



Journal of the Senate

Number 2—Special Session B

Tuesday, May 25, 1993

CALL TO ORDER

The Senate was called to order by the President at 2:00 p.m. A quorum present—38:

Mr. President	Diaz-Balart	Holzendorf	Siegel
Bankhead	Dudley	Jenne	Silver
Beard	Dyer	Jennings	Sullivan
Boczar	Foley	Johnson	Thomas
Brown-Waite	Forman	Jones	Turner
Burt	Grant	Kiser	Weinstein
Casas	Grogan	Kurth	Wexler
Childers	Gutman	McKay	Williams
Crist	Harden	Meadows	
Dantzler	Hargrett	Scott	

Excused: Senators Kirkpatrick and Myers

PRAYER

The following prayer was offered by James C. Vaughn, Jr., Reading Clerk:

Merciful God, who reigns as our sovereign mother and father, as we begin another day of business, we pause to say thank you for life, health, and strength and to praise you for your bountiful love and mercy.

As these noble Senators begin another day of work on behalf of the citizens of Florida, may they be reminded that, a vision without a task is but a dream; a task without a vision is simply drudgery, but a vision and a task requires each individual to march forward to the drumbeat that beats to the syncopated cadence of spirit and soul, thereby producing a symphony of hope.

In the Beneficent Name of Allah, Asalaam Alakim.

PLEDGE

Senator Siegel led the Senate in the pledge of allegiance to the flag of the United States of America.

COMMUNICATION

The Honorable Ander Crenshaw, President
The Florida Senate

May 24, 1993

Dear Mr. President:

In compliance with Article III, Section 19(d) of the Constitution and Joint Rule 2, copies of CS for SB 8-B have been furnished to each member of the Legislature, each member of the Cabinet, the Governor, and the Chief Justice of the Supreme Court.

Delivery was completed May 24, 1993 at 6:48 p.m.

Respectfully submitted
Joe Brown
Secretary of the Senate

MOTIONS RELATING TO COMMITTEE REFERENCE

On motions by Senator Scott, by two-thirds vote **Senate Bills 2-B** and **44-B** were withdrawn from the Committee on Appropriations.

On motion by Senator Jennings, by two-thirds vote **SB 42-B** was referred to the Committee on Rules and Calendar.

On motions by Senator Jennings, by two-thirds vote **SB 22-B** was withdrawn from the Committee on Rules and Calendar and referred to the Committee on Commerce.

MOTIONS

On motions by Senator Jennings, the rules were waived and by two-thirds vote **SB 10-B**, **SM 4-B**, **SB 2-B**, **SB 26-B** and **SB 44-B** were established as the Special Order Calendar for this day.

Senator Jennings moved that all bills presented for introduction outside the call of the Special Session be referred to the Committee on Rules and Calendar for examination and recommendation. The motion was adopted.

SPECIAL ORDER

SB 10-B—A bill to be entitled An act relating to license plates; amending s. 320.06, F.S.; removing the county name from license plates and replacing it with the words "The Sunshine State"; providing that a license plate issued for a for-hire motor vehicle may not contain any distinguishing character or designation that identifies the vehicle as a for-hire motor vehicle; requiring the replacement of certain license plates previously issued with such distinguishing character or designation; prohibiting the display of any indicia of ownership on a rental motor vehicle; providing a penalty; providing an effective date.

—was read the second time by title.

The Committee on Transportation recommended the following amendment which was moved by Senator Forman and adopted:

Amendment 1—On page 2, line 25, strike "September 15" and insert: July 31

The Committee on Transportation recommended the following amendment which was moved by Senator Forman:

Amendment 2 (with Title Amendment)—On page 3, strike lines 4-9, and renumber subsequent section

And the title is amended as follows:

In title, on page 1, strike lines 12-14, and insert: character or designation; providing

Senator Jenne moved the following substitute amendment:

Amendment 3—On page 3, strike lines 4-10, and insert:

Section 3. Effective July 31, 1993, a rental car agency may not attach to any of its for-hire motor vehicles, other than a motor vehicle designed primarily to transport cargo, any indicia of ownership that are visible from outside the vehicle and that identify it as a for-hire vehicle. A rental car agency that leases a motor vehicle that is found to be in violation of this section shall be punished by a fine of \$500 per occurrence.

Senator Jones moved the following amendment to **Amendment 3** which was adopted:

Amendment 3A—On page 1, line 15, after "any" insert: permanent or semi-permanent

Senator Weinstein moved the following amendment to **Amendment 3** which was adopted:

Amendment 3B—On page 1, line 13, after "vehicles" insert: that are registered in Florida

Amendment 3 as amended was adopted.

Senator Diaz-Balart moved the following amendment which was adopted:

Amendment 4—On page 3, between lines 9 and 10, insert:

Section 4. The Department of Highway Safety and Motor Vehicles may deplete the existing inventory of license plates that have county designations before issuing license plates that replace the county designations with the words "The Sunshine State."

(Renumber subsequent section.)

On motion by Senator Forman, by two-thirds vote **SB 10-B** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—37 Nays—None

SM 4-B—A memorial to the Congress of the United States urging Congress to propose an amendment to the Fair Labor Standards Act of 1938 to specify that inmates participating in certain correctional work programs are excluded from the application of that act.

WHEREAS, under the Fair Labor Standards Act of 1938, the definition of the term "employee" does not specifically include any inmate of a penal or correctional institution, and

WHEREAS, a number of federal lawsuits are underway which argue that prisoners working in correctional work programs are employees under the Fair Labor Standards Act of 1938, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

That the Congress of the United States is urged to amend the Fair Labor Standards Act of 1938 to provide that an inmate who is participating in a correctional work program sanctioned by a state or federal corrections agency or administered by a nonprofit corporation authorized by state law to conduct a correctional work program on behalf of the state is not considered an employee for the purposes of that act.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

—was read the second time in full. On motion by Senator Dantzler, **SM 4-B** was adopted and certified to the House. The vote on adoption was:

Yeas—37 Nays—None

SB 2-B—A bill to be entitled An act relating to corrections; amending s. 948.51, F.S.; providing for certain felony offenders to be placed in county correctional facilities as a condition of probation; requiring a contract between the chief county correctional officer and the Department of Corrections before any such offender is placed in the custody of the county; amending s. 775.08, F.S., relating to classes and definitions of offenses; exempting certain felony offenders from commitment to a state correctional facility; amending ss. 944.02, 951.23, F.S., relating to the state correctional system and county and municipal detention facilities; conforming definitions to changes made by the act; providing for construction of laws enacted at the 1993 Regular Session in relation to this act; providing an effective date.

—was read the second time by title. On motion by Senator Burt, by two-thirds vote **SB 2-B** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35 Nays—None

SB 26-B—A bill to be entitled An act relating to corrections; amending s. 775.084, F.S.; deleting the exemption from consideration for parole and control release provided for persons sentenced as habitual felony offenders; amending s. 893.13, F.S.; revising certain prohibited acts with respect to possessing controlled substances in the vicinity of a school; deleting the exemption from consideration for parole and control release provided for persons convicted of such a crime; amending s. 947.146, F.S.;

increasing the threshold capacity of the state correctional system above which inmates are released under control release by the Control Release Authority; providing that an inmate may not receive control release award allotments before he is statutorily eligible for control release or before the date his advanceable control release date is established; deleting certain prerequisites for the award of provisional credits by the Secretary of Corrections; providing for certain persons convicted of drug trafficking offenses and sentenced to less than a specified term of imprisonment to be eligible for control release; providing for certain persons sentenced as habitual felony offenders to be eligible for control release; excluding certain persons from control release consideration; providing for the emergency release of inmates in the state correctional system; increasing the threshold capacity of the correctional system above which inmates must be granted emergency release; providing for the award of emergency control release to certain inmates who are ineligible for parole; providing for suspension of emergency control release dates; providing for future abrogation of certain amendments to s. 947.146, F.S.; providing that certain offenders who are eligible for control release may be released into supervision; providing for critical depletion transfers of certain offenders; providing for the expiration of such provisions; requiring the Control Release Authority to develop uniform procedures for awarding control release to certain habitual offenders; repealing s. 944.277, F.S., relating to provisional release credits; repealing s. 944.598, F.S., relating to the emergency release of inmates; creating s. 921.0017, F.S.; requiring the court to order credit for time served without considering gain-time earned for certain recommitted offenders; providing effective dates.

—was read the second time by title.

The Committee on Corrections, Probation and Parole recommended the following amendments which were moved by Senator Siegel and adopted:

Amendment 1—On page 16, strike all of line 21, and insert:

(10) *The authority shall adopt as a standard condition for all persons released pursuant to this section that such persons shall not commit a violation which constitutes a felony.* The authority shall determine the appropriate

Amendment 2 (with Title Amendment)—On page 29, between lines 18 and 19, insert:

Section 10. Section 944.278, Florida Statutes, is created to read:

944.278 Cancellation of administrative gain-time and provisional credits.—All awards of administrative gain-time under s. 944.276 and provisional credits under s. 944.277 are hereby cancelled for all inmates serving a sentence or combined sentences in the custody of the department, or serving a state sentence in the custody of another jurisdiction. Release dates of all inmates with 1 or more days of such awards shall be extended by the length of time equal to the number of days of administrative gain-time and provisional credits which were cancelled. Inmates who are out of custody due to an escape or a release on bond, or whose post-release supervision is revoked on or after the effective date of this act, shall have all administrative gain-time and provisional credits cancelled when the inmate's release date is reestablished upon the return to custody.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 2, line 24, after the semicolon (;) insert: creating s. 944.278, F.S.; cancelling all administrative gain-time and provisional credits;

Amendment 3 (with Title Amendment)—On page 29, between lines 18 and 19, insert:

Section 10. Chapter 957, Florida Statutes, consisting of sections 957.01, 957.02, 957.03, 957.04, 957.05, 957.06, 957.07, 957.08, 957.09, 957.10, 957.11, 957.12, 957.13, 957.14, 957.15, 957.16, 957.17, 957.18, 957.19, 957.20, 957.21, 957.22, 957.23, 957.24, 957.25, 957.26, 957.27, 957.28, and 957.29, is created to read:

Chapter 957

SPECIAL CORRECTIONS DISTRICTS

957.01 Short title.—This chapter may be cited as the “Special Corrections District Act.”

957.02 Definitions.—As used in this chapter, the term:

- (1) “Department” means the Department of Corrections.
- (2) “District corrections commission” means the governing board of a special corrections district.
- (3) “District corrections system” means all district detention and rehabilitation centers established under the jurisdiction of the special corrections districts created in this chapter.

(4) “District detention and rehabilitation center” means any local prison, road camp, prison industry, prison forestry camp, prison farm, halfway facility, drug rehabilitation facility, or other corrections facility, temporary or permanent, in which district felony offenders are housed, worked, or maintained under the custody and jurisdiction of a special corrections district. This term also includes a regional jail as described in s. 950.001.

(5) “District felony offender” means a person who:

(a) Is committed, as a condition of probation or community control, to a district detention and rehabilitation center for a period of 11 months and 29 days upon sentencing for a felony or felonies of the third degree, other than a sex offense, and who:

1. Has not been previously convicted of a first degree, life, or capital felony.
2. Has not been previously convicted of sexual battery or attempted sexual battery or of any sex offense involving a child.
3. Has not been previously convicted of escape or attempted escape.
4. Has not been previously convicted of a drug offense other than a drug offense that is a felony of the third degree.
5. Has not been previously committed to a district detention and rehabilitation center.
6. Is not, at the time of sentencing, serving a period of incarceration in another jurisdiction.

(b) Is committed, as a condition of probation or community control, to a district detention and rehabilitation center for a period of 11 months and 29 days upon sentencing for a felony or felonies of the second degree, other than a sex offense, and who:

1. Has not been previously convicted of a first degree, capital, or life felony.
2. Has not been previously convicted of sexual battery or attempted sexual battery or of any sex offense involving a child.
3. Has not been previously convicted of escape or attempted escape.
4. Has not been previously convicted of a drug offense other than a drug offense that is a felony of the third degree.
5. Has not been previously committed to a district detention and rehabilitation center.
6. Is not, at the time of sentencing, serving a period of incarceration in another jurisdiction.

