procuring any person under 16 years for prostitution.
761	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
762	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
763	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
764	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
765	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
766	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
767	812.014(2)(a)	1st	Property stolen, valued at \$100,000 or more; cargo stolen valued at \$50,000 or more; property stolen while causing other property damage; 1st degree grand theft.



HB 1815

2004  
CS

768	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
769	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
770	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
771	812.131(2)(a)	2nd	Robbery by sudden snatching.
772	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
773	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
774	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
775	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
776	817.2341(2)(b)& (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of

HB 1815

2004  
CS

that entity.

777	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
778	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
779	827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
780	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
781	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
782	838.015	2nd	Bribery.
783	838.016	2nd	Unlawful compensation or reward for official behavior.
784	838.021(3)(a)	2nd	Unlawful harm to a public servant.
785	838.22	2nd	Bid tampering.

HB 1815

2004  
CS

786	872.06	2nd	Abuse of a dead human body.
787	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
788	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
789	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
790	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
791	893.135(1)(b)1. a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
792	893.135(1)(c)1.	1st	Trafficking in illegal drugs, more

HB 1815

2004  
CS

793	a.		than 4 grams, less than 14 grams.
794	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
795	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
796	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
797	893.135(1)(g)1.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
798	893.135(1)(h)1.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
799	893.135(1)(j)1.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
800	893.135(1)(k)2.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
801	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
801	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration

HB 1815

2004  
CS

requirements, financial transactions  
exceeding \$300 but less than \$20,000.

(i) LEVEL 9

802

803

316.193(3)(c)3. 1st  
b.

DUI manslaughter; failing to render  
aid or give information.

804

327.35(3)(c)3.b 1st  
.

BUI manslaughter; failing to render  
aid or give information.

805

499.0053 1st

Sale or purchase of contraband legend  
drugs resulting in great bodily harm.

806

560.123(8)(b)3. 1st

Failure to report currency or payment  
instruments totaling or exceeding  
\$100,000 by money transmitter.

807

560.125(5)(c) 1st

Money transmitter business by  
unauthorized person, currency, or  
payment instruments totaling or  
exceeding \$100,000.

808

655.50(10)(b)3. 1st

Failure to report financial  
transactions totaling or exceeding  
\$100,000 by financial institution.

809

775.0844 1st

Aggravated white collar crime.

810

782.04(1) 1st

Attempt, conspire, or solicit to  
commit premeditated murder.

HB 1815

2004  
CS

811	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
812	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
813	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
814	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
815	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
816	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
817	787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.

818

HB 1815

2004  
CS

819	790.161	1st	Attempted capital destructive device offense.
820	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
821	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
822	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
823	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
824	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
825	800.04(5)(b)	1st	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
826	812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
	812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.

HB 1815

2004  
CS

827	817.568(7)	2nd,PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
828	827.03(2)	1st	Aggravated child abuse.
829	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
830	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
831	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
832	893.135	1st	Attempted capital trafficking offense.
833	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
834	893.135(1)(b)1. c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
835	893.135(1)(c)1. c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.



HB 1815

2004  
CS

- 836 | 893.135(1)(d)1. 1st Trafficking in phencyclidine, more  
c. than 400 grams.
- 837 | 893.135(1)(e)1. 1st Trafficking in methaqualone, more than  
c. 25 kilograms.
- 838 | 893.135(1)(f)1. 1st Trafficking in amphetamine, more than  
c. 200 grams.
- 839 | 893.135(1)(h)1. 1st Trafficking in gamma-hydroxybutyric  
c. acid (GHB), 10 kilograms or more.
- 840 | 893.135(1)(j)1. 1st Trafficking in 1,4-Butanediol, 10  
c. kilograms or more.
- 841 | 893.135(1)(k)2. 1st Trafficking in Phenethylamines, 400  
c. grams or more.
- 842 | 896.101(5)(c) 1st Money laundering, financial  
instruments totaling or exceeding  
\$100,000.
- 843 | 896.104(4)(a)3. 1st Structuring transactions to evade  
reporting or registration  
requirements, financial transactions  
totaling or exceeding \$100,000.

844 |  
845 | Section 17. For the purpose of incorporating the amendment  
846 | to section 893.135, Florida Statutes, in references thereto,

HB 1815

2004  
CS

847 subsection (1) of section 921.0024, Florida Statutes, is  
848 reenacted to read:

849 921.0024 Criminal Punishment Code; worksheet computations;  
850 scoresheets.--

851 (1)(a) The Criminal Punishment Code worksheet is used to  
852 compute the subtotal and total sentence points as follows:

854 FLORIDA CRIMINAL PUNISHMENT CODE

855 WORKSHEET

857 OFFENSE SCORE

859 Primary Offense

Level	Sentence Points		Total
861 10	116	=	_____
862 9	92	=	_____
863 8	74	=	_____
864 7	56	=	_____
865 6	36	=	_____
866 5	28	=	_____
867 4	22	=	_____

HB 1815

2004  
CS

869	3	16	=	_____
870	2	10	=	_____
871	1	4	=	_____
872				<u>Total</u>

Additional Offenses

875	Level	Sentence Points		Counts	Total
876					
877	10	58	x	_____	= _____
878	9	46	x	_____	= _____
879	8	37	x	_____	= _____
880	7	28	x	_____	= _____
881	6	18	x	_____	= _____
882	5	5.4	x	_____	= _____
883	4	3.6	x	_____	= _____
884	3	2.4	x	_____	= _____
885					

HB 1815

2004  
CS

886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900

2	1.2	x	_____	=	_____
1	0.7	x	_____	=	_____
M	0.2	x	_____	=	_____

Total

Victim Injury

Level	Sentence Points			Number	Total
2nd degree murder- death	240	x		_____	= _____
Death	120	x		_____	= _____
Severe	40	x		_____	= _____
Moderate	18	x		_____	= _____
Slight	4	x		_____	= _____
Sexual Penetration	80	x		_____	= _____

HB 1815

2004  
CS

901 Sexual contact            40                    x                    \_\_\_\_\_ = \_\_\_\_\_

902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919

Total

Primary Offense + Additional Offenses + Victim Injury =  
TOTAL OFFENSE SCORE

PRIOR RECORD SCORE

Prior Record

Level	Sentence Points		Number		Total
10	29	x	_____	=	_____
9	23	x	_____	=	_____
8	19	x	_____	=	_____
7	14	x	_____	=	_____
6	9	x	_____	=	_____
5	3.6	x	_____	=	_____
4	2.4	x	_____	=	_____
3	1.6	x	_____	=	_____

HB 1815

2004  
CS

920	2	0.8	x	_____	=	_____
921	1	0.5	x	_____	=	_____
922	M	0.2	x	_____	=	_____
923						
924						<u>Total</u>
925						
926						
927		TOTAL OFFENSE SCORE				
928		TOTAL PRIOR RECORD SCORE				
929						
930		LEGAL STATUS				
931		COMMUNITY SANCTION VIOLATION				
932		PRIOR SERIOUS FELONY				
933		PRIOR CAPITAL FELONY				
934		FIREARM OR SEMIAUTOMATIC WEAPON				
935						SUBTOTAL_____
936						
937		PRISON RELEASEE REOFFENDER (no)(yes)				
938		VIOLENT CAREER CRIMINAL (no)(yes)				
939		HABITUAL VIOLENT OFFENDER (no)(yes)				
940		HABITUAL OFFENDER (no)(yes)				
941		DRUG TRAFFICKER (no)(yes) (x multiplier)				
942		LAW ENF. PROTECT. (no)(yes) (x multiplier)				
943		MOTOR VEHICLE THEFT (no)(yes) (x multiplier)				
944		CRIMINAL STREET GANG OFFENSE (no)(yes) (x multiplier)				

HB 1815

2004  
CS

945 DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD (no)(yes)  
946 (x multiplier)

947  
948 TOTAL SENTENCE POINTS \_\_\_\_\_  
949

950 (b) WORKSHEET KEY:  
951

952 Legal status points are assessed when any form of legal status  
953 existed at the time the offender committed an offense before the  
954 court for sentencing. Four (4) sentence points are assessed for  
955 an offender's legal status.

956  
957 Community sanction violation points are assessed when a  
958 community sanction violation is before the court for sentencing.  
959 Six (6) sentence points are assessed for each community sanction  
960 violation, and each successive community sanction violation;  
961 however, if the community sanction violation includes a new  
962 felony conviction before the sentencing court, twelve (12)  
963 community sanction violation points are assessed for such  
964 violation, and for each successive community sanction violation  
965 involving a new felony conviction. Multiple counts of community  
966 sanction violations before the sentencing court shall not be a  
967 basis for multiplying the assessment of community sanction  
968 violation points.

969  
970 Prior serious felony points: If the offender has a primary  
971 offense or any additional offense ranked in level 8, level 9, or  
972 level 10, and one or more prior serious felonies, a single

HB 1815

2004  
CS

973 assessment of 30 points shall be added. For purposes of this  
 974 section, a prior serious felony is an offense in the offender's  
 975 prior record that is ranked in level 8, level 9, or level 10  
 976 under s. 921.0022 or s. 921.0023 and for which the offender is  
 977 serving a sentence of confinement, supervision, or other  
 978 sanction or for which the offender's date of release from  
 979 confinement, supervision, or other sanction, whichever is later,  
 980 is within 3 years before the date the primary offense or any  
 981 additional offense was committed.

982  
 983 Prior capital felony points: If the offender has one or more  
 984 prior capital felonies in the offender's criminal record, points  
 985 shall be added to the subtotal sentence points of the offender  
 986 equal to twice the number of points the offender receives for  
 987 the primary offense and any additional offense. A prior capital  
 988 felony in the offender's criminal record is a previous capital  
 989 felony offense for which the offender has entered a plea of nolo  
 990 contendere or guilty or has been found guilty; or a felony in  
 991 another jurisdiction which is a capital felony in that  
 992 jurisdiction, or would be a capital felony if the offense were  
 993 committed in this state.

994  
 995 Possession of a firearm, semiautomatic firearm, or machine gun:  
 996 If the offender is convicted of committing or attempting to  
 997 commit any felony other than those enumerated in s. 775.087(2)  
 998 while having in his or her possession: a firearm as defined in  
 999 s. 790.001(6), an additional 18 sentence points are assessed; or  
 1000 if the offender is convicted of committing or attempting to



HB 1815

2004  
CS

1001 | commit any felony other than those enumerated in s. 775.087(3)  
 1002 | while having in his or her possession a semiautomatic firearm as  
 1003 | defined in s. 775.087(3) or a machine gun as defined in s.  
 1004 | 790.001(9), an additional 25 sentence points are assessed.

1005 |  
 1006 | Sentencing multipliers:

1007 |  
 1008 | Drug trafficking: If the primary offense is drug trafficking  
 1009 | under s. 893.135, the subtotal sentence points are multiplied,  
 1010 | at the discretion of the court, for a level 7 or level 8  
 1011 | offense, by 1.5. The state attorney may move the sentencing  
 1012 | court to reduce or suspend the sentence of a person convicted of  
 1013 | a level 7 or level 8 offense, if the offender provides  
 1014 | substantial assistance as described in s. 893.135(4).

1015 |  
 1016 | Law enforcement protection: If the primary offense is a  
 1017 | violation of the Law Enforcement Protection Act under s.  
 1018 | 775.0823(2), the subtotal sentence points are multiplied by 2.5.  
 1019 | If the primary offense is a violation of s. 775.0823(3), (4),  
 1020 | (5), (6), (7), or (8), the subtotal sentence points are  
 1021 | multiplied by 2.0. If the primary offense is a violation of s.  
 1022 | 784.07(3) or s. 775.0875(1), or of the Law Enforcement  
 1023 | Protection Act under s. 775.0823(9) or (10), the subtotal  
 1024 | sentence points are multiplied by 1.5.

1025 |  
 1026 | Grand theft of a motor vehicle: If the primary offense is grand  
 1027 | theft of the third degree involving a motor vehicle and in the  
 1028 | offender's prior record, there are three or more grand thefts of

HB 1815

2004  
CS

1029 | the third degree involving a motor vehicle, the subtotal  
1030 | sentence points are multiplied by 1.5.

1031 |  
1032 | Offense related to a criminal street gang: If the offender is  
1033 | convicted of the primary offense and committed that offense for  
1034 | the purpose of benefiting, promoting, or furthering the  
1035 | interests of a criminal street gang as prohibited under s.  
1036 | 874.04, the subtotal sentence points are multiplied by 1.5.

1037 |  
1038 | Domestic violence in the presence of a child: If the offender is  
1039 | convicted of the primary offense and the primary offense is a  
1040 | crime of domestic violence, as defined in s. 741.28, which was  
1041 | committed in the presence of a child under 16 years of age who  
1042 | is a family household member as defined in s. 741.28(2) with the  
1043 | victim or perpetrator, the subtotal sentence points are  
1044 | multiplied by 1.5.

1045 | Section 18. For the purpose of incorporating the amendment  
1046 | to section 893.135, Florida Statutes, in a reference thereto,  
1047 | subsection (2) of section 921.142, Florida Statutes, is  
1048 | reenacted to read:

1049 | 921.142 Sentence of death or life imprisonment for capital  
1050 | drug trafficking felonies; further proceedings to determine  
1051 | sentence.--

1052 | (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon  
1053 | conviction or adjudication of guilt of a defendant of a capital  
1054 | felony under s. 893.135, the court shall conduct a separate  
1055 | sentencing proceeding to determine whether the defendant should  
1056 | be sentenced to death or life imprisonment as authorized by s.

HB 1815

2004  
CS

1057 775.082. The proceeding shall be conducted by the trial judge  
1058 before the trial jury as soon as practicable. If, through  
1059 impossibility or inability, the trial jury is unable to  
1060 reconvene for a hearing on the issue of penalty, having  
1061 determined the guilt of the accused, the trial judge may summon  
1062 a special juror or jurors as provided in chapter 913 to  
1063 determine the issue of the imposition of the penalty. If the  
1064 trial jury has been waived, or if the defendant pleaded guilty,  
1065 the sentencing proceeding shall be conducted before a jury  
1066 impaneled for that purpose, unless waived by the defendant. In  
1067 the proceeding, evidence may be presented as to any matter that  
1068 the court deems relevant to the nature of the crime and the  
1069 character of the defendant and shall include matters relating to  
1070 any of the aggravating or mitigating circumstances enumerated in  
1071 subsections (6) and (7). Any such evidence which the court deems  
1072 to have probative value may be received, regardless of its  
1073 admissibility under the exclusionary rules of evidence, provided  
1074 the defendant is accorded a fair opportunity to rebut any  
1075 hearsay statements. However, this subsection shall not be  
1076 construed to authorize the introduction of any evidence secured  
1077 in violation of the Constitution of the United States or the  
1078 Constitution of the State of Florida. The state and the  
1079 defendant or the defendant's counsel shall be permitted to  
1080 present argument for or against sentence of death.