(6) “Secretary” means the Secretary of Corrections.

957.03 Declaration of policy; applicability.—

(1) The Legislature hereby reaffirms that the corrections policy of the state is to punish and to rehabilitate the criminal offender.

(2) The Legislature declares it to be necessary for the public health, safety, and welfare of the people of Florida that detention and rehabilitation of certain felony offenders be delegated to special corrections districts where such offenders can be safely and more economically housed and maintained in facilities acquired or constructed for that purpose as an alternative to commitment to department facilities.

(3) The people of this state have repeatedly voiced their concern about the early release of serious and violent felony offenders, a concern which is shared by the Legislature. Lack of bed space to house felons sentenced in the state in unprecedented numbers has resulted in an undermining of corrections policy in the state so that punishment and rehabilitation now seem only incidental to other considerations.

(4) The Legislature finds a compelling need to address the matter of corrections in this state on both a short-term and a long-term basis. Prison overcrowding has reached a point of crisis, and many inmates are being released after serving only a fraction of the sentence lawfully imposed upon them. Any long-term solution to the state’s corrections woes demands new approaches and bold initiatives.

(5) Historically, over one-third of all felony commitments to the state correctional system have been persons convicted of felonies of the type committed by the target inmate population denominated as district felony offenders. These offenders are distinctive both correctionally and criminally from other felons, warranting detention and rehabilitation facilities that differ from traditional department facilities geographically, physically, operationally, administratively, and programmatically. Alternative commitment of district felony offenders will enable the state to devote more resources and effort to punishing and rehabilitating more serious felony offenders.

(6) The Legislature finds that the special corrections district detention and rehabilitation centers established pursuant to this chapter will serve a local purpose, in that they will be used to house target offenders from the special corrections districts. These offenders will have enhanced opportunities for rehabilitation by virtue of being closer to their families, friends, employment, and other support groups. Additionally, it is noted that such proximity between offender and family, friends, employers, and support groups affords corrections officials with a powerful management tool in dealing with such offenders. In many instances, these offenders may continue to work at their present jobs due to the proximity of district detention centers. The opportunities for restitution and the ability of such offenders to contribute to the cost of their incarceration and rehabilitation will therefore be augmented. The county or counties comprising each special corrections district will also benefit from such facilities by having a pool of low-risk inmates available for public works.

957.04 Creation of special corrections districts.—The state is divided into 20 special corrections districts, as follows:

(1) The first special corrections district is composed of Escambia, Okaloosa, Santa Rosa, and Walton Counties.

(2) The second special corrections district is composed of Leon, Gadsden, Jefferson, Wakulla, Liberty, and Franklin Counties.

(3) The third special corrections district is composed of Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, and Taylor Counties.

(4) The fourth special corrections district is composed of Clay, Duval, and Nassau Counties.

(5) The fifth special corrections district is composed of Citrus, Hernando, Lake, Marion, and Sumter Counties.

(6) The sixth special corrections district is composed of Pasco and Pinellas Counties.

(7) The seventh special corrections district is composed of Flagler, Putnam, St. Johns, and Volusia Counties.

(8) The eighth special corrections district is composed of Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties.

(9) The ninth special corrections district is composed of Orange and Osceola Counties.

(10) The tenth special corrections district is composed of Hardee, Highlands, and Polk Counties.

(11) The eleventh special corrections district is composed of Dade County.

(12) The twelfth special corrections district is composed of Manatee, Sarasota, and DeSoto Counties.

(13) The thirteenth special corrections district is composed of Hillsborough County.

(14) The fourteenth special corrections district is composed of Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties.

(15) The fifteenth special corrections district is composed of Palm Beach County.

(16) The sixteenth special corrections district is composed of Monroe County.

(17) The seventeenth special corrections district is composed of Broward County.

(18) The eighteenth special corrections district is composed of Brevard and Seminole Counties.

(19) The nineteenth special corrections district is composed of Indian River, Martin, Okeechobee, and St. Lucie Counties.

(20) The twentieth special corrections district is composed of Charlotte, Collier, Glades, Hendry, and Lee Counties.

957.05 District corrections commission; term of office; vacancies; requirements; removal from office.—

(1) The governing board of each special corrections district shall be a district corrections commission composed of five members who reside within the district. The terms of office for members of a district corrections commission shall be 4 years; however, three members of each initial commission shall serve terms of 4 years and two shall serve terms of 2 years. Each term of office commences on March 2 of the year of appointment and terminates March 1 of the year of the end of a term.

(2) Members of a district corrections commission shall be appointed by the Governor in consultation with the Secretary of Corrections.

(3) A member of a district corrections commission whose term of office expires may be reappointed, and a vacancy occurring on the commission prior to the expiration of the affected term shall be filled for the unexpired term.

(4) The Governor may remove from office any member of a district corrections commission for cause.

957.06 Members of district corrections commission; oath of office; staff.—

(1) Each member of a district corrections commission, before entering upon his or her official duties, shall take and subscribe to an oath, before an officer authorized by law to administer oaths, that he or she will honestly, faithfully, and impartially perform the duties of that office.

(2) Immediately after appointment, and every 2 years thereafter, members of a district corrections commission shall meet at a convenient place and choose one of their number as chairperson of the commission and a suitable person, who need not be a member of the commission and who may be required to execute bond for the faithful performance of his or her duties, as the district corrections commission may determine, as secretary. Such district corrections commission shall adopt a seal with a suitable device and shall keep a well-bound book entitled, in effect, "Record of the District Corrections Commission of the Special Corrections District," in which shall be recorded minutes of all meetings, resolutions, proceedings, bonds given by all employees, certificates, and any and all corporate acts, which book shall at reasonable times be open to public inspection.

(3) The chairperson and members of the district corrections commission shall receive no compensation for services as such; but, while officially on work for the special corrections district, they shall receive actual traveling expenses between their respective places of residence and the place where official district business is conducted and actual subsistence, lodging, and other expenses. These expenses may not exceed the amount allowed state officers and employees as provided in s. 112.061.

(4)(a) Each district corrections commission shall select and employ a chief corrections officer from a list of at least three applicants or nominees approved by the secretary.

(b) After considering recommendations submitted by the chief corrections officer, each district corrections commission shall provide for the appointment, employment, and removal of personnel. The commission shall determine the compensation, including salaries and fringe benefits, and other conditions of employment for such personnel, including the chief corrections officer. Personnel employed by each district corrections

commission are "public employees" as that term is defined by law and shall be entitled to the same benefits, entitlements, and protection given by law to their counterparts employed by the department.

(c) In employing and retaining personnel whose duties primarily involve day-to-day contact with district felony offenders, preference shall first be given to department employees who may be displaced as a result of the establishment of the facilities contemplated in this chapter and thereafter to persons with prior corrections experience at either the local or state level.

(d) Any internal auditor employed by a special corrections district shall be hired by the district corrections commission and shall report directly to that body. A copy of any written report requested of or prepared by such internal auditor shall be furnished to the secretary at the time of its submission.

(5) The district corrections commission may employ a legal staff for the purpose of:

(a) Providing legal counsel on matters relating to the exercise of its powers and duties.

(b) Representing it in all administrative or judicial proceedings.

(c) Otherwise assisting in the administration of this chapter.

(6) By resolution, the district corrections commission may determine the location of its principal office and provide for the change thereof.

(7) The district corrections commission shall meet at least once each month and upon call of the chairperson.

957.07 General powers and duties of district corrections commissions.—Each district corrections commission is vested with the responsibility to operate its district corrections system and with such necessary authority as may be needed for the proper operation thereof pursuant to law and rules of the department. In addition to its other powers and duties, each district corrections commission is authorized to:

(1) Contract with other public agencies, private corporations, or other persons; sue and be sued; and, pursuant to law, appoint and remove agents and employees, including specialists and consultants.

(2) Issue orders to implement or enforce any provision of this chapter or rule adopted hereunder.

(3) Make surveys and investigations of the available land resources within the district for institutional siting and cooperate with other governmental agencies in similar activities.

(4) Adopt, promulgate, and enforce such rules as may be reasonably necessary to effectuate its powers, duties, and functions pursuant to chapter 120.

957.08 Specific powers and duties of district corrections commissions.—In addition to the general powers under s. 957.07, each district corrections commission is authorized to:

(1) Acquire by donation or lease or condemn any land, public or private, needed to site, construct, or expand any district detention and rehabilitation center; remove any building or other obstruction necessary for the construction, maintenance, and operation of any such facility; and hold and have full control over such facilities in the district. Eminent domain powers may be used only for acquiring real property for actual facility siting. With respect to acquiring facilities to house district felony offenders, the Legislature directs the following:

(a) In order to spare the state the costs involved in leasing existing facilities or facilities to be constructed to house such offenders, the district corrections commission shall first endeavor to acquire from the department or another federal, state, or local governmental agency or entity either unused or underutilized existing facilities of a type suitable for the use intended in this chapter at no cost to the state except costs entailed in renovating such facilities.

(b) If no such facilities are available within the district, the district corrections commission shall lease, at a reasonable unit cost, existing facilities suitable for district needs. To assist the commissions in determining a "reasonable" unit cost, the Legislature declares that such figure should bear a reasonable relation to the unit cost then expended by the state to lease beds at existing probation and restitution centers operated by the department. Such cost figures shall be made available by the department at the request of the commissions.

(c) If the district corrections commission determines that no suitable facilities then exist within the district to house district felony offenders, it shall enter into lease agreements with private entrepreneurs to construct suitable facilities on property either owned by the state or privately owned and leased to the commission at a reasonable unit cost as described in paragraph (b). It is the intent of the Legislature that the district corrections commission lease rather than own the facilities contemplated in this chapter unless such facilities are located on property already owned by the state or have been donated for that purpose as provided in paragraph (a).

(d) In determining where to site district facilities to be leased, the district corrections commission shall consider the following criteria:

1. Current and future estimates of offenders originating from the district.
2. The availability of personnel within the district labor market.
3. The total usable and developable acreage of the site, based upon the use and purpose of the facility.
4. The accessibility of the site to existing utility, transportation, law enforcement, health care, fire protection, refuse collection, and water and sewage disposal services.
5. The susceptibility of the site to flooding hazards or other adverse environmental consequences.
6. Site location in relation to desirable and undesirable proximity to other public facilities, including schools, colleges, and area vocational-technical centers.
7. The job opportunities available within the district.
8. Patterns of residential growth and projected population growth.
9. Such other criteria as the commission deems appropriate.

(e) When the district corrections commission proposes a site for a district detention and rehabilitation center, it shall request that the local government having jurisdiction over the proposed site determine whether the proposed use of the site is in compliance with local government comprehensive plans, local land use ordinances, local zoning ordinances or regulations, and other local ordinances in effect at the time of such request. If no such determination is made within 90 days after the request, it shall be presumed that the proposed use of the site is in compliance with such plans, ordinances, or regulations.

(f) If the local government determines within 90 days after the request that lease or construction of a district detention and rehabilitation center at the proposed location does not comply with any such plan, ordinance, or regulation, the district corrections commission may request a modification of the plan, ordinance, or regulation without having an ownership interest in the property. For the purposes of this paragraph, modification includes, but is not limited to, a variance, rezoning, special exception, or other action of the local government having jurisdiction over the proposed site which would authorize siting of a center.

(g) Upon receipt of a request for modification from the commission, the local government may recommend alternative sites to the commission and shall give notice and hold a public hearing on the request for modification in the same manner as for a rezoning, except that the proceeding shall be recorded by tape or by a certified court reporter and made available for transcription at the expense of an interested party.

(h) When the commission requests such a modification and it is denied by the local government or there is no action on the request within 90 days after it is made, the commission may appeal the decision of the local government or its failure to act to the Governor and Cabinet, sitting as the Special Corrections Adjudicatory Board.

(i) The Special Corrections Adjudicatory Board shall consider the following when determining whether to grant the appeal:

1. The record of the proceedings before the local government.
2. Reports and studies by any other agency relating to matters within the jurisdiction of such agency, which matters may be potentially affected by the proposed site.

(j) The Special Corrections Adjudicatory Board, upon determining that the local government has recommended no feasible alternative site

and that the interest of the state in providing corrections facilities outweighs the concerns of the local government, shall authorize leasing or construction and operation of a district detention and rehabilitation center on the proposed site, notwithstanding any local plan, ordinance, or regulation.

(k) The Special Corrections Adjudicatory Board may adopt rules of procedure to govern these proceedings in accordance with s. 120.54.

(l) Actions taken by the district corrections commission or the Special Corrections Adjudicatory Board pursuant to this section are not subject to ss. 120.56 and 120.57. The decision by the Special Corrections Adjudicatory Board is subject to judicial review pursuant to s. 120.68 in the District Court of Appeal, First District.

(m) Insofar as the provisions of this section are inconsistent with any other general or special laws, the provisions of this section are controlling, and the criteria and procedures set forth in this section supersede and are in lieu of any review and approval required by s. 380.06.

957.09 Rules.—

(1) Each district corrections commission shall adopt rules, subject to review under s. 957.10, governing the administration of the district corrections system and the operation of the district, which rules shall relate to:

- (a) The rights of inmates.
- (b) The rules of conduct to be observed by inmates and the categories of inmate violations according to degrees or levels of severity, as well as the degrees of punishment applicable and appropriate to such violations.
- (c) Disciplinary procedures and punishment.
- (d) Grievance procedures, which must conform to Title 42 U.S.C. s. 1997e.
- (e) The operation and management of the district's detention and rehabilitation centers and their personnel and functions.
- (f) The development of a staffing formula for security positions in its residential facilities, taking into account the factors of leave time, security needs, and training requirements.
- (g) Mail to and from special corrections facilities.
- (h) Uniforms for inmates and custodial personnel.
- (i) Rules of conduct for custodial and other personnel.
- (j) Classification of personnel and duties assigned thereto and classification and separation of offenders according to age, sex, offense, and such other factors as are deemed advisable.
- (k) Payments to inmates for work performed. Such payments, if any, shall include restrictions on the use of earnings, including payments for support of dependents and release reserves. The rule shall provide that payment shall not be made to any inmate who fails to satisfactorily perform the work assigned.

(l) The collection and enforcement of restitution orders entered by the court against the inmates.

(m) Visiting hours and privileges.

(n) The feeding of inmates, including diet and menus, and the furnishing of health and comfort items to indigent inmates.

(o) Such other rules as may be necessary for the efficient operation and management of the special corrections district system.

(2) It is the duty of the officer in charge of each district detention and rehabilitation center to supervise the governance, discipline, and policies of the facility and to enforce all orders and rules.

(3) Each special corrections district shall keep a record of violations of rules of conduct, the rule or rules violated, the nature of punishment administered, the authority ordering such punishment, the duration of time during which the inmate was subjected to punishment, and the condition of the inmate's health.

957.10 Department review of district rules.—The department has the exclusive authority to review rules of the special corrections districts to ensure consistency with the state corrections policy as set forth in the

rules of the department. Within 30 days before adoption or revision of any special corrections district rule, the department shall review, and may approve, the proposed rule pursuant to this section.

(1) If, upon review, the department finds a proposed rule to be inconsistent with state corrections policy, it shall make recommendations for changes in the proposed rule in writing to the district proposing the rule. Upon receipt of the department's recommendations, the district shall endeavor to adopt or include the changes, or provide reasons in writing why it is unable or unwilling to do so.

(2) The department has standing to initiate a proceeding under s. 120.56 to challenge the validity of any rule or proposed rule of a district on the grounds that the rule or proposed rule is inconsistent with state corrections policy.

957.11 Maintenance of actions.—The department and the district corrections commission of any special corrections district are authorized to commence and maintain actions and proceedings in any court of competent jurisdiction. Such actions may be for, but are not limited to, the following purposes:

(1) To enforce a rule or order adopted or issued pursuant to this chapter.

(2) To enjoin or abate violations of this chapter.

(3) To defend all actions and proceedings involving powers and duties of the special corrections districts.

957.12 Commission to adopt budget.—

(1) The chief corrections officer of each special corrections district shall recommend to the district corrections commission a budget of income and expenditures at such time and in such form as the department may prescribe. Upon approval of a budget by the corrections commission, the budget shall be transmitted to the department for review and approval. When approved by the department, the budget shall be included as part of the comprehensive departmental summary budget document required by s. 20.315(13) to be submitted biennially to the Legislature.

(2) Rules of the department shall prescribe procedures for effecting budget amendments subsequent to the final approval of a budget for a given year.

957.13 Award to employee for meritorious service.—A district corrections commission may adopt and implement a program of meritorious service awards for district employees who make proposals that are implemented and result in reducing district expenditures or improving district operations, who make exceptional contributions to the efficiency of the district, or who make other improvements in the operations of the district. An award granted under this section may not exceed \$2,000 or 10 percent of the first year's savings, whichever is less, unless a larger award is made by the Legislature. Awards shall be paid by the district from any available funds.

957.14 Group insurance for special corrections districts.—Each district corrections commission is authorized to provide group insurance for its employees in the same manner and with the same provisions and limitations authorized for other public employees by ss. 112.08, 112.09, 112.10, 112.11, and 112.14.

957.15 Enforcement; city and county officers to assist.—It is the duty of every state and county attorney, sheriff, police officer, and other appropriate city and county official, upon request, to assist a district corrections commission in the enforcement of this chapter and the rules adopted and orders issued under this chapter.

957.16 Penalties.—Any person who violates any provision of this chapter or any rule adopted or order issued pursuant to this chapter commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

957.17 Unlawful damage to district property or facilities; reward.—A district corrections commission is authorized to offer and pay rewards of up to \$1,000 to any person furnishing information leading to the arrest and conviction of any person who has committed an unlawful act upon the rights-of-way, land, or land interests of the district or who has destroyed or damaged district properties or facilities. The department and the commission may bring an action to recover a civil penalty for each offense in an amount not to exceed \$10,000. Each date upon which an offense occurs constitutes a separate offense.

957.18 Liberal construction.—The provisions of this chapter shall be liberally construed in order to effectively carry out its purposes.

957.19 Commitments and classification; transfers.—

(1) Notwithstanding any other provision of law, in lieu of committing any offender described in s. 957.02(5)(a) to the state prison system, the trial court shall place or continue the offender on a period of probation or community control conditioned in whole or in part upon service by the offender of a period of 11 months and 29 days in a district detention and rehabilitation center located in the special corrections district from which the offender was sentenced.

(2) Notwithstanding any other provision of law, the trial court may place or continue any offender described in s. 957.02(5)(b) on a period of probation or community control conditioned in whole or in part upon the service of a period of 11 months and 29 days in a district detention and rehabilitation center located in the special corrections district from which the offender was sentenced.

(3) No person shall be committed to a district detention and rehabilitation center as a condition of probation or community control unless the person has previously been placed on a period of probation or community control without imposition of such condition.

(4) An offender committed to the custody of the special corrections district shall be delivered to the custody of the district at a reception and classification center provided for this purpose. Thereafter, the offender shall be assigned to an institution, facility, or program in accordance with the district's classification scheme.

(5) The districts shall design and supply to the clerk of the circuit court a uniform commitment form to be completed by the clerk and used in the issuing of commitments of all offenders sentenced in their respective courts. The district shall adopt the uniform judgment and sentence forms as promulgated by the Supreme Court in Rule 3.986, Florida Rules of Criminal Procedure.

(6) A district shall refuse to accept an offender into a district detention and rehabilitation center unless the following documents are presented in completed form by the sheriff or his designated representative to the officer in charge of the reception process:

(a) The uniform commitment and judgment and sentence forms described in subsection (5).

(b) The sheriff's certificate described in s. 921.161.

(c) A certified copy of the charging document relating to the offense for which the person was sentenced. The officer who has the offender in his or her charge shall also deliver, with the documents described in this paragraph and paragraphs (a) and (b), any available presentence investigation report as described in s. 921.231 and any attachments thereto.

(7) Pursuant to such rules as it adopts, a special corrections district may transfer inmates intradistrict from one facility to another and, with the approval of the sentencing court, may transfer any inmate sentenced in such district to the district in which the inmate's place of residence is located. The district may classify and reclassify inmates as circumstances may require.

(8) If an inmate's presence is required in court for any reason after the sheriff has relinquished custody to the district, the court shall issue an order for the sheriff to assume temporary custody and transport the inmate to the county jail pending the court appearance. The sheriff or his designated representative shall present a copy of the order to the appropriate officer at the district detention and rehabilitation center housing the inmate before assuming temporary custody of the inmate. It is the responsibility of the clerk of the circuit court to provide the district with certified copies of each court action that affects a district inmate.

957.20 Compliance with educational and vocational goals and policies.—

(1) Each special corrections district shall comply with the goals and policies outlined in s. 242.68 to ensure that corrections, education, and vocational programs are in accord with the public policies, goals, and objectives of the state. The following order of priority shall be observed:

(a) Providing each inmate with the opportunity to achieve functional literacy, specifically the ability to read and write the English language and the ability to perform routine mathematical calculations.

(b) Provide every inmate who has demonstrated the intellectual capacity to benefit therefrom with the opportunity to obtain the equivalent of a public high school education. Inmates who wish to receive a standard high school diploma shall be required to meet the graduation requirements provided in ss. 232.246 and 232.247. The highest priority in achieving this goal shall be focused on those facilities within the district housing youthful offenders as defined in chapter 958.

(c) Ensuring that every inmate participating in a rehabilitation program shall possess at least entry-level marketable vocational skills in one or more occupational fields for which there is a demonstrable demand in the economy of this state or the district.

(d) Ensuring that each inmate participating in a rehabilitation program possesses sufficient life management skills to function successfully in a free society.

(e) Providing the training and the fundamentals of physical education and personal health as an integral part of all academic and vocational educational programs, including instruction in personal hygiene, general health, and the importance of rules of discipline in athletic contests. Regular vigorous physical exercise shall be emphasized in those facilities housing youthful offenders as defined in chapter 958.

(f) Providing inmates with a comprehensive counseling program related to alcohol and substance abuse.

(2) Each district detention and rehabilitation center shall ensure that each inmate who lacks basic and functional literacy skills as defined in s. 228.0713 attends not fewer than 150 hours of sequential instruction in an adult basic education program. The basic and functional literacy level of an inmate shall be determined by the average composite test score obtained on a test approved by the state board of education.

(a) Upon completion of the 150 hours of instruction, the inmate shall be retested, and, if a composite test score of functional literacy is not attained, the district shall require the inmate to remain in the instructional program.

(b) Highest priority of inmate participation shall be focused on youthful offenders.

(c) An inmate shall be required to attend the 150 hours of adult basic education instruction unless the inmate:

1. Is specifically exempted for health reasons;
2. Attains a functional literacy level after attendance of less than 150 hours of adult basic education instruction; or
3. Is unable to enter such instruction because of insufficient facilities, staff, or classroom capacity.

(d) Classes shall be provided after normal working hours to accommodate those inmates assigned to correctional or public work programs or participating in a work release program.

(3) To provide the educational, vocational, and rehabilitation programs contemplated in this chapter, the district corrections commission is authorized to contract with any public community college, area vocational-technical center, or district school board within the special corrections district. Whenever practical, preference in the contracting for educational and vocational services shall be given to public community colleges, particularly those which operate a vocational-technical education component. Additionally, the commission may contract with private individuals or entities to provide such services to district felony offenders.

(4) As part of the reception and classification process, an educational, vocational, and rehabilitation needs assessment profile shall be prepared on each district felony offender committed to the district, and an individualized program shall be tailored to meet the inmate's needs. The affected inmates shall participate in the development of such program and shall thereafter exert every effort to achieve the goals of the program. Unexcused failure or refusal of an inmate to participate in the development and carrying out of such rehabilitation program shall constitute a violation of probation or community control and be dealt with in accordance with s. 957.26.