1081 Section 19. For the purpose of incorporating the amendment  
1082 to section 893.13, Florida Statutes, in references thereto,  
1083 subsection (1) of section 921.187, Florida Statutes, is  
1084 reenacted to read:

HB 1815

2004  
CS

1085           921.187 Disposition and sentencing; alternatives;  
 1086 restitution.--  
 1087           (1) The alternatives provided in this section for the  
 1088 disposition of criminal cases shall be used in a manner that  
 1089 will best serve the needs of society, punish criminal offenders,  
 1090 and provide the opportunity for rehabilitation.  
 1091           (a) If the offender does not receive a state prison  
 1092 sentence, the court may:  
 1093           1. Impose a split sentence whereby the offender is to be  
 1094 placed on probation upon completion of any specified period of  
 1095 such sentence, which period may include a term of years or less.  
 1096           2. Make any other disposition that is authorized by law.  
 1097           3. Place the offender on probation with or without an  
 1098 adjudication of guilt pursuant to s. 948.01.  
 1099           4. Impose a fine and probation pursuant to s. 948.011 when  
 1100 the offense is punishable by both a fine and imprisonment and  
 1101 probation is authorized.  
 1102           5. Place the offender into community control requiring  
 1103 intensive supervision and surveillance pursuant to chapter 948.  
 1104           6. Impose, as a condition of probation or community  
 1105 control, a period of treatment which shall be restricted to a  
 1106 county facility, a Department of Corrections probation and  
 1107 restitution center, a probation program drug punishment  
 1108 treatment community, or a community residential or  
 1109 nonresidential facility, excluding a community correctional  
 1110 center as defined in s. 944.026, which is owned and operated by  
 1111 any qualified public or private entity providing such services.  
 1112 Before admission to such a facility, the court shall obtain an

HB 1815

2004  
CS

1113 individual assessment and recommendations on the appropriate  
 1114 treatment needs, which shall be considered by the court in  
 1115 ordering such placements. Placement in such a facility, except  
 1116 for a county residential probation facility, may not exceed 364  
 1117 days. Placement in a county residential probation facility may  
 1118 not exceed 3 years. Early termination of placement may be  
 1119 recommended to the court, when appropriate, by the center  
 1120 supervisor, the supervising probation officer, or the probation  
 1121 program manager.

1122 7. Sentence the offender pursuant to s. 922.051 to  
 1123 imprisonment in a county jail when a statute directs  
 1124 imprisonment in a state prison, if the offender's cumulative  
 1125 sentence, whether from the same circuit or from separate  
 1126 circuits, is not more than 364 days.

1127 8. Sentence the offender who is to be punished by  
 1128 imprisonment in a county jail to a jail in another county if  
 1129 there is no jail within the county suitable for such prisoner  
 1130 pursuant to s. 950.01.

1131 9. Require the offender to participate in a work-release  
 1132 or educational or technical training program pursuant to s.  
 1133 951.24 while serving a sentence in a county jail, if such a  
 1134 program is available.

1135 10. Require the offender to perform a specified public  
 1136 service pursuant to s. 775.091.

1137 11. Require the offender who violates chapter 893 or  
 1138 violates any law while under the influence of a controlled  
 1139 substance or alcohol to participate in a substance abuse  
 1140 program.

HB 1815

2004  
CS

1141           12.a. Require the offender who violates any criminal  
1142 provision of chapter 893 to pay an additional assessment in an  
1143 amount up to the amount of any fine imposed, pursuant to ss.  
1144 938.21 and 938.23.

1145           b. Require the offender who violates any provision of s.  
1146 893.13 to pay an additional assessment in an amount of \$100,  
1147 pursuant to ss. 938.25 and 943.361.

1148           13. Impose a split sentence whereby the offender is to be  
1149 placed in a county jail or county work camp upon the completion  
1150 of any specified term of community supervision.

1151           14. Impose split probation whereby upon satisfactory  
1152 completion of half the term of probation, the Department of  
1153 Corrections may place the offender on administrative probation  
1154 pursuant to s. 948.01 for the remainder of the term of  
1155 supervision.

1156           15. Require residence in a state probation and restitution  
1157 center or private drug treatment program for offenders on  
1158 community control or offenders who have violated conditions of  
1159 probation.

1160           16. Impose any other sanction which is provided within the  
1161 community and approved as an intermediate sanction by the county  
1162 public safety coordinating council as described in s. 951.26.

1163           17. Impose, as a condition of community control,  
1164 probation, or probation following incarceration, a requirement  
1165 that an offender who has not obtained a high school diploma or  
1166 high school equivalency diploma or who lacks basic or functional  
1167 literacy skills, upon acceptance by an adult education program,  
1168 make a good faith effort toward completion of such basic or

HB 1815

2004  
CS

1169 functional literacy skills or high school equivalency diploma,  
1170 as defined in s. 1003.435, in accordance with the assessed adult  
1171 general education needs of the individual offender.

1172 (b)1. Notwithstanding any provision of former s. 921.001  
1173 or s. 921.002 to the contrary, on or after October 1, 1993, the  
1174 court may require any defendant who violates s. 893.13(1)(a)1.,  
1175 (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), and meets the criteria  
1176 described in s. 893.13(10), to successfully complete a term of  
1177 probation pursuant to the terms and conditions set forth in s.  
1178 948.034(1), in lieu of serving a term of imprisonment.

1179 2. Notwithstanding any provision of former s. 921.001 or  
1180 s. 921.002 to the contrary, on or after October 1, 1993, the  
1181 court may require any defendant who violates s. 893.13(1)(a)2.,  
1182 (2)(a)2., (5)(b), or (6)(a), and meets the criteria described in  
1183 s. 893.13(11), to successfully complete a term of probation  
1184 pursuant to the terms and conditions set forth in s. 948.034(2),  
1185 in lieu of serving a term of imprisonment.

1186 Section 20. For the purpose of incorporating the amendment  
1187 to section 893.13, Florida Statutes, in a reference thereto,  
1188 section 938.25, Florida Statutes, is reenacted to read:

1189 938.25 Operating Trust Fund of the Department of Law  
1190 Enforcement.--Notwithstanding any provision to the contrary of  
1191 the laws of this state, the court may assess any defendant who  
1192 pleads guilty or nolo contendere to, or is convicted of, a  
1193 violation of any provision of s. 893.13, without regard to  
1194 whether adjudication was withheld, in addition to any fine and  
1195 other penalty provided or authorized by law, an amount of \$100,  
1196 to be paid to the clerk of the court, who shall forward it to

HB 1815

2004  
CS

1197 | the Department of Revenue for deposit in the Operating Trust  
 1198 | Fund of the Department of Law Enforcement to be used by the  
 1199 | statewide criminal analysis laboratory system for the purposes  
 1200 | specified in s. 943.361. The court is authorized to order a  
 1201 | defendant to pay an additional assessment if it finds that the  
 1202 | defendant has the ability to pay the fine and the additional  
 1203 | assessment and will not be prevented thereby from being  
 1204 | rehabilitated or from making restitution.

1205 |         Section 21. For the purpose of incorporating the amendment  
 1206 | to section 893.135, Florida Statutes, in references thereto,  
 1207 | section 943.0585, Florida Statutes, is reenacted to read:

1208 |         943.0585 Court-ordered expunction of criminal history  
 1209 | records.--The courts of this state have jurisdiction over their  
 1210 | own procedures, including the maintenance, expunction, and  
 1211 | correction of judicial records containing criminal history  
 1212 | information to the extent such procedures are not inconsistent  
 1213 | with the conditions, responsibilities, and duties established by  
 1214 | this section. Any court of competent jurisdiction may order a  
 1215 | criminal justice agency to expunge the criminal history record  
 1216 | of a minor or an adult who complies with the requirements of  
 1217 | this section. The court shall not order a criminal justice  
 1218 | agency to expunge a criminal history record until the person  
 1219 | seeking to expunge a criminal history record has applied for and  
 1220 | received a certificate of eligibility for expunction pursuant to  
 1221 | subsection (2). A criminal history record that relates to a  
 1222 | violation of s. 787.025, chapter 794, s. 796.03, s. 800.04, s.  
 1223 | 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.  
 1224 | 847.0135, s. 847.0145, s. 893.135, or a violation enumerated in



HB 1815

2004  
CS

1225 s. 907.041 may not be expunged, without regard to whether  
1226 adjudication was withheld, if the defendant was found guilty of  
1227 or pled guilty or nolo contendere to the offense, or if the  
1228 defendant, as a minor, was found to have committed, or pled  
1229 guilty or nolo contendere to committing, the offense as a  
1230 delinquent act. The court may only order expunction of a  
1231 criminal history record pertaining to one arrest or one incident  
1232 of alleged criminal activity, except as provided in this  
1233 section. The court may, at its sole discretion, order the  
1234 expunction of a criminal history record pertaining to more than  
1235 one arrest if the additional arrests directly relate to the  
1236 original arrest. If the court intends to order the expunction of  
1237 records pertaining to such additional arrests, such intent must  
1238 be specified in the order. A criminal justice agency may not  
1239 expunge any record pertaining to such additional arrests if the  
1240 order to expunge does not articulate the intention of the court  
1241 to expunge a record pertaining to more than one arrest. This  
1242 section does not prevent the court from ordering the expunction  
1243 of only a portion of a criminal history record pertaining to one  
1244 arrest or one incident of alleged criminal activity.  
1245 Notwithstanding any law to the contrary, a criminal justice  
1246 agency may comply with laws, court orders, and official requests  
1247 of other jurisdictions relating to expunction, correction, or  
1248 confidential handling of criminal history records or information  
1249 derived therefrom. This section does not confer any right to the  
1250 expunction of any criminal history record, and any request for  
1251 expunction of a criminal history record may be denied at the  
1252 sole discretion of the court.