957.21 Extension of the limits of confinement; reimbursement and restitution by employed inmates; disbursement of earnings of employed inmates.—

(1) The district corrections commission is authorized to adopt rules permitting the extension of the limits of the place of confinement of an inmate as to whom there is reasonable cause to believe that he or she will honor his or her trust by authorizing him or her, under prescribed conditions and with approval of the officer in charge of the facility, who shall maintain a written record of such action, to leave the confines of that place unaccompanied by a custodial officer for a prescribed period of time to:

(a) Visit, for a specified period, a specially designated place or places;

1. For the purpose of visiting a dying relative, attending the funeral of a relative, or arranging for employment or for a suitable residence for use when released,

2. To otherwise aid in the rehabilitation of the inmate; or

3. For another compelling reason consistent with the public interest.

(b) Work at paid employment, participate in an education or training program, or voluntarily serve a public or nonprofit agency in the community, while continuing as an inmate of the facility in which he or she is confined, except during the hours of his or her employment, education, training, or service and traveling thereto and therefrom.

(c) Participate in a residential or nonresidential rehabilitative program operated by a public or private, nonprofit agency with which the district has contracted for the treatment of the inmate. The provisions of ss. 216.311 and 287.057 apply to all contracts between the district and any private entity providing such services. The district shall require such agencies to provide appropriate supervision of inmates participating in the program. The district is authorized to terminate an inmate's participation in the program if the inmate fails to demonstrate satisfactory progress in the program, as established by district rules.

(2) The district may adopt rules as to the eligibility of inmates for the extension of confinement, the disbursement of any earnings of the inmates, or the entering into of agreements between itself and any municipal, county, or federal agency for the housing of the inmates in a local place of confinement.

(3) The willful failure of an inmate to remain within the extended limits of his or her confinement or to return within the time prescribed to the place of confinement designated by the district shall be deemed an escape from the custody of the district, punishable as prescribed by law.

(4) The district shall require inmates working at paid employment to use a portion of their employment wages to provide:

(a) Court-ordered restitution to the aggrieved party for the damage or loss caused by the offense of the inmate and any other court-ordered costs.

(b) Court-ordered child support and alimony payments.

(c) Reimbursement to the district to defray a portion of the cost of his or her maintenance in an amount not less than \$6 per day, which amount shall be collected by the district prior to payment of amounts paid pursuant to paragraphs (a) and (b).

(5) The district shall document and account for all forms of disciplinary reports for inmates placed on extended limits of confinement, which shall include, but not be limited to, all violations of rules of conduct, the rule or rules violated, the nature of the punishment administered, the authority ordering such punishment, and the duration of time during which the inmate was subjected to confinement.

957.22 Periodic alcohol and substance abuse testing.—There shall exist in each special corrections district a program of alcohol and substance abuse testing. All inmates committed to the custody of the special corrections district shall submit to such testing when directed to do so. Failure or refusal of an inmate to submit to such testing when directed to do so shall constitute a violation of the inmate's probation or community control and be dealt with as prescribed in s. 957.26.

957.23 Transition assistance program for special corrections districts.—It is the intent of the Legislature that, prior to the release of an inmate from a special corrections district, the inmate be possessed with certain fundamental resources in the areas of employment, life skills training, and job placement, including access to as many support services as possible in order to appreciably increase the likelihood of the inmate's successful reentry into the community.

957.24 Transition assistance coordinators; duties.—Working in conjunction with the circuit administrator of the Probation and Parole Program Office of the department, each special corrections district shall provide one or more transition assistance coordinators, whose duties include, but are not limited to:

- (1) Coordinating inmate vocational assignment within the district detention and rehabilitation center.
- (2) Coordinating delivery of transition assistance program services to the district detention and rehabilitation center.
- (3) Assisting in the development of each inmate's postrelease employment plan.
- (4) Obtaining job placement information and assisting inmates to obtain gainful prerelease and postrelease employment.

957.25 Release orientation program.—

(1) Each special corrections district, in conjunction with the Probation and Parole Program Office of the department, shall provide participation in a standardized release orientation program to every eligible inmate.

(2) The release orientation program shall consist of both prerelease and postrelease instruction, of which not fewer than 40 hours must be completed before release. This instruction shall include, but be limited to:

- (a) Employment skills.
- (b) Money management skills.
- (c) Special needs.
- (d) Community reentry concerns.
- (e) Community reentry support.
- (f) Any other appropriate instruction to ensure the inmate's successful reentry into the community.

(3) Each special corrections district shall conduct a needs assessment of every inmate to determine which, if any, basic support services the inmate needs after release.

(4) Each special corrections district is authorized to contract with public and private entities for the provision of all or part of the services required pursuant to this section.

(5) The Department of Labor and Employment Security shall assign job service staff exclusively dedicated to releasee services to those offices identified by a special corrections district as having a high number of releasees. Those offices having fewer releasees shall have designated staff assigned to assist those releasees. The Department of Labor and Employment Security shall provide appropriate training for staff assigned to assist releasees. Staff assigned to assist releasees shall use job placement information obtained at each releasee's release orientation to attempt to secure suitable employment for the releasee before the releasee's arrival. The staff assigned to releasees shall act to maximize releasees' placement opportunities in the job service office service area.

(6) The Department of Labor and Employment Security shall provide to the special corrections district data relating to inmate placement, tracking, and market needs.

957.26 Violation of probation; procedures; legislative intent.—

(1) The Legislature declares that the success of the rehabilitation programs contemplated in this chapter depends upon the determined efforts of all persons involved in such programs, particularly the inmates. To that end, it is the intent of the Legislature that these programs not be weakened by the failure or refusal of inmates to abide by special corrections district rules. While such inmates are entitled to be treated with fairness, the success of these programs, as a whole, requires that those inmates who by their words or deeds prove themselves unamenable to the opportunities afforded by these programs should be expeditiously removed from these programs before their undermining influence becomes pervasive and erodes program effectiveness.

(2) If any person committed to a district detention and rehabilitation center as a condition of probation or community control willfully refuses to participate in a rehabilitation program as directed or otherwise will-

fully refuses to abide by applicable rules of the district, such refusal shall constitute a violation of probation or community control and be dealt with in the following manner:

(a) Upon being notified by the chief corrections officer of the district or his designee that an inmate has refused to participate in district educational, vocational, or other programs as directed or has violated or refused to abide by district rules, the circuit administrator of the Probation and Parole Program Office of the department shall cause to be filed with the sentencing court, or supervising court in the event the inmate has been transferred to a corrections district other than the one in which the inmate was sentenced, a probation or community control violation affidavit citing the particulars of the violation.

(b) With the filing of the affidavit, the inmate alleged to have violated probation or community control shall be immediately removed from the detention and rehabilitation center and delivered to the county jail in the county within which the sentencing or supervising court is located, there to await a probation violation hearing.

(c) After a hearing at which the inmate is entitled to be represented by counsel, if the trial court finds that the inmate violated his or her probation or community control as alleged, the court may revoke the inmate's probation or community control and impose any sentence permitted by law except that the inmate shall not thereafter be eligible for commitment to a special district detention and rehabilitation center. An inmate committed to the state corrections system under this section shall not receive credit for time served in any special corrections district detention and rehabilitation center.

957.27 Modification of probation; release of inmate.—

(1) If, prior to the expiration of the term of his or her commitment to a special corrections district detention and rehabilitation center as a condition of probation or community control, an inmate who:

(a) Has participated in developing his or her own individualized rehabilitation program and has achieved or made a good faith effort to achieve the goals of the program;

(b) Has attained functional literacy as described in s. 957.20(1)(a);

(c) Possesses at least entry-level marketable vocational skills;

(d) Has participated in a standardized release orientation program as described in s. 957.25;

(e) Has an acceptable record of compliance with district disciplinary and other rules and participation in assigned duties; and

(f) Has acceptable postrelease employment and an approved postrelease residence;

shall be recommended by the district to the circuit administrator of the Probation and Parole Program Office of the department for release from the district detention and rehabilitation center.

(2) Upon receipt of a release recommendation by the district, the circuit administrator shall immediately recommend to the trial court that the terms of the inmate's probation or community control be modified by deleting the condition requiring the inmate's further commitment to a district detention and rehabilitation center.

(3) Promptly upon receipt of the circuit administrator's recommendation, the trial court shall delete the commitment requirement and direct that the inmate be released to the supervision of the Probation and Parole Program Office of the department to serve out the remainder of his or her term of probation or community control.

957.28 Provisions of chapters 944, 947, and 949 not applicable to district inmates.—Except as provided in this chapter, the provisions of chapters 944, 947, and 949 do not apply to district felony offenders committed to special corrections district detention and rehabilitation centers.

957.29 Pilot programs; effective dates.—

(1) The Legislature deems it advisable that the provisions of this chapter be the subject of pilot programs in selected special corrections districts. Accordingly, ss. 957.19-957.27 do not apply to the special corrections districts created by s. 957.04(1), (2), (4), and (15) until July 1, 1994, and courts may not commit an offender to one of those special corrections districts before that date.

(2) Sections 957.19-957.27 do not apply to the special corrections districts created by s. 957.04(3), (5), (7), (8), and (14) until July 1, 1995, and courts may not commit an offender to one of those special corrections districts before that date.

(3) Sections 957.19-957.27 do not apply to the special corrections districts created by s. 957.04(6), (10), (13), (18), and (19) until July 1, 1996, and courts may not commit an offender to one of those special corrections districts before that date.

(4) Sections 957.19-957.27 do not apply to the special corrections districts created by s. 957.04(9), (11), (12), (16), (17), and (20) until July 1, 1997, and courts may not commit an offender to one of those special corrections districts before that date.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 2, line 24, after the semicolon (;) insert: creating ch. 957, F.S.; creating the "Special Corrections District Act" and providing definitions, policy, and applicability; dividing the state into 20 special corrections districts; providing for district corrections commissions, including terms, membership staff, general and specific powers and duties, rulemaking, administrative procedures, department review of rules, maintenance of actions, and adoption of budget; providing for employee service awards and group insurance; providing for enforcement; providing criminal penalties for violations; providing for rewards; authorizing civil penalties; requiring liberal construction; providing for inmate commitments and classification, documentation, uniform commitment forms, and transferring and transporting of inmates; requiring compliance with educational and vocational goals and policies; providing for extension of limits of confinement, and for restitution and disbursement inmate earnings; providing for substance abuse testing; providing a transition assistance program and a release orientation program; providing intent and procedure for probation violations; providing for probation modification and inmate release; providing inapplicability of certain provisions of law; providing for pilot programs;

Senator Dantzler moved the following amendment which was adopted:

Amendment 4 (with Title Amendment)—On page 29, between lines 18 and 19, insert:

Section 10. Section 921.188, Florida Statutes, is created to read:

921.188 Retention of jurisdiction for review of control-release date.—

(1) At the time of sentencing of a defendant who is convicted of robbery; burglary of a dwelling, structure, or conveyance in which a human being is present; aggravated assault; aggravated battery; aggravated child abuse; or arson, or of a defendant who receives a minimum mandatory sentence under s. 775.0823, s. 775.087, s. 775.0875, s. 784.08, s. 790.165, s. 790.221, s. 893.135, or s. 893.20, the court may enter an order retaining jurisdiction for review of a control-release date. Retention of jurisdiction is limited to the first half of the term of imprisonment imposed. If a defendant is convicted of two or more felonies and concurrent sentences are imposed, retention of jurisdiction is limited to the first half of the maximum sentence imposed for the highest felony charged and proven. If a defendant is convicted of two or more felonies and consecutive sentences are imposed, retention of jurisdiction is limited to one-half of the total of the consecutive sentences. In retaining jurisdiction, the court shall state the justification with particularity and make the justification a part of the court record.

(2) During the period of retained jurisdiction, the Control Release Authority shall, within 6 months before control release, cease control-release advancements and send a notice of the scheduled release to the court. Within 10 working days after receipt of the notice, the court shall notify the authority as to whether or not it chooses to retain jurisdiction. If the court does not notify the authority within the 10-working-day period or if the court notifies the authority that it does not choose to retain jurisdiction, the authority may resume control-release advancements. Upon receipt of a notice of intent to retain jurisdiction, the authority shall, within 10 working days, forward to the court its supporting information upon which its control-release decision was based. Within 30 working days after receipt of the supporting information, the court shall review the documentation and notify the authority of its decision. If the court finds that release is not in the best interest of the community, the court may vacate the control-release date. If the court does not notify the authority within the 30-working-day period or if the court

notifies the authority that it will not vacate the control-release date, the authority may resume control-release advancements. The decision of the court to vacate a control-release date is not appealable, and the inmate is no longer eligible for control release during the period that the court retains jurisdiction.