HB 1815

2004  
CS

1253 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.--Each  
1254 petition to a court to expunge a criminal history record is  
1255 complete only when accompanied by:

1256 (a) A certificate of eligibility for expunction issued by  
1257 the department pursuant to subsection (2).

1258 (b) The petitioner's sworn statement attesting that the  
1259 petitioner:

1260 1. Has never, prior to the date on which the petition is  
1261 filed, been adjudicated guilty of a criminal offense or  
1262 comparable ordinance violation or adjudicated delinquent for  
1263 committing a felony or a misdemeanor specified in s.  
1264 943.051(3)(b).

1265 2. Has not been adjudicated guilty of, or adjudicated  
1266 delinquent for committing, any of the acts stemming from the  
1267 arrest or alleged criminal activity to which the petition  
1268 pertains.

1269 3. Has never secured a prior sealing or expunction of a  
1270 criminal history record under this section, former s. 893.14,  
1271 former s. 901.33, or former s. 943.058, or from any jurisdiction  
1272 outside the state.

1273 4. Is eligible for such an expunction to the best of his  
1274 or her knowledge or belief and does not have any other petition  
1275 to expunge or any petition to seal pending before any court.

1276  
1277 Any person who knowingly provides false information on such  
1278 sworn statement to the court commits a felony of the third  
1279 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
1280 775.084.

1281 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to  
 1282 petitioning the court to expunge a criminal history record, a  
 1283 person seeking to expunge a criminal history record shall apply  
 1284 to the department for a certificate of eligibility for  
 1285 expunction. The department shall, by rule adopted pursuant to  
 1286 chapter 120, establish procedures pertaining to the application  
 1287 for and issuance of certificates of eligibility for expunction.  
 1288 The department shall issue a certificate of eligibility for  
 1289 expunction to a person who is the subject of a criminal history  
 1290 record if that person:

1291 (a) Has obtained, and submitted to the department, a  
 1292 written, certified statement from the appropriate state attorney  
 1293 or statewide prosecutor which indicates:

1294 1. That an indictment, information, or other charging  
 1295 document was not filed or issued in the case.

1296 2. That an indictment, information, or other charging  
 1297 document, if filed or issued in the case, was dismissed or nolle  
 1298 prosequi by the state attorney or statewide prosecutor, or was  
 1299 dismissed by a court of competent jurisdiction.

1300 3. That the criminal history record does not relate to a  
 1301 violation of s. 787.025, chapter 794, s. 796.03, s. 800.04, s.  
 1302 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.  
 1303 847.0135, s. 847.0145, s. 893.135, or a violation enumerated in  
 1304 s. 907.041, where the defendant was found guilty of, or pled  
 1305 guilty or nolo contendere to any such offense, or that the  
 1306 defendant, as a minor, was found to have committed, or pled  
 1307 guilty or nolo contendere to committing, such an offense as a

HB 1815

2004  
CS

1308 delinquent act, without regard to whether adjudication was  
1309 withheld.

1310 (b) Remits a \$75 processing fee to the department for  
1311 placement in the Department of Law Enforcement Operating Trust  
1312 Fund, unless such fee is waived by the executive director.

1313 (c) Has submitted to the department a certified copy of  
1314 the disposition of the charge to which the petition to expunge  
1315 pertains.

1316 (d) Has never, prior to the date on which the application  
1317 for a certificate of eligibility is filed, been adjudicated  
1318 guilty of a criminal offense or comparable ordinance violation  
1319 or adjudicated delinquent for committing a felony or a  
1320 misdemeanor specified in s. 943.051(3)(b).

1321 (e) Has not been adjudicated guilty of, or adjudicated  
1322 delinquent for committing, any of the acts stemming from the  
1323 arrest or alleged criminal activity to which the petition to  
1324 expunge pertains.

1325 (f) Has never secured a prior sealing or expunction of a  
1326 criminal history record under this section, former s. 893.14,  
1327 former s. 901.33, or former s. 943.058.

1328 (g) Is no longer under court supervision applicable to the  
1329 disposition of the arrest or alleged criminal activity to which  
1330 the petition to expunge pertains.

1331 (h) Is not required to wait a minimum of 10 years prior to  
1332 being eligible for an expunction of such records because all  
1333 charges related to the arrest or criminal activity to which the  
1334 petition to expunge pertains were dismissed prior to trial,  
1335 adjudication, or the withholding of adjudication. Otherwise,

HB 1815

2004  
CS

1336 such criminal history record must be sealed under this section,  
1337 former s. 893.14, former s. 901.33, or former s. 943.058 for at  
1338 least 10 years before such record is eligible for expunction.

1339 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

1340 (a) In judicial proceedings under this section, a copy of  
1341 the completed petition to expunge shall be served upon the  
1342 appropriate state attorney or the statewide prosecutor and upon  
1343 the arresting agency; however, it is not necessary to make any  
1344 agency other than the state a party. The appropriate state  
1345 attorney or the statewide prosecutor and the arresting agency  
1346 may respond to the court regarding the completed petition to  
1347 expunge.

1348 (b) If relief is granted by the court, the clerk of the  
1349 court shall certify copies of the order to the appropriate state  
1350 attorney or the statewide prosecutor and the arresting agency.  
1351 The arresting agency is responsible for forwarding the order to  
1352 any other agency to which the arresting agency disseminated the  
1353 criminal history record information to which the order pertains.  
1354 The department shall forward the order to expunge to the Federal  
1355 Bureau of Investigation. The clerk of the court shall certify a  
1356 copy of the order to any other agency which the records of the  
1357 court reflect has received the criminal history record from the  
1358 court.

1359 (c) For an order to expunge entered by a court prior to  
1360 July 1, 1992, the department shall notify the appropriate state  
1361 attorney or statewide prosecutor of an order to expunge which is  
1362 contrary to law because the person who is the subject of the  
1363 record has previously been convicted of a crime or comparable

HB 1815

2004  
CS

1364 ordinance violation or has had a prior criminal history record  
 1365 sealed or expunged. Upon receipt of such notice, the appropriate  
 1366 state attorney or statewide prosecutor shall take action, within  
 1367 60 days, to correct the record and petition the court to void  
 1368 the order to expunge. The department shall seal the record until  
 1369 such time as the order is voided by the court.

1370 (d) On or after July 1, 1992, the department or any other  
 1371 criminal justice agency is not required to act on an order to  
 1372 expunge entered by a court when such order does not comply with  
 1373 the requirements of this section. Upon receipt of such an order,  
 1374 the department must notify the issuing court, the appropriate  
 1375 state attorney or statewide prosecutor, the petitioner or the  
 1376 petitioner's attorney, and the arresting agency of the reason  
 1377 for noncompliance. The appropriate state attorney or statewide  
 1378 prosecutor shall take action within 60 days to correct the  
 1379 record and petition the court to void the order. No cause of  
 1380 action, including contempt of court, shall arise against any  
 1381 criminal justice agency for failure to comply with an order to  
 1382 expunge when the petitioner for such order failed to obtain the  
 1383 certificate of eligibility as required by this section or such  
 1384 order does not otherwise comply with the requirements of this  
 1385 section.

1386 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
 1387 criminal history record of a minor or an adult which is ordered  
 1388 expunged by a court of competent jurisdiction pursuant to this  
 1389 section must be physically destroyed or obliterated by any  
 1390 criminal justice agency having custody of such record; except  
 1391 that any criminal history record in the custody of the

HB 1815

2004  
CS

1392 department must be retained in all cases. A criminal history  
 1393 record ordered expunged that is retained by the department is  
 1394 confidential and exempt from the provisions of s. 119.07(1) and  
 1395 s. 24(a), Art. I of the State Constitution and not available to  
 1396 any person or entity except upon order of a court of competent  
 1397 jurisdiction. A criminal justice agency may retain a notation  
 1398 indicating compliance with an order to expunge.

1399 (a) The person who is the subject of a criminal history  
 1400 record that is expunged under this section or under other  
 1401 provisions of law, including former s. 893.14, former s. 901.33,  
 1402 and former s. 943.058, may lawfully deny or fail to acknowledge  
 1403 the arrests covered by the expunged record, except when the  
 1404 subject of the record:

- 1405 1. Is a candidate for employment with a criminal justice  
 1406 agency;
- 1407 2. Is a defendant in a criminal prosecution;
- 1408 3. Concurrently or subsequently petitions for relief under  
 1409 this section or s. 943.059;
- 1410 4. Is a candidate for admission to The Florida Bar;
- 1411 5. Is seeking to be employed or licensed by or to contract  
 1412 with the Department of Children and Family Services or the  
 1413 Department of Juvenile Justice or to be employed or used by such  
 1414 contractor or licensee in a sensitive position having direct  
 1415 contact with children, the developmentally disabled, the aged,  
 1416 or the elderly as provided in s. 110.1127(3), s. 393.063(15), s.  
 1417 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
 1418 409.175(2)(i), s. 415.102(4), s. 985.407, or chapter 400; or

HB 1815

2004  
CS

1419           6. Is seeking to be employed or licensed by the Office of  
1420 Teacher Education, Certification, Staff Development, and  
1421 Professional Practices of the Department of Education, any  
1422 district school board, or any local governmental entity that  
1423 licenses child care facilities.

1424           (b) Subject to the exceptions in paragraph (a), a person  
1425 who has been granted an expunction under this section, former s.  
1426 893.14, former s. 901.33, or former s. 943.058 may not be held  
1427 under any provision of law of this state to commit perjury or to  
1428 be otherwise liable for giving a false statement by reason of  
1429 such person's failure to recite or acknowledge an expunged  
1430 criminal history record.

1431           (c) Information relating to the existence of an expunged  
1432 criminal history record which is provided in accordance with  
1433 paragraph (a) is confidential and exempt from the provisions of  
1434 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
1435 except that the department shall disclose the existence of a  
1436 criminal history record ordered expunged to the entities set  
1437 forth in subparagraphs (a)1., 4., 5., and 6. for their  
1438 respective licensing and employment purposes, and to criminal  
1439 justice agencies for their respective criminal justice purposes.  
1440 It is unlawful for any employee of an entity set forth in  
1441 subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or  
1442 subparagraph (a)6. to disclose information relating to the  
1443 existence of an expunged criminal history record of a person  
1444 seeking employment or licensure with such entity or contractor,  
1445 except to the person to whom the criminal history record relates  
1446 or to persons having direct responsibility for employment or



HB 1815

2004  
CS

1447 licensure decisions. Any person who violates this paragraph  
1448 commits a misdemeanor of the first degree, punishable as  
1449 provided in s. 775.082 or s. 775.083.

1450 (5) STATUTORY REFERENCES.--Any reference to any other  
1451 chapter, section, or subdivision of the Florida Statutes in this  
1452 section constitutes a general reference under the doctrine of  
1453 incorporation by reference.

1454 Section 22. For the purpose of incorporating the amendment  
1455 to section 893.135, Florida Statutes, in references thereto,  
1456 Section 943.059, Florida Statutes, is reenacted to read:

1457 943.059 Court-ordered sealing of criminal history  
1458 records.--The courts of this state shall continue to have  
1459 jurisdiction over their own procedures, including the  
1460 maintenance, sealing, and correction of judicial records  
1461 containing criminal history information to the extent such  
1462 procedures are not inconsistent with the conditions,  
1463 responsibilities, and duties established by this section. Any  
1464 court of competent jurisdiction may order a criminal justice  
1465 agency to seal the criminal history record of a minor or an  
1466 adult who complies with the requirements of this section. The  
1467 court shall not order a criminal justice agency to seal a  
1468 criminal history record until the person seeking to seal a  
1469 criminal history record has applied for and received a  
1470 certificate of eligibility for sealing pursuant to subsection  
1471 (2). A criminal history record that relates to a violation of s.  
1472 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.  
1473 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.  
1474 847.0145, s. 893.135, or a violation enumerated in s. 907.041

HB 1815

2004  
CS

1475 | may not be sealed, without regard to whether adjudication was  
 1476 | withheld, if the defendant was found guilty of or pled guilty or  
 1477 | nolo contendere to the offense, or if the defendant, as a minor,  
 1478 | was found to have committed or pled guilty or nolo contendere to  
 1479 | committing the offense as a delinquent act. The court may only  
 1480 | order sealing of a criminal history record pertaining to one  
 1481 | arrest or one incident of alleged criminal activity, except as  
 1482 | provided in this section. The court may, at its sole discretion,  
 1483 | order the sealing of a criminal history record pertaining to  
 1484 | more than one arrest if the additional arrests directly relate  
 1485 | to the original arrest. If the court intends to order the  
 1486 | sealing of records pertaining to such additional arrests, such  
 1487 | intent must be specified in the order. A criminal justice agency  
 1488 | may not seal any record pertaining to such additional arrests if  
 1489 | the order to seal does not articulate the intention of the court  
 1490 | to seal records pertaining to more than one arrest. This section  
 1491 | does not prevent the court from ordering the sealing of only a  
 1492 | portion of a criminal history record pertaining to one arrest or  
 1493 | one incident of alleged criminal activity. Notwithstanding any  
 1494 | law to the contrary, a criminal justice agency may comply with  
 1495 | laws, court orders, and official requests of other jurisdictions  
 1496 | relating to sealing, correction, or confidential handling of  
 1497 | criminal history records or information derived therefrom. This  
 1498 | section does not confer any right to the sealing of any criminal  
 1499 | history record, and any request for sealing a criminal history  
 1500 | record may be denied at the sole discretion of the court.

HB 1815

2004  
CS

1501 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each  
1502 petition to a court to seal a criminal history record is  
1503 complete only when accompanied by:

1504 (a) A certificate of eligibility for sealing issued by the  
1505 department pursuant to subsection (2).

1506 (b) The petitioner's sworn statement attesting that the  
1507 petitioner:

1508 1. Has never, prior to the date on which the petition is  
1509 filed, been adjudicated guilty of a criminal offense or  
1510 comparable ordinance violation or adjudicated delinquent for  
1511 committing a felony or a misdemeanor specified in s.  
1512 943.051(3)(b).

1513 2. Has not been adjudicated guilty of or adjudicated  
1514 delinquent for committing any of the acts stemming from the  
1515 arrest or alleged criminal activity to which the petition to  
1516 seal pertains.

1517 3. Has never secured a prior sealing or expunction of a  
1518 criminal history record under this section, former s. 893.14,  
1519 former s. 901.33, former s. 943.058, or from any jurisdiction  
1520 outside the state.

1521 4. Is eligible for such a sealing to the best of his or  
1522 her knowledge or belief and does not have any other petition to  
1523 seal or any petition to expunge pending before any court.

1524  
1525 Any person who knowingly provides false information on such  
1526 sworn statement to the court commits a felony of the third  
1527 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
1528 775.084.

HB 1815

2004  
CS

1529           (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to  
1530 petitioning the court to seal a criminal history record, a  
1531 person seeking to seal a criminal history record shall apply to  
1532 the department for a certificate of eligibility for sealing. The  
1533 department shall, by rule adopted pursuant to chapter 120,  
1534 establish procedures pertaining to the application for and  
1535 issuance of certificates of eligibility for sealing. The  
1536 department shall issue a certificate of eligibility for sealing  
1537 to a person who is the subject of a criminal history record  
1538 provided that such person:

1539           (a) Has submitted to the department a certified copy of  
1540 the disposition of the charge to which the petition to seal  
1541 pertains.