(Renumber subsequent sections.)

And the title is amended as follows:

In title, on page 2, line 24, after the semicolon (;) insert: creating s. 921.188, F.S.; providing that a trial court may retain jurisdiction for review of a control release date under certain circumstances; providing a procedure;

Senator Dantzler moved the following amendment which failed:

Amendment 5 (with Title Amendment)—On page 29, between lines 18 and 19, insert:

Section 10. Section 921.26, Florida Statutes, is created to read:

921.26 Reduction of sentence of imprisonment.—Upon the recommendation of the Department of Corrections or the Control Release Authority, a circuit court may reduce a sentence for an offense committed after July 31, 1993, imposed by it, except a sentence imposed for a capital felony, at any time during the first half of the incarceration portion of the sentence.

And the title is amended as follows:

In title, on page 2, line 24, after the semicolon (;) insert: creating s. 921.26, F.S.; providing that under certain circumstances a circuit court may reduce a sentence imposed by it; providing exceptions;

Senator Foley moved the following amendment which failed:

Amendment 6—On page 5, line 13, insert: That the Department of Corrections immediately begin an active effort to deport illegal aliens currently serving sentences in Florida prisons and return them to their native countries.

Senators Silver and Holzendorf offered the following amendments which were moved by Senator Silver and adopted:

Amendment 7—On page 7, strike lines 24-26, and insert: to a minimum term of imprisonment of 3 calendar years and shall not be eligible for parole or release under the Control Release Authority pursuant to s. 947.146 or statutory gain.

The vote was:

Yeas—31 Nays—6

Amendment 8—On page 10, lines 15-17, strike "a mandatory minimum term of imprisonment of more than 5 years of a"

Amendment 9—On page 19, strike lines 5 and 6, and insert: minimum provision for a capital offense or a drug

Amendment 10—On page 26, strike line 27 through page 27, line 1, and insert:

(a) A sentence for a controlled substance offense under section 893.13(1)(i), Florida Statutes; or

(b) A sentence, or has previously served a sentence,

Senators Foley and Siegel offered the following amendment which was moved by Senator Foley and adopted:

Amendment 11—On page 29, between lines 18 and 19 insert:

Section . When the population of the state correctional system reaches 99 percent of its lawful capacity the Governor, pursuant to section 252.36, Florida Statutes, shall use his emergency powers to reduce the capacity of the state correctional system as follows: the Governor shall inform any federal jurisdiction which has a concurrent or consecutive sentence or any active detainer placed on any prisoner in the state correctional system of his intention to transfer custody to that jurisdiction within 30 days. No prisoner shall be so transferred who is convicted of a capital felony in this state nor shall any transfer take place to any county or municipal jurisdiction within the state.

On motion by Senator Siegel, by two-thirds vote **SB 26-B** as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—27 Nays—10

Consideration of **SB 44-B** was deferred.

By direction of the President, the Secretary read the following proclamation:

PROCLAMATION
State of Florida
Executive Department
Tallahassee

TO THE HONORABLE MEMBERS OF THE FLORIDA SENATE
AND THE FLORIDA HOUSE OF REPRESENTATIVES:

WHEREAS, the Thirteenth Legislature of the State of Florida, under the Florida Constitution, 1968 Revision, convened in regular session on Tuesday, February 2, 1993, and adjourned sine die on Sunday, April 4, 1993, and

WHEREAS, by proclamation of the Governor dated May 13, 1993, the Florida Legislature was called into special session to consider legislation authorizing the construction of additional prison capacity within the state correctional system and legislation appropriating monies sufficient to fund such prison expansion as well as other issues as specified within that proclamation, and

WHEREAS, the damage resulting from Hurricane Andrew has prompted the insurance industry in Florida to propose substantial cancellation or non-renewals of homeowner insurance policies, and

WHEREAS, it is appropriate to provide a moratorium period to protect Florida's homeowners while a study is conducted to assess the effect of these extraordinary events on the insurance industry which occurred as a result of Hurricane Andrew, and

WHEREAS, a study of the commercial viability and competitiveness of the property insurance and re-insurance industry in Florida would provide the Governor and the Legislature with the information needed to assess whether current regulatory statutes should be amended, and

WHEREAS, certain additional statutory amendments are required to make necessary insurance coverage available to provide fundamental protection to the citizens of this state, and

WHEREAS, it is appropriate to amend the proclamation of May 13, 1993, to add to the matters considered by the Florida Legislature convened in special session, the implementation of a moratorium on personal lines property insurance cancellations or non-renewals, the creation of a study commission to report to the Governor and legislature on the commercial viability and competitiveness of insurance underwriting in Florida, and the amendment of certain statutory provisions to allow fundamental insurance protection to Florida citizens.

NOW, THEREFORE, I, LAWTON CHILES, Governor of the State of Florida, by virtue of the power and authority vested in me by Article III, Section 3(c)(1), Florida Constitution, do hereby amend the proclamation of the Governor issued May 13, 1993, as follows:

In addition to the matters stated by the proclamation of the Governor of May 13, 1993, the Legislature of the State of Florida is convened for the purpose of considering the following supplemental issues:

- (a) Legislation to implement and, if necessary extend for period not to exceed 90 additional days, the emergency rule promulgated by the Insurance Commissioner, 4ER93-18.
- (b) Legislation to create a gubernatorially appointed study commission to report to both houses of the legislature and the Governor before September 15, 1993, on the commercial viability and competitiveness of the personal lines property insurance industry in Florida, and the adequacy of statutory regulation of the re-insurance industry.
- (c) Legislation to provide the following critical amendments to the laws regulating insurance coverage to protect the life, health, and property of Florida citizens:

1. Amendments to prevent non-renewal of insurance policies based on claims for sinkhole damage and amendments implementing administrative proceedings before such a claim may be denied.
2. Legislation modifying the board membership of the Residential Property and Casualty Joint Underwriting Association to increase consumer representation.
3. Amendments to increase limits under the Florida Insurance Guaranty Association for condominium association and homeowners association policies.
4. Amendments to the statute creating the Florida Windstorm Underwriting Association to revise geographic eligibility provisions.
5. Amendment to statutory provisions regarding the payment of extraordinary dividends to stockholders of a domestic stock insurer.



IN TESTIMONY WHEREOF, I have hereunto set my hand and have caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capitol, this 25th day of May, 1993.

Lawton Chiles
GOVERNOR

ATTEST:
Jim Smith
SECRETARY OF STATE

Motion to Introduce Bill

On motion by Senator Bankhead, by the required constitutional two-thirds vote of the Senate the following bill was admitted for introduction:

By Senator Bankhead—

SCR 62-B—A concurrent resolution requesting members of the Florida Congressional Delegation to appear before a joint session of the Florida Legislature to discuss problems relating to unfunded federal mandates.

RECESS

The Senate recessed at 4:47 p.m. to reconvene upon call of the President.

CALL TO ORDER

The Senate was called to order by the President at 5:37 p.m. A quorum present.

SPECIAL ORDER, continued

SB 44-B—A bill to be entitled An act relating to sentencing, excluding capital felonies; creating the "Safe Streets Initiative of 1993"; providing legislative intent; amending s. 777.04, F.S., relating to criminal attempts, criminal solicitation, and criminal conspiracy, to conform to the sentencing guidelines revision; amending s. 921.001, F.S.; providing the purpose of and additional requirements for the sentencing guidelines that are recommended to the Supreme Court by the Sentencing Commission; requiring the commission, with the Department of Corrections, to estimate rates of incarceration in the state correctional system and make funding and other recommendations to the Legislature; deleting obsolete provisions pertaining to alternative sentencing guideline recommendations; providing that a departure sentence must be within any relevant statutory maximum sentence; amending ss. 924.06, 924.07, 958.04, F.S., relating to appeal by defendant, appeal by the state, and judicial disposition of youthful offenders, to conform; providing an additional circumstance under which the state may appeal certain orders to dismiss; creating s. 921.0011, F.S.; providing definitions; creating s. 921.0012, F.S.; providing sentencing guidelines offense levels based on severity rankings for specified crimes, including drug trafficking; providing multipliers for drug trafficking violations; providing additional points for possession of a firearm or destructive device, and providing for scoring criminal attempt, solicitation, or conspiracy; creating s. 921.0013, F.S.; providing requirements for ranking unlisted felony offenses; creating s. 921.0014, F.S.; providing sentencing guidelines worksheet computations; creating s.

921.0016, F.S.; providing nonexclusive aggravating and mitigating circumstances supporting departure by increasing or decreasing the length of the guidelines sentence; creating s. 921.0017, F.S.; providing for credit for time served upon recommitment of offender serving split sentence; providing requirements for the Department of Corrections, the Sentencing Commission, and the Supreme Court in adopting and implementing revised sentencing guidelines; amending ss. 775.0875, 784.08, 790.161, 790.165, 790.221, 893.13, 893.135, 893.20, F.S., relating to unlawful taking of a law enforcement officer's firearm, assault or battery on persons 65 years of age or older, unlawful activities involving destructive devices, planting of hoax bombs, unlawful possession of certain guns, controlled substances violations, trafficking violations, and continuing criminal enterprise; deleting provisions relating to certain mandatory minimum sentences and certain release, to conform to the sentencing guidelines revision; amending s. 944.275, F.S.; increasing the maximum permissible amount of incentive gain time; prohibiting the granting of basic gain-time for offenses committed after a specified date; amending s. 775.084, F.S.; deleting the exemption from consideration for parole and control release provided for persons sentenced as habitual felony offenders; providing certain exceptions; providing circumstances under which a felony is a prior felony; providing that references to s. 775.084, F.S., are general references for purposes of incorporating that section by reference; amending s. 893.13, F.S.; deleting the exemption from consideration for parole and control release provided for persons convicted of possessing controlled substances in the vicinity of a school; amending s. 947.146, F.S.; providing for certain persons convicted of drug trafficking offenses and sentenced to less than a specified term of imprisonment to be eligible for control release; providing for certain persons sentenced as habitual felony offenders to be eligible for control release; increasing the threshold capacity of the correctional system above which inmates will be given control release; prohibiting the award of control release to persons convicted of DUI manslaughter and sentenced as habitual offenders; providing circumstances under which the Control Release Authority may establish emergency control release dates for certain inmates; prohibiting the award of control release to certain persons convicted of offenses involving firearms or destructive devices; providing for future abrogation of certain amendments to s. 947.146, F.S.; providing for certain offenders who are eligible for control release to be released into supervision; providing for critical depletion transfers of certain offenders; providing for the expiration of such provisions; requiring the development of uniform procedures for awarding control release credits to habitual felony offenders; requiring the state attorneys to adopt criterion to be used in determining an offender's eligibility for sentencing as a habitual offender or a habitual violent felony offender; directing the Inspector General of the Department of Corrections to determine the maximum monthly average of sentenced felony offenders for each county; providing that the sentenced felony offenders incarcerated in each county's jail facilities shall not exceed such average, adjusted for growth; repealing s. 944.277, F.S., relating to provisional release credits; repealing s. 944.598, F.S., relating to the emergency release of inmates; providing effective dates.

—was read the second time by title.

The Committee on Criminal Justice recommended the following amendments which were moved by Senator Wexler and adopted:

Amendment 1 (with Title Amendment)—On page 23, line 21, after the period (.) insert: If the conviction is for murder in the second degree under s. 782.04(2), sentence points for death must be multiplied by 2.