1542           (b) Remits a \$75 processing fee to the department for  
1543 placement in the Department of Law Enforcement Operating Trust  
1544 Fund, unless such fee is waived by the executive director.

1545           (c) Has never, prior to the date on which the application  
1546 for a certificate of eligibility is filed, been adjudicated  
1547 guilty of a criminal offense or comparable ordinance violation  
1548 or adjudicated delinquent for committing a felony or a  
1549 misdemeanor specified in s. 943.051(3)(b).

1550           (d) Has not been adjudicated guilty of or adjudicated  
1551 delinquent for committing any of the acts stemming from the  
1552 arrest or alleged criminal activity to which the petition to  
1553 seal pertains.

1554           (e) Has never secured a prior sealing or expunction of a  
1555 criminal history record under this section, former s. 893.14,  
1556 former s. 901.33, or former s. 943.058.

HB 1815

2004  
CS

1557 (f) Is no longer under court supervision applicable to the  
1558 disposition of the arrest or alleged criminal activity to which  
1559 the petition to seal pertains.

1560 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.--

1561 (a) In judicial proceedings under this section, a copy of  
1562 the completed petition to seal shall be served upon the  
1563 appropriate state attorney or the statewide prosecutor and upon  
1564 the arresting agency; however, it is not necessary to make any  
1565 agency other than the state a party. The appropriate state  
1566 attorney or the statewide prosecutor and the arresting agency  
1567 may respond to the court regarding the completed petition to  
1568 seal.

1569 (b) If relief is granted by the court, the clerk of the  
1570 court shall certify copies of the order to the appropriate state  
1571 attorney or the statewide prosecutor and to the arresting  
1572 agency. The arresting agency is responsible for forwarding the  
1573 order to any other agency to which the arresting agency  
1574 disseminated the criminal history record information to which  
1575 the order pertains. The department shall forward the order to  
1576 seal to the Federal Bureau of Investigation. The clerk of the  
1577 court shall certify a copy of the order to any other agency  
1578 which the records of the court reflect has received the criminal  
1579 history record from the court.

1580 (c) For an order to seal entered by a court prior to July  
1581 1, 1992, the department shall notify the appropriate state  
1582 attorney or statewide prosecutor of any order to seal which is  
1583 contrary to law because the person who is the subject of the  
1584 record has previously been convicted of a crime or comparable

HB 1815

2004  
CS

1585 ordinance violation or has had a prior criminal history record  
 1586 sealed or expunged. Upon receipt of such notice, the appropriate  
 1587 state attorney or statewide prosecutor shall take action, within  
 1588 60 days, to correct the record and petition the court to void  
 1589 the order to seal. The department shall seal the record until  
 1590 such time as the order is voided by the court.

1591 (d) On or after July 1, 1992, the department or any other  
 1592 criminal justice agency is not required to act on an order to  
 1593 seal entered by a court when such order does not comply with the  
 1594 requirements of this section. Upon receipt of such an order, the  
 1595 department must notify the issuing court, the appropriate state  
 1596 attorney or statewide prosecutor, the petitioner or the  
 1597 petitioner's attorney, and the arresting agency of the reason  
 1598 for noncompliance. The appropriate state attorney or statewide  
 1599 prosecutor shall take action within 60 days to correct the  
 1600 record and petition the court to void the order. No cause of  
 1601 action, including contempt of court, shall arise against any  
 1602 criminal justice agency for failure to comply with an order to  
 1603 seal when the petitioner for such order failed to obtain the  
 1604 certificate of eligibility as required by this section or when  
 1605 such order does not comply with the requirements of this  
 1606 section.

1607 (e) An order sealing a criminal history record pursuant to  
 1608 this section does not require that such record be surrendered to  
 1609 the court, and such record shall continue to be maintained by  
 1610 the department and other criminal justice agencies.

1611 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal  
 1612 history record of a minor or an adult which is ordered sealed by

HB 1815

2004  
CS

1613 a court of competent jurisdiction pursuant to this section is  
 1614 confidential and exempt from the provisions of s. 119.07(1) and  
 1615 s. 24(a), Art. I of the State Constitution and is available only  
 1616 to the person who is the subject of the record, to the subject's  
 1617 attorney, to criminal justice agencies for their respective  
 1618 criminal justice purposes, or to those entities set forth in  
 1619 subparagraphs (a)1., 4., 5., and 6. for their respective  
 1620 licensing and employment purposes.

1621 (a) The subject of a criminal history record sealed under  
 1622 this section or under other provisions of law, including former  
 1623 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
 1624 deny or fail to acknowledge the arrests covered by the sealed  
 1625 record, except when the subject of the record:

- 1626 1. Is a candidate for employment with a criminal justice  
 1627 agency;
- 1628 2. Is a defendant in a criminal prosecution;
- 1629 3. Concurrently or subsequently petitions for relief under  
 1630 this section or s. 943.0585;
- 1631 4. Is a candidate for admission to The Florida Bar;
- 1632 5. Is seeking to be employed or licensed by or to contract  
 1633 with the Department of Children and Family Services or the  
 1634 Department of Juvenile Justice or to be employed or used by such  
 1635 contractor or licensee in a sensitive position having direct  
 1636 contact with children, the developmentally disabled, the aged,  
 1637 or the elderly as provided in s. 110.1127(3), s. 393.063(15), s.  
 1638 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
 1639 409.175(2)(i), s. 415.102(4), s. 415.103, s. 985.407, or chapter  
 1640 400; or

HB 1815

2004  
CS

1641           6. Is seeking to be employed or licensed by the Office of  
1642 Teacher Education, Certification, Staff Development, and  
1643 Professional Practices of the Department of Education, any  
1644 district school board, or any local governmental entity which  
1645 licenses child care facilities.

1646           (b) Subject to the exceptions in paragraph (a), a person  
1647 who has been granted a sealing under this section, former s.  
1648 893.14, former s. 901.33, or former s. 943.058 may not be held  
1649 under any provision of law of this state to commit perjury or to  
1650 be otherwise liable for giving a false statement by reason of  
1651 such person's failure to recite or acknowledge a sealed criminal  
1652 history record.

1653           (c) Information relating to the existence of a sealed  
1654 criminal record provided in accordance with the provisions of  
1655 paragraph (a) is confidential and exempt from the provisions of  
1656 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
1657 except that the department shall disclose the sealed criminal  
1658 history record to the entities set forth in subparagraphs (a)1.,  
1659 4., 5., and 6. for their respective licensing and employment  
1660 purposes. It is unlawful for any employee of an entity set forth  
1661 in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5.,  
1662 or subparagraph (a)6. to disclose information relating to the  
1663 existence of a sealed criminal history record of a person  
1664 seeking employment or licensure with such entity or contractor,  
1665 except to the person to whom the criminal history record relates  
1666 or to persons having direct responsibility for employment or  
1667 licensure decisions. Any person who violates the provisions of



HB 1815

2004  
CS

1668 | this paragraph commits a misdemeanor of the first degree,  
1669 | punishable as provided in s. 775.082 or s. 775.083.

1670 |         (5) STATUTORY REFERENCES.--Any reference to any other  
1671 | chapter, section, or subdivision of the Florida Statutes in this  
1672 | section constitutes a general reference under the doctrine of  
1673 | incorporation by reference.

1674 |         Section 23. For the purpose of incorporating the amendment  
1675 | to section 893.13, Florida Statutes, in references thereto,  
1676 | subsections (1) and (2) of section 948.034, Florida Statutes,  
1677 | are reenacted to read:

1678 |             948.034 Terms and conditions of probation; community  
1679 | residential drug punishment centers.--

1680 |         (1) On or after October 1, 1993, any person who violates  
1681 | s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a) may,  
1682 | in the discretion of the trial court, be required to  
1683 | successfully complete a term of probation in lieu of serving a  
1684 | term of imprisonment as required or authorized by s. 775.084,  
1685 | former s. 921.001, or s. 921.002, as follows:

1686 |             (a) If the person has not previously been convicted of  
1687 | violating s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or  
1688 | (5)(a), adjudication may be withheld and the offender may be  
1689 | placed on probation for not less than 18 months, as a condition  
1690 | of which the court shall require the offender to reside at a  
1691 | community residential drug punishment center for 90 days. The  
1692 | offender must comply with all rules and regulations of the  
1693 | center and must pay a fee for the costs of room and board and  
1694 | residential supervision. Placement of an offender into a  
1695 | community residential drug punishment center is subject to

HB 1815

2004  
CS

1696 budgetary considerations and availability of bed space. If the  
 1697 court requires the offender to reside at a community residential  
 1698 drug punishment center, the court shall also require the  
 1699 offender to comply with one or more of the other following terms  
 1700 and conditions:

1701 1. Pay a fine of not less than \$500 nor more than \$10,000  
 1702 pursuant to s. 775.083(1)(c).

1703 2. Enter, regularly attend, and successfully complete a  
 1704 substance abuse education program of at least 40 hours or a  
 1705 prescribed substance abuse treatment program provided by a  
 1706 treatment resource licensed pursuant to chapter 397 or by a  
 1707 hospital licensed pursuant to chapter 395, as specified by the  
 1708 court. In addition, the court may refer the offender to a  
 1709 licensed agency for substance abuse evaluation and, if  
 1710 appropriate, substance abuse treatment subject to the ability of  
 1711 the offender to pay for such evaluation and treatment. If such  
 1712 referral is made, the offender must comply and must pay for the  
 1713 reasonable cost of the evaluation and treatment.

1714 3. Perform at least 100 hours of public service.

1715 4. Submit to routine and random drug testing which may be  
 1716 conducted during the probationary period, with the reasonable  
 1717 costs thereof borne by the offender.

1718 5. Participate, at his or her own expense, in an  
 1719 appropriate self-help group, such as Narcotics Anonymous,  
 1720 Alcoholics Anonymous, or Cocaine Anonymous, if available.

1721 (b) If the person has been previously convicted of one  
 1722 felony violation of s. 893.13(1)(a)1., (1)(c)2., (1)(d)2.,  
 1723 (2)(a)1., or (5)(a), adjudication may not be withheld and the

HB 1815

2004  
CS

1724 offender may be placed on probation for not less than 24 months,  
 1725 as a condition of which the court shall require the offender to  
 1726 reside at a community residential drug punishment center for 180  
 1727 days. The offender must comply with all rules and regulations of  
 1728 the center and must pay a fee for the costs of room and board  
 1729 and residential supervision. Placement of an offender into a  
 1730 community residential drug punishment center is subject to  
 1731 budgetary considerations and availability of bed space. If the  
 1732 court requires the offender to reside at a community residential  
 1733 drug punishment center, the court shall also require the  
 1734 offender to comply with one or more of the other following terms  
 1735 and conditions:

- 1736 1. Pay a fine of not less than \$1,000 nor more than  
 1737 \$10,000 pursuant to s. 775.083(1)(c).
- 1738 2. Enter, regularly attend, and successfully complete a  
 1739 substance abuse education program of at least 40 hours or a  
 1740 prescribed substance abuse treatment program provided by a  
 1741 treatment resource licensed pursuant to chapter 397 or by a  
 1742 hospital licensed pursuant to chapter 395, as specified by the  
 1743 court. In addition, the court may refer the offender to a  
 1744 licensed agency for substance abuse evaluation and, if  
 1745 appropriate, substance abuse treatment subject to the ability of  
 1746 the offender to pay for such evaluation and treatment. If such  
 1747 referral is made, the offender must comply and must pay for the  
 1748 reasonable cost of the evaluation and treatment.
- 1749 3. Perform at least 200 hours of public service.

1750           4. Submit to routine and random drug testing which may be  
1751 conducted during the probationary period, with the reasonable  
1752 costs thereof borne by the offender.

1753           5. Participate, at his or her own expense, in an  
1754 appropriate self-help group, such as Narcotics Anonymous,  
1755 Alcoholics Anonymous, or Cocaine Anonymous, if available.

1756           (c) If the person has been previously convicted of two  
1757 felony violations of s. 893.13(2)(a)1. or (5)(a), adjudication  
1758 may not be withheld and the offender may be placed on probation  
1759 for not less than 36 months, as a condition of which the court  
1760 shall require the offender to reside at a community residential  
1761 drug punishment center for 360 days. The offender must comply  
1762 with all rules and regulations of the center and must pay a fee  
1763 for the costs of room and board and residential supervision.  
1764 Placement of an offender into a community residential drug  
1765 punishment center is subject to budgetary considerations and  
1766 availability of bed space. If the court requires the offender to  
1767 reside at a community residential drug punishment center, the  
1768 court shall also require the offender to comply with one or more  
1769 of the other following terms and conditions:

1770           1. Pay a fine of not less than \$1,500 nor more than  
1771 \$10,000 pursuant to s. 775.083(1)(c).

1772           2. Enter, regularly attend, and successfully complete a  
1773 substance abuse education program of at least 40 hours or a  
1774 prescribed substance abuse treatment program provided by a  
1775 treatment resource licensed pursuant to chapter 397 or by a  
1776 hospital licensed pursuant to chapter 395, as specified by the  
1777 court. In addition, the court may refer the offender to a

HB 1815

2004  
CS

1778 licensed agency for substance abuse evaluation and, if  
 1779 appropriate, substance abuse treatment subject to the ability of  
 1780 the offender to pay for such evaluation and treatment. If such  
 1781 referral is made, the offender must comply and must pay for the  
 1782 reasonable cost of the evaluation and treatment.

1783 3. Perform at least 300 hours of public service.

1784 4. Submit to routine and random drug testing which may be  
 1785 conducted during the probationary period, with the reasonable  
 1786 costs thereof borne by the offender.

1787 5. Participate, at his or her own expense, in an  
 1788 appropriate self-help group, such as Narcotics Anonymous,  
 1789 Alcoholics Anonymous, or Cocaine Anonymous, if available.

1790 (d) An offender who violates probation imposed pursuant to  
 1791 this section shall be sentenced in accordance with s. 921.002.

1792 (2) On or after October 1, 1993, any person who violates  
 1793 s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a) may, in the  
 1794 discretion of the trial court, be required to successfully  
 1795 complete a term of probation in lieu of serving a term of  
 1796 imprisonment as required or authorized by s. 775.084, former s.  
 1797 921.001, or s. 921.002, as follows:

1798 (a) If the person has not previously been convicted of  
 1799 violating s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a),  
 1800 adjudication may be withheld and the offender shall be placed on  
 1801 probation for not less than 12 months, as a condition of which  
 1802 the court may require the offender to comply with one or more of  
 1803 the following terms and conditions:

1804 1. Pay a fine of not less than \$250 nor more than \$5,000  
 1805 pursuant to s. 775.083(1)(c).

HB 1815

2004  
CS

1806           2. Enter, regularly attend, and successfully complete a  
 1807 substance abuse education program of at least 40 hours or a  
 1808 prescribed substance abuse treatment program provided by a  
 1809 treatment resource licensed pursuant to chapter 397 or by a  
 1810 hospital licensed pursuant to chapter 395, as specified by the  
 1811 court. In addition, the court may refer the offender to a  
 1812 licensed agency for substance abuse evaluation and, if  
 1813 appropriate, substance abuse treatment subject to the ability of  
 1814 the offender to pay for such evaluation and treatment. If such  
 1815 referral is made, the offender must comply and must pay for the  
 1816 reasonable cost of the evaluation and treatment.

1817           3. Perform at least 50 hours of public service.

1818           4. Submit to routine and random drug testing which may be  
 1819 conducted during the probationary period, with the reasonable  
 1820 costs thereof borne by the offender.

1821           5. Participate, at his or her own expense, in an  
 1822 appropriate self-help group, such as Narcotics Anonymous,  
 1823 Alcoholics Anonymous, or Cocaine Anonymous, if available.