And the title is amended as follows:

In title, on page 1, line 31, after the semicolon (;) insert: providing a victim injury multiplier for second degree murder;

Amendment 2 (with Title Amendment)—On page 46, between lines 13 and 14, insert:

Second degree murder, s. 782.04(2) (no)(yes) (× multiplier)

And the title is amended as follows:

In title, on page 1, line 31, after the semicolon (;) insert: providing a victim injury multiplier for second degree murder;

Senator Meadows moved the following amendment which was adopted:

Amendment 3 (with Title Amendment)—On page 10, line 11, after the period (.) insert: *At least one of the commission members must be a minority person, as defined in s. 288.703.*

And the title is amended as follows:

In title, on page 1, line 12, following the semicolon (;) insert: providing for certain representation on the commission;

Senators Silver and Holzendorf offered the following amendments which were moved by Senator Silver and adopted:

Amendment 4—On page 64, line 31, after "years" insert: and is not eligible for release under the Control Release Authority pursuant to s. 947.146, before serving such minimum sentence

Amendment 5 (with Title Amendment)—On page 90, line 30 through page 91, line 1, strike all of said lines and insert: to a minimum term of imprisonment of 3 calendar years and *is shall not be* eligible for parole or release under the Control Release Authority pursuant to s. 947.146 or statutory gain—

And the title is amended as follows:

In title, on page 3, strike lines 19-23, and insert: 947.146, F.S.; providing for certain persons

Amendment 6—On page 92, lines 20-22, strike "a mandatory minimum term of imprisonment of more than 5 years for a"

Amendment 7—On page 101, strike lines 24 and 25, and insert: minimum provision for a capital offense or a drug

Amendment 8—On page 109, strike line 27 through page 110, line 1, and insert:

(a) A sentence for a controlled substance offense under section 893.13(1)(i), Florida Statutes; or

(b) A sentence, or has previously served a sentence,

Senators Foley and Siegel offered the following amendment which was moved by Senator Foley and adopted:

Amendment 9 (with Title Amendment)—On page 113, between lines 27 and 28, insert:

Section 34. When the population of the state correctional system reaches 99 percent of its lawful capacity the Governor, pursuant to section 252.36, Florida Statutes, shall use his emergency powers to reduce the capacity of the state correctional system as follows: the Governor shall inform any federal jurisdiction which has a concurrent or consecutive sentence or any active detainer placed on any prisoner in the state correctional system of his intention to transfer custody to that jurisdiction within 30 days. No prisoner shall be so transferred who is convicted of a capital felony in this state nor shall any transfer take place to any county or municipal jurisdiction within the state.

(Renumber subsequent sections)

And the title is amended as follows:

In title, on page 4, line 29, after the semicolon (;) insert: providing emergency powers for the Governor to reduce the capacity of the state correctional system;

Pending further consideration of **SB 44-B** as amended, on motions by Senator Wexler, by two-thirds vote—

CS for HB 39-B—A bill to be entitled An act relating to criminal justice; creating the "Safe Streets Initiative of 1993"; providing legislative intent; amending s. 775.084, F.S.; redefining habitual felony offenders and habitual violent felony offenders; stating legislative intent that all cross references to s. 775.084, F.S., refer to that section as amended and enumerating said references; clarifying that provisions of s. 947.1405, F.S., apply to persons sentenced as habitual offenders; amending s. 777.04, F.S.; providing for scoring criminal attempt, criminal solicitation, and criminal conspiracy, to conform to the sentencing guidelines revision; amending s. 921.001, F.S.; providing the purpose of and additional requirements for the sentencing guidelines that are recommended to the Supreme Court by the Sentencing Commission; requiring the commission, with the Department of Corrections, to estimate rates of incarceration in the state correctional system and make funding and other recommendations to the Legislature; requiring a net zero sum impact for increases or additions in criminal penalties; deleting obsolete provisions pertaining to alternative sentencing guideline recommendations; providing that a departure sentence must be within any relevant statutory max-

imum sentence; amending ss. 924.06, 924.07, and 958.04, F.S., relating to appeal by defendant, appeal by the state, and judicial disposition of youthful offenders, to conform; creating s. 921.0011, F.S.; providing definitions; creating s. 921.0012, F.S.; providing sentencing guidelines offense levels based on severity rankings for specified crimes, including drug trafficking; creating s. 921.0013, F.S.; providing requirements for ranking unlisted felony offenses; creating s. 921.0014, F.S.; providing sentencing guidelines worksheet computations; providing multipliers for drug trafficking and Law Enforcement Protection Act violation; providing additional points for possession of a firearm or destructive device; creating s. 921.0016, F.S.; providing nonexclusive aggravating and mitigating circumstances supporting departure by increasing or decreasing the length of the guidelines sentence; creating s. 921.0017, F.S.; providing for credit for time served upon recommitment of offender serving split sentence; requiring the Sentencing Commission to adopt procedures for implementing revised sentencing guidelines; providing timeframes for the new scoresheets; amending ss. 775.0823, 775.087, 775.0875, 784.08, 790.161, 790.165, 790.221, 893.13, 893.135, and 893.20, F.S., relating to violent offenses committed against certain law enforcement officials, possession of a firearm or destructive device, unlawful taking of a law enforcement officer's firearm, assault or battery on persons 65 years of age or older, unlawful activities involving destructive devices, planting of hoax bombs, unlawful possession of certain guns, controlled substances violations, trafficking violations, and continuing criminal enterprise; revising elements of certain offenses; deleting provisions relating to mandatory minimum sentences and certain release mechanisms, to conform to the sentencing guidelines revision; amending s. 944.275, F.S.; prohibiting the granting of basic gain-time for offenses committed after a specified date; amending s. 947.146, F.S.; providing that an inmate may not receive control release award allotments before he is statutorily eligible for control release or before the date his advanceable control release date is established; providing for certain persons convicted of drug trafficking offenses and sentenced to less than a specified term of imprisonment to be eligible for control release; providing for certain persons sentenced as habitual felony offenders to be eligible for control release; excluding certain persons from control release consideration; providing for the Control Release Authority to establish a control release date for offenders whose release has been revoked; providing additional circumstances under which the authority may extend, advance, or postpone an inmate's control release date; providing circumstances under which the authority may vacate a grant of control release; increasing the threshold capacity of the correctional system above which inmates will be given control release; providing that certain offenders who are eligible for control release may be released into supervision; providing for critical depletion transfers of certain offenders; providing for the expiration of such provisions; providing for the emergency control release of prisoners; increasing the threshold capacity of the correctional system above which inmates will be granted emergency control release; providing emergency control release dates for certain parole ineligible inmates; requiring the Control Release Authority to develop uniform procedures for awarding control release to certain habitual offenders; providing for future abrogation of certain amendments to s. 947.146, F.S.; repealing s. 944.277, F.S., relating to provisional release credits; repealing s. 944.598, F.S., relating to the emergency release of inmates; listing statutory cross references to s. 775.084, F.S., and providing directives to the Division of Statutory Revision; directing the Inspector General of the Department of Corrections to determine the maximum monthly average number of sentenced felony offenders for each county; providing that the number of sentenced felony offenders incarcerated in each county's jail facilities shall not exceed such number, adjusted for growth; amending s. 944.405, F.S.; providing for issuance of warrants to retake offenders who are ineligible for release and have been erroneously released; creating s. 944.278, F.S.; providing for cancellation of administrative gain-time and provisional credits; amending ss. 210.20 and 210.70, F.S.; revising the distribution of revenues from the tax on cigarettes and other tobacco products; creating chapter 957, F.S., the Correctional Privatization Commission Act; providing definitions; creating the commission and providing for its membership, organization, meetings, and duties; providing requirements for contracts, contractors, cost savings, and inmate capacity; providing powers and duties not delegable to contractors; providing applicability of chapter to other provisions of law; providing for evaluation of costs and benefits of contracts; prohibiting certain contact by bidders; expediting the process for the first two facilities; requiring a request for proposals for construction and operation of a private correctional health care facility capable of forensic medical custody, and providing required components; amending s. 794.022, F.S.; providing evidentiary considerations in sexual battery cases; providing for legislative adoption and implementation of revisions to sentencing guidelines promulgated by the Florida Supreme Court in accordance with s. 921.001, F.S.; providing effective dates.

—a companion measure, was substituted for SB 44-B and by two-thirds vote read the second time by title.

Senator Wexler moved the following amendment which was adopted:

Amendment 1 (with Title Amendment)—Strike everything after the enacting clause and insert:

Section 1. 1993 Revision of the Sentencing Guidelines; legislative intent.—This revision of the sentencing guidelines may be cited as the "Safe Streets Initiative of 1993," and is designed to emphasize incarceration in the state prison system for violent offenders and nonviolent offenders who have repeatedly committed criminal offenses and have demonstrated an inability to comply with less restrictive penalties previously imposed.

Section 2. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 777.04, Florida Statutes, is amended to read:

777.04 Attempts, solicitation, and conspiracy, generally.—

(1) A person who ~~Whoever~~ attempts to commit an offense prohibited by law and in such attempt does any act toward the commission of such an offense, but fails in the perpetration or is intercepted or prevented in the execution thereof of the same, commits the offense of criminal attempt, ranked for purposes of sentencing and shall, when no express provision is made by law for the punishment of such attempt, be punished as provided in subsection (4). ~~The offense of Criminal attempt includes shall include~~ the act of an adult who, with intent to commit an offense prohibited by law, allures, seduces, coaxes, or induces a child under the age of 12 to engage in an offense prohibited by law.

(2) A person who ~~Whoever~~ solicits another to commit an offense prohibited by law and in the course of such solicitation commands, encourages, hires, or requests another person to engage in specific conduct which would constitute such offense or an attempt to commit such offense commits the offense of criminal solicitation, ranked for purposes of sentencing and shall, when no express provision is made by law for the punishment of such solicitation, be punished as provided in subsection (4).

(3) A person who ~~Whoever~~ agrees, conspires, combines, or confederates with another person or persons to commit any offense commits the offense of criminal conspiracy and shall, when no express provision is made by law for the punishment of such conspiracy, be punished as provided in subsection (4).

(4) Except as otherwise provided in s. 921.0012, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is ranked on the offense severity ranking chart in s. 921.0012 one level below the offense attempted, solicited, or conspired to is, was, or would have been ranked on the offense severity ranking chart.

~~(4) Whoever commits the offense of criminal attempt, criminal solicitation, or criminal conspiracy shall be punished as follows:~~

(b)(a) If the offense attempted, solicited, or conspired to is a capital felony, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is the person convicted is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c)(b) If the offense attempted, solicited, or conspired to is a life felony or a felony of the first degree, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is the person convicted is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d)(c) If the offense attempted, solicited, or conspired to is a felony of the second degree or a burglary that is a felony of the third degree, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is the person convicted is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e)(d) If the offense attempted, solicited, or conspired to is a felony of the third degree, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is the person convicted is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(f)(e) If the offense attempted, solicited, or conspired to is a misdemeanor of the first or second degree, the offense of criminal attempt,

criminal solicitation, or criminal conspiracy is the person convicted is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) It is a defense to a charge of criminal attempt, criminal solicitation, or criminal conspiracy under this section that, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose, the defendant:

(a) Abandoned his attempt to commit the offense or otherwise prevented its commission;

(b) After soliciting another person to commit an offense, persuaded such other person not to do so or otherwise prevented commission of the offense; or

(c) After conspiring with one or more persons to commit an offense, persuaded such persons not to do so or otherwise prevented commission of the offense.

Section 3. Effective upon this act becoming a law and applicable to sentencing for offenses committed on or after January 1, 1994, section 921.001, Florida Statutes, 1992 Supplement, is amended to read:

921.001 Sentencing Commission and sentencing guidelines generally.—

(1) The provision of criminal penalties and of limitations upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature. The Legislature, in the exercise of its authority and responsibility to establish sentencing criteria, to provide for the imposition of criminal penalties, and to make the best use of state prisons so that violent criminal offenders are appropriately incarcerated, has determined that it is in the best interest of the state to develop, implement, and revise a uniform sentencing policy in cooperation with the Supreme Court. In furtherance of this cooperative effort, the Legislature there is created a Sentencing Commission, which shall be responsible for the initial development of a statewide system of sentencing guidelines, evaluating ~~the commission shall evaluate~~ these guidelines periodically, and recommending ~~recommend~~ such changes on a continuing basis changes as are necessary to ensure incarceration of:

(a) Violent criminal offenders; and

(b) Nonviolent criminal offenders who commit repeated acts of criminal behavior and who have demonstrated an inability to comply with less restrictive penalties previously imposed for nonviolent criminal acts.