1824           (b) If the person has been previously convicted of one  
 1825 felony violation of s. 893.13(1)(a)2., (2)(a)2., (5)(b), or  
 1826 (6)(a), adjudication may not be withheld and the offender may be  
 1827 placed on probation for not less than 18 months, as a condition  
 1828 of which the court shall require the offender to reside at a  
 1829 community residential drug punishment center for 90 days. The  
 1830 offender must comply with all rules and regulations of the  
 1831 center and must pay a fee for the costs of room and board and  
 1832 residential supervision. Placement of an offender into a  
 1833 community residential drug punishment center is subject to

HB 1815

2004  
CS

1834 budgetary considerations and availability of bed space. If the  
 1835 court requires the offender to reside at a community residential  
 1836 drug punishment center, the court shall also require the  
 1837 offender to comply with one or more of the other following terms  
 1838 and conditions:

1839 1. Pay a fine of not less than \$500 nor more than \$5,000  
 1840 pursuant to s. 775.083(1)(c).

1841 2. Enter, regularly attend, and successfully complete a  
 1842 substance abuse intervention program of a least 80 hours  
 1843 provided by a treatment resource licensed pursuant to chapter  
 1844 397 or by a hospital licensed pursuant to chapter 395, as  
 1845 specified by the court. In addition, the court may refer the  
 1846 offender to a licensed agency for substance abuse evaluation  
 1847 and, if appropriate, substance abuse treatment subject to the  
 1848 ability of the offender to pay for such evaluation and  
 1849 treatment. If such referral is made, the offender must comply  
 1850 and must pay for the reasonable cost of the evaluation and  
 1851 treatment.

1852 3. Perform at least 100 hours of public service.

1853 4. Submit to routine and random drug testing which may be  
 1854 conducted during the probationary period, with the reasonable  
 1855 costs thereof borne by the offender.

1856 5. Participate, at his or her own expense, in an  
 1857 appropriate self-help group, such as Narcotics Anonymous,  
 1858 Alcoholics Anonymous, or Cocaine Anonymous, if available.

1859 (c) If the person has been previously convicted of two  
 1860 felony violations of s. 893.13(2)(a)2., (5)(b), or (6)(a),  
 1861 adjudication may not be withheld and the offender may be placed

1862 on probation for not less than 24 months, as a condition of  
 1863 which the court shall require the offender to reside at a  
 1864 community residential drug punishment center for 120 days. The  
 1865 offender must comply with all rules and regulations of the  
 1866 center and must pay a fee for the costs of room and board and  
 1867 residential supervision. Placement of an offender into a  
 1868 community residential drug punishment center is subject to  
 1869 budgetary considerations and availability of bed space. If the  
 1870 court requires the offender to reside at a community residential  
 1871 drug punishment center, the court shall also require the  
 1872 offender to comply with one or more of the other following terms  
 1873 and conditions:

1874 1. Pay a fine of not less than \$1,000 nor more than \$5,000  
 1875 pursuant to s. 775.083(1)(c).

1876 2. Enter, regularly attend, and successfully complete a  
 1877 prescribed substance abuse treatment program provided by a  
 1878 treatment resource licensed pursuant to chapter 397 or by a  
 1879 hospital licensed pursuant to chapter 395, as specified by the  
 1880 court. In addition, the court may refer the offender to a  
 1881 licensed agency for substance abuse evaluation and, if  
 1882 appropriate, substance abuse treatment subject to the ability of  
 1883 the offender to pay for such evaluation and treatment. If such  
 1884 referral is made, the offender must comply and must pay for the  
 1885 reasonable cost of the evaluation and treatment.

1886 3. Perform at least 150 hours of public service.

1887 4. Submit to routine and random drug testing which may be  
 1888 conducted during the probationary period, with the reasonable  
 1889 costs thereof borne by the offender.



HB 1815

2004  
CS

1890           5. Participate, at his or her own expense, in an  
1891 appropriate self-help group, such as Narcotics Anonymous,  
1892 Alcoholics Anonymous, or Cocaine Anonymous, if available.

1893           (d) If the person has been previously convicted of three  
1894 felony violations of s. 893.13(2)(a)2., (5)(b), or (6)(a),  
1895 adjudication may not be withheld and the offender may be placed  
1896 on probation for not less than 30 months, as a condition of  
1897 which the court shall require the offender to reside at a  
1898 community residential drug punishment center for 200 days. The  
1899 offender must comply with all rules and regulations of the  
1900 center and must pay a fee for the costs of room and board and  
1901 residential supervision. Placement of an offender into a  
1902 community residential drug punishment center is subject to  
1903 budgetary considerations and availability of bed space. If the  
1904 court requires the offender to reside at a community residential  
1905 drug punishment center, the court shall also require the  
1906 offender to comply with one or more of the other following terms  
1907 and conditions:

1908           1. Pay a fine of not less than \$1,500 nor more than \$5,000  
1909 pursuant to s. 775.083(1)(c).

1910           2. Enter, regularly attend, and successfully complete a  
1911 prescribed substance abuse treatment program provided by a  
1912 treatment resource licensed pursuant to chapter 397 or by a  
1913 hospital licensed pursuant to chapter 395, as specified by the  
1914 court. In addition, the court may refer the offender to a  
1915 licensed agency for substance abuse evaluation and, if  
1916 appropriate, substance abuse treatment subject to the ability of  
1917 the offender to pay for such evaluation and treatment. If such

HB 1815

2004  
CS

1918 referral is made, the offender must comply and must pay for the  
1919 reasonable cost of the evaluation and treatment.

1920 3. Perform at least 200 hours of public service.

1921 4. Submit to routine and random drug testing which may be  
1922 conducted during the probationary period, with the reasonable  
1923 costs thereof borne by the offender.

1924 5. Participate, at his or her own expense, in an  
1925 appropriate self-help group, such as Narcotics Anonymous,  
1926 Alcoholics Anonymous, or Cocaine Anonymous, if available.

1927 (e) If the person has been previously convicted of four  
1928 felony violations of s. 893.13(2)(a)2., (5)(b), or (6)(a),  
1929 adjudication may not be withheld and the offender may be placed  
1930 on probation for not less than 36 months, as a condition of  
1931 which the court shall require the offender to reside at a  
1932 community residential drug punishment center for 360 days. The  
1933 offender must comply with all rules and regulations of the  
1934 center and must pay a fee for the costs of room and board and  
1935 residential supervision. Placement of an offender into a  
1936 community residential drug punishment center is subject to  
1937 budgetary considerations and availability of bed space. If the  
1938 court requires the offender to reside at a community residential  
1939 drug punishment center, the court shall also require the  
1940 offender to comply with one or more of the other following terms  
1941 and conditions:

1942 1. Pay a fine of not less than \$2,000 nor more than \$5,000  
1943 pursuant to s. 775.083(1)(c).

1944 2. Enter, regularly attend, and successfully complete a  
1945 prescribed substance abuse treatment program provided by a

HB 1815

2004  
CS

1946 treatment resource licensed pursuant to chapter 397 or by a  
 1947 hospital licensed pursuant to chapter 395, as specified by the  
 1948 court. In addition, the court may refer the offender to a  
 1949 licensed agency for substance abuse evaluation and, if  
 1950 appropriate, substance abuse treatment subject to the ability of  
 1951 the offender to pay for such evaluation and treatment. If such  
 1952 referral is made, the offender must comply and must pay for the  
 1953 reasonable cost of the evaluation and treatment.

1954 3. Perform at least 250 hours of public service.

1955 4. Submit to routine and random drug testing which may be  
 1956 conducted during the probationary period, with the reasonable  
 1957 costs thereof borne by the offender.

1958 5. Participate, at his or her own expense, in an  
 1959 appropriate self-help group, such as Narcotics Anonymous,  
 1960 Alcoholics Anonymous, or Cocaine Anonymous, if available.

1961 (f) An offender who violates probation imposed pursuant to  
 1962 this section shall be sentenced in accordance with s. 921.002.

1963 Section 24. This act shall take effect July 1, 2004, and  
 1964 shall apply to offenses committed on or after that date.