(2)(a) The commission is shall be composed of 17 members, consisting of: two members of the Senate to be appointed by the President of the Senate; two members of the House of Representatives to be appointed by the Speaker of the House of Representatives; the Chief Justice of the Supreme Court or a member of the Supreme Court designated by the Chief Justice; three circuit court judges, one county court judge, and one representative of the victim advocacy profession, to be appointed by the Chief Justice of the Supreme Court; the Attorney General or his designee; and the secretary of the Department of Corrections or his designee. The following members are shall be appointed by the Governor: one state attorney recommended by the Florida Prosecuting Attorneys Association; one public defender recommended by the Public Defenders Association; one private attorney recommended by the President of The Florida Bar; and two persons of the Governor's choice. At least one of the commission members must be a minority person, as defined in s. 288.703. The Chief Justice or the member of the Supreme Court designated by the Chief Justice serves shall serve as chairman of the commission.

(b) The members of the commission appointed by the Governor and the members from the Senate and the House of Representatives shall serve 2-year terms. The members appointed by the Chief Justice of the Supreme Court shall serve at his pleasure.

(c) Membership on the commission does shall not disqualify a member from holding any other public office or from being employed by a public entity. The Legislature finds and declares that the commission serves a state, county, and municipal purpose and that service on the commission is consistent with a member's principal service in a public office or in public employment.

(d) Members of the commission shall serve without compensation but are shall be entitled to be reimbursed for per diem and travel expenses as provided for in s. 112.061.

(e) The office of the State Courts Administrator shall act as staff for the commission and shall provide all necessary data collection, analysis, and research, and support services.

(3)(a) The commission shall meet annually or at the call of the chairman to review sentencing practices and recommend modifications to the guidelines. In recommending modifications to modifying the sentencing guidelines, the commission shall take into consideration the existing ~~current~~ sentencing and release practices and correctional resources, including the capacities of local and state correctional facilities, in addition to other relevant factors.

(b) For the this purpose of assisting the commission in recommending modifications to the sentencing guidelines, the Department of Corrections ~~commission~~ is authorized to collect and evaluate data on sentencing practices in the state from each of the judicial circuits and provide technical assistance to the commission upon request. The Department of Corrections shall, no later than October 1 of each year, provide the commission with a yearly report detailing the rate of compliance of each judicial circuit in providing scoresheets to the department.

(4) The purpose of the sentencing guidelines is to establish a uniform set of standards to guide the sentencing judge in the sentence decisionmaking process. The guidelines represent a synthesis of current sentencing theory, historical sentencing practices, and a rational approach to managing correctional resources. The sentencing guidelines are intended to eliminate unwarranted variation in the sentencing process by reducing the subjectivity in interpreting specific offense-related and offender-related criteria and in defining the relative importance of those criteria in the sentencing decision.

(a) The sentencing guidelines embody the principles that:

1. Sentencing is neutral with respect to race, gender, and social and economic status.

2. The primary purpose of sentencing is to punish the offender. Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of punishment.

3. The penalty imposed is commensurate with the severity of the primary offense and the circumstances surrounding the primary offense.

4. The severity of the sentence increases with the length and nature of the offender's prior record.

5. The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time.

6. Departures from the recommended sentences established in the guidelines are articulated in writing and made only when circumstances or factors reasonably justify the aggravation or mitigation of the sentence. The level of proof necessary to establish facts that support a departure from the sentencing guidelines is a preponderance of the evidence.

7. Use of incarcerative sanctions is prioritized toward offenders convicted of serious offenses and certain offenders who have long prior records, in order to maximize the finite capacities of state and local correctional facilities.

(b)(4)(a) The guidelines enacted effective October 1, 1983, apply shall be applied to all felonies, except capital felonies, committed on or after October 1, 1983; and to all felonies, except capital felonies and life felonies, committed prior to that date and October 1, 1983; for which sentencing occurs after such date when the defendant affirmatively selects to be sentenced pursuant to such the provisions of this act. The 1994 guidelines apply to sentencing for all felonies, except capital felonies, committed on or after January 1, 1994, and to sentencing for all felonies, except capital felonies, committed before January 1, 1994, for which sentencing occurs after such date when the defendant affirmatively selects to be sentenced pursuant to the 1994 guidelines.

(c)(b) The commission shall, no later than October 1 of each year, make a recommendation to the members of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives, and the chairpersons of the relevant substantive committees of both houses on the need for changes in the guidelines. Upon receipt of such

recommendation, the Supreme Court may revise the statewide sentencing guidelines to conform them with all or part of the commission recommendation. Such revision shall be submitted by the Supreme Court to the President of the Senate, and the Speaker of the House of Representatives, and the chairpersons of the relevant substantive committees of both houses no later than December 1 February 1 of each year following the receipt of the recommendations of the commission. However, such revision shall become effective only upon the subsequent adoption by the Legislature of legislation implementing the guidelines as then revised. The court may also revise the statewide sentencing guidelines if it certifies that the revisions are necessary to conform the guidelines to previously adopted statutory revisions.

(d) The commission, with the assistance of the Department of Corrections, shall estimate how sentencing score thresholds and weights assigned to the sentencing factors will affect the rates of incarceration and the levels of prison population and shall submit to the Legislature, by October 1 of each year, recommended sentencing score thresholds, recommended weights assigned to the sentencing factors, and a recommended appropriation for state correctional resources that is sufficient to fund the estimated prison population.

(e) The Division of Economic and Demographic Research of the Joint Legislative Management Committee shall prepare alternative proposals which revise the statewide sentencing guidelines and submit such proposals to the Senate Committee on Corrections, Probation, and Parole; the Senate Committee on Criminal Justice; the House Committee on Corrections; the House Committee on Criminal Justice; and to the Sentencing Guidelines Commission by November 1, 1991. The commission is hereby ordered to develop revised statewide sentencing guidelines and provide them to the members of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives by January 1, 1992, which emphasize incarceration for violent offenders and alternatives to incarceration for nonviolent offenders. In developing revised sentencing guidelines, the commission shall consider present and future state prison resources so that available spaces for incarceration are used as specified in paragraphs (1)(a) and (b).

(d) In developing revised sentencing guidelines to meet the requirements of paragraphs (1)(a) and (b) and (4)(e), the commission shall:

1. Rank the gravity of offenses to reflect judgments about harm or potential harm to the community, the culpability of the offender, and the physical injury to the victim.

2. Develop a scoring system to assign weight to such offender characteristics as the nature and extent of prior criminal convictions, the juvenile record, the offender's legal status at the time of the offense, whether extended periods of crime free behavior will diminish the weight given to earlier convictions, and how multiple convictions arising out of a single criminal episode should be counted.

3. Define a dispositional policy to determine which offenders should go to state prison and which should be sanctioned in other ways.

4. Establish a durational policy to set the lengths of sentences.

5. Develop policy and procedure to govern when a judge may depart from the guidelines to impose a more severe or less severe sanction.

(5) Sentences imposed by trial court judges under the 1994 revised sentencing guidelines on or after January 1, 1994, must be in all cases within the 1994 guidelines unless there is a departure sentence with written findings any relevant minimum and maximum sentence limitations provided by statute and must conform to all other statutory provisions. If a recommended sentence under the guidelines exceeds the maximum sentence otherwise authorized by s. 775.082, the sentence under the guidelines must be imposed, absent a departure. If a departure sentence, with written findings, is imposed, such sentence must be within any relevant maximum sentence limitations provided in s. 775.082. The failure of a trial court to impose a sentence within the sentencing guidelines is shall be subject to appellate review pursuant to Chapter 924. However, the extent of a departure from a guidelines sentence is not subject to appellate review. However, any person sentenced for a felony offense committed after October 1, 1983, whose presumptive sentence is any nonstate prison sanction may be sentenced to community control or to a term of incarceration not to exceed 22 months. Such sentence is not subject to appeal. However, before imposing such sentence, the court shall give due consideration to the criteria in s. 921.005(1). The extent of departure from a guideline sentence shall not be subject to appellate review.

(6) A court may impose a departure sentence outside the sentencing guidelines A departure sentence shall be based upon circumstances or factors which reasonably justify the aggravation or mitigation of the sentence in accordance with s. 921.0016. The level of proof necessary to establish facts supporting a departure from a sentence under the guidelines is a preponderance of the evidence. When multiple reasons exist to support a departure from a guidelines sentence, the departure shall be upheld when at least one circumstance or factor justifies the departure regardless of the presence of other circumstances or factors found not to justify departure.

(6) The sentencing guidelines shall provide that Any sentence sentences imposed outside the range recommended by the guidelines must be explained in writing by the trial court judge.

(7) A court may impose A sentence may be imposed outside the guidelines based on when credible facts, which may include an oral or written statement submitted by the victim or next of kin pursuant to s. 921.143, proven by a preponderance of the evidence, which demonstrate that the victim suffered excessive physical or emotional trauma at the hands of the defendant; and such departure is not barred because victim injury has been utilized in the calculation of the guidelines sentence.

(8) For purposes of the statewide sentencing guidelines, if the conviction is for an offense described in chapter 794, chapter 800, or s. 826.04 and such offense includes sexual penetration, the sexual penetration must receive the score indicated for penetration or slight injury, regardless of whether there is evidence of any physical injury. If the conviction is for an offense described in chapter 794, chapter 800, or s. 826.04 and such offense does not include sexual penetration, the sexual contact must receive the score indicated for contact but no penetration, regardless of whether there is evidence of any physical injury. If the victim of an offense described in chapter 794, chapter 800, or s. 826.04 suffers any physical injury as a direct result of the primary offense or any other offense committed by the offender resulting in conviction, such physical injury must be scored separately and in addition to the points scored for the sexual contact or the sexual penetration.

(8)(9) A trial court may impose A sentence may be imposed outside the guidelines based on when credible facts, proven by a preponderance of the evidence, which demonstrate that the defendant's prior record, including offenses for which adjudication was withheld, and the current criminal offense for which the defendant is being sentenced, indicate an escalating pattern of criminal conduct. The escalating pattern of criminal conduct may be evidenced by a progression from nonviolent to violent crimes, or a progression of increasingly violent crimes, or a pattern of increasingly serious criminal activity.

(9)(10) The Sentencing Commission and the office of the State Courts Administrator shall conduct ongoing research on the impact of the sentencing guidelines adopted by the commission on sentencing practices, the use of imprisonment and alternatives to imprisonment, and plea bargaining. The commission, with the aid of the office of the State Courts Administrator, the Department of Corrections, and the Parole Commission, shall estimate the impact of any proposed changes to the sentencing guidelines on future rates of incarceration and levels of prison population. Such estimates shall be based in part on historical data of sentencing practices which have been accumulated by the office of the State Courts Administrator and on Department of Corrections records reflecting average time served for offenses covered by the proposed changes to the guidelines. Projections of impact shall be reviewed by The commission shall review the projections of impact and shall make them and made available to other appropriate agencies of state government, including the Legislature, by October 1 December 15 of each year.

(10)(a)(11) A person who is convicted of a crime committed on or after October 1, 1983, but before January 1, 1994, may shall be released from incarceration only:

- 1.(a) Upon expiration of his sentence;
- 2.(b) Upon expiration of his sentence as reduced by accumulated gain-time;
- 3.(c) As directed by an executive order granting clemency;
- 4.(d) Upon attaining the provisional release date;
- 5.(e) Upon placement in a conditional release program pursuant to s. 947.1405; or
- 6.(f) Upon the granting of control release pursuant to s. 947.146.

(b) A person who is convicted of a crime committed on or after January 1, 1994, may be released from incarceration only:

1. Upon expiration of his sentence;
2. Upon expiration of his sentence as reduced by accumulated meritorious or incentive gain-time;
3. As directed by an executive order granting clemency;
4. Upon placement in a conditional release program pursuant to s. 947.1405; or
5. Upon the granting of control release pursuant to s. 947.146.

(11)(12) A person who is convicted of a crime committed on or after December 1, 1990, and who receives a control release date may not refuse to accept the terms or conditions of control release.

Section 4. Subsection (1) of section 924.06, Florida Statutes, is amended to read:

924.06 Appeal by defendant.—

- (1) A defendant may appeal from:
 - (a) A final judgment of conviction when probation has not been granted under chapter 948, except as provided in subsection (3);
 - (b) An order granting probation under chapter 948;
 - (c) An order revoking probation under chapter 948;
 - (d) A sentence, on the ground that it is illegal; or
 - (e) A sentence imposed outside the range recommended by the guidelines authorized by chapter 921 ~~s. 921.001~~.

Section 5. Section 924.07, Florida Statutes, as amended by section 14 of chapter 93-37, Laws of Florida, is amended to read:

924.07 Appeal by state.—

- (1) The state may appeal from:
 - (a) An order dismissing an indictment or information or any count thereof or dismissing an affidavit charging the commission of a criminal offense, the violation of probation, the violation of community control, or the violation of any supervised correctional release.
 - (b) An order granting a new trial.
 - (c) An order arresting judgment.
 - (d) A ruling on a question of law when the defendant is convicted and appeals from the judgment. Once the state's cross-appeal is instituted, the appellate court shall review and rule upon the question raised by the state regardless of the disposition of the defendant's appeal.
 - (e) The sentence, on the ground that it is illegal.
 - (f) A judgment discharging a prisoner on habeas corpus.
 - (g) An order adjudicating a defendant insane under the Florida Rules of Criminal Procedure.
 - (h) All other pretrial orders, except that it may not take more than one appeal under this subsection in any case.
 - (i) A sentence imposed outside the range recommended by the guidelines authorized by s. 921.001.
 - (j) A ruling granting a motion for judgment of acquittal after a jury verdict.
 - (k) An order denying restitution under s. 775.089.
 - (l) An order or ruling suppressing evidence or evidence in limine at trial.

(2) An appeal under this section shall embody all assignments of error in each pretrial order that the state seeks to have reviewed. The state shall pay all costs of such appeal except for the defendant's attorney's fee.

Section 6. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, subsection (3) of section 958.04, Florida Statutes, is amended to read:

958.04 Judicial disposition of youthful offenders.—

(3) The provisions of this section shall not be used to impose a greater sentence than the maximum recommended range as established by statewide sentencing guidelines pursuant to chapter 921 ~~s. 921.001~~ unless reasons are explained in writing by the trial court judge which reasonably justify departure. A sentence imposed outside of such guidelines shall be subject to appeal pursuant to s. 924.06 or s. 924.07.

Section 7. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 921.0011, Florida Statutes, is created to read:

921.0011 Definitions.—As used in this chapter, the term:

(1) "Additional offense" means any offense other than the primary offense for which an offender is convicted and that is pending before the court for sentencing at the time of the primary offense.

(2) "Conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld.

(3) "Legal status violation" includes:

- (a) An escape from incarceration.
- (b) Flight to avoid prosecution.
- (c) Failure to appear for a criminal proceeding.
- (d) Violation of any condition of a supersedeas bond.

(4) "Primary offense" means the offense at conviction pending before the court for sentencing for which the total sentence points recommend a sanction that is as severe as, or more severe than the sanction recommended for any other offense committed by the offender and pending before the court at sentencing. Only one count of one offense before the court for sentencing shall be classified as the primary offense.

(5) "Prior record" means a conviction for a crime committed by the offender, as an adult or a juvenile, prior to the time of the primary offense. Convictions by federal, out-of-state, military, or foreign courts, and convictions for violations of county or municipal ordinances that incorporate by reference a penalty under state law, are included in the offender's prior record. Convictions for offenses committed by the offender more than 10 years before the primary offense are not included in the offender's prior record if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of the primary offense. Juvenile dispositions of offenses committed by the offender within 3 years before the primary offense are included in the offender's prior record when the offense would have been a crime had the offender been an adult rather than a juvenile. Juvenile dispositions of offenses committed by the offender which were committed 3 years or more before the primary offense are not included in the offender's prior record if the offender has maintained a conviction-free record, either as an adult or juvenile, for a period of 3 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of the primary offense.

(6) "Release program" includes:

- (a) Parole.
- (b) Control release.
- (c) Probation.
- (d) Community control.
- (e) Pretrial intervention or diversion.
- (f) Provisional release supervision.
- (g) Conditional release supervision.
- (h) Supervised community release supervision.
- (i) Conditional medical release supervision.

(7) "Victim injury" means the physical injury or death suffered by a person as a direct result of the primary offense, or any offense other than the primary offense, for which an offender is convicted and which is pending before the court for sentencing at the time of the primary offense. If the conviction is for murder in the second degree under s. 782.04(2), sentence points for death must be multiplied by 2. If the con-

viction is for an offense involving sexual contact which includes sexual penetration, the sexual penetration must be scored as a severe injury regardless of whether there is evidence of any physical injury. If the conviction is for an offense involving sexual contact which does not include sexual penetration, the sexual contact must be scored as a moderate injury regardless of whether there is evidence of any physical injury. If the victim of an offense involving sexual contact suffers any physical injury as a direct result of the primary offense or any other offense committed by the offender resulting in conviction, such physical injury must be scored separately and in addition to the points scored for the sexual contact or the sexual penetration.

Section 8. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 921.0012, Florida Statutes, is created to read:

921.0012 Sentencing guidelines offense levels; offense severity ranking chart.—A single offense severity ranking chart must be used to compute a sentence score for each felony offender. The offense severity ranking chart has 10 offense levels, ranked from least severe to most severe, and each felony offense is assigned to a level according to the severity of the offense.

OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description			
		LEVEL 1			
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.	828.122(3)	3rd	Fighting or baiting animals.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.	831.04(1)	3rd	Any erasure, alteration etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$100 but less than \$20,000.	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.	838.015(3)	3rd	Bribery.
322.212(1)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver's license.	838.016(1)	3rd	Public servant receiving unlawful compensation.
322.212(4)	3rd	Supply or aid in supplying unauthorized driver's license.	838.15(2)	3rd	Commercial bribe receiving.
322.212(5)	3rd	False application for driver's license.	838.16	3rd	Commercial bribery.
370.13(4)(a)	3rd	Molest any stone crab trap, line, or buoy which is property of licenseholder.	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
370.135(1)	3rd	Molest any blue crab trap, line, or buoy which is property of licenseholder.	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd etc., material (2nd conviction).
372.663(1)	3rd	Poach any alligator or crocodilia.	849.01	3rd	Keeping gambling house.
409.325(2)	3rd	Unauthorized use, possession, forgery, or alteration of food stamps, Medicaid ID, value greater than \$200.	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
409.325(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
443.071(1)	3rd	False statement or representation to obtain or increase unemployment compensation benefits.	849.25(2)	3rd	Engaging in bookmaking.
458.327(1)(a)	3rd	Unlicensed practice of medicine.	860.08	3rd	Interfere with a railroad signal.
466.026(1)(a)	3rd	Unlicensed practice of dentistry or dental hygiene.	860.13(1)(a)	3rd	Operate aircraft while under the influence.
509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.	893.13(2)(a)2.	3rd	Purchase of cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs).
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
562.27(1)	3rd	Possess still or still apparatus.	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
812.014(2)(d)	3rd	Petit theft (3rd conviction); theft of any property not specified in other paragraphs of subsection (2).			LEVEL 2
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.	403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
815.04(4)(a)	3rd	Offense against intellectual property (i.e. computer programs, data).	517.07	3rd	Registration of securities and furnishing of prospectus required.
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.	590.28(1)	3rd	Willful, malicious, or intentional burning.
826.01	3rd	Bigamy.	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
			787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
			806.13(1)(a)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
			812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
			817.234(1)(a)2.	3rd	False statement in support of insurance claim.
			817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
			817.52(3)	3rd	Failure to redeliver hired vehicle.
			817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
			817.60(5)	3rd	Dealing in credit cards of another.
			817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
			817.60(6)(b)	3rd	Possess two or more false credit cards.
			817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
			826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
			831.01	3rd	Forgery.
			831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
			831.07	3rd	Forging bank bills or promissory note.
			831.08	3rd	Possession of 10 or more forged notes.

790.23	2nd	Felons in possession of firearms or electronic weapons or devices.	415.111(3)	2nd	Knowingly abuse or neglect aged or disabled adult resulting in bodily harm or disability.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.	782.07	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
812.019(1)	2nd	Stolen property; dealing in or trafficking in.	782.071	3rd	Killing of human being by the operation of a motor vehicle in a reckless manner (vehicular homicide).
817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.			
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
843.01	3rd	Resist officer with violence to his person; resist arrest with violence.	784.045(1)(a)2. 784.045(1)(b)	2nd 2nd	Aggravated battery; using deadly weapon. Aggravated battery; perpetrator aware victim pregnant.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs).	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03 (1)(c), (2)(c), (3), or (4) drugs) within 1,000 feet of a school.	796.03	2nd	Procuring any person under 16 years for prostitution.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03 (1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs) within 200 feet of university, public housing facility, or public park.	800.04	2nd	Handle, fondle, or assault child under 16 years in lewd, lascivious, or indecent manner.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs).	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
951.075	2nd	Prisoner commits assault or battery.	810.02(3)	2nd	Burglary of occupied conveyance or burglary of a dwelling.
		LEVEL 6	812.014(2)(a)	1st	Property stolen, valued at \$100,000 or more; 1st degree grand theft.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
775.087(2)(a)2.		Battery upon law enforcement officer or firefighter while possessing firearm.	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
775.0875(1)	3rd	Taking firearm from law enforcement officer.	827.04(1)	3rd	Deprive child of necessities causing great bodily harm or disfigurement.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs) within 1,000 feet of a school.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03 (1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs).
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.	893 135(1)(a)1.	1st	Trafficking in cannabis, more than 100 lbs., less than 2,000 lbs.
787.02(1)(a)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.	893.135(1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.	893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
794.041(2)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
794.05(1)	2nd	Unlawful carnal intercourse with unmarried person under 18 of previous chaste character.	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
810.02(3)	2nd	Burglary of occupied structure or unoccupied dwelling; not armed, no assault.			LEVEL 8
812.014(2)(b)	2nd	Property stolen over \$20,000 and less than \$100,000, grand theft in 2nd degree.	316.193(3)(c)3. 782.04(4)	2nd 2nd	DUI manslaughter. Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawfully discharging bomb.
817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.			Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.	794.011(5)	2nd	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
836.05	2nd	Threats; extortion.			Burglary with assault or battery.
836.10	2nd	Written threats to kill or do bodily injury.			Burglary; armed with explosives or dangerous weapon.
843.12	3rd	Aids or assists person to escape.			Robbery with a weapon.
893.13(2)(c)1.	1st	Purchase cocaine (or other s. 893.03(1)(a), (b), or (d) or (2)(a) or (b) drugs) within 1,000 feet of a school.	806.01(1)	1st	Commits aggravated battery on a child.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.	810.02(2)(a) 810.02(2)(b)	1st,PBL 1st,PBL	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
944.40	2nd	Escapes.			Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
944.46	3rd	Harboring, concealing, aiding escaped prisoners.	812.13(2)(b) 827.03(1)(a) 893.13(1)(b)	1st 2nd 1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.	893.13(2)(b)	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.	893.13(6)(c)	1st	
		LEVEL 7	893 135(1)(a)2.	1st	
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.			

893.135(1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
893.135(1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
893.135(1)(d)2.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
893.135(1)(e)2.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
893.135(1)(f)2.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.

LEVEL 9

782.04(1)	1st	Attempted premeditated murder.
782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
784.07(3)	Life	Attempted murder of law enforcement officer engaged in duty.
787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits child abuse, sexual battery, lewd, or lascivious act, etc.
790.161	1st	Attempted capital firearms offense.
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
794.041(2)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135(1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
893.135(1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135(1)(d)3.	1st	Trafficking in phencyclidine, more than 400 grams.
893.135(1)(e)3.	1st	Trafficking in methaqualone, more than 25 kilograms.
893.135(1)(f)3.	1st	Trafficking in amphetamine, more than 200 grams.

LEVEL 10

782.04(2)	1st,PBL	Unlawful killing of human; act is homicide, unpremeditated.
787.01(1)(a)3.	1st,PBL	Kidnapping; inflict bodily harm upon or terrorize victim.
787.01(3)(a)	Life	Kidnapping; child under age 13, perpetrator also commits child abuse, sexual battery, lewd, or lascivious act, etc.
794.011(3)	Life	Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force to cause serious injury.

921.0013 Sentencing guidelines; ranking unlisted felony offenses.—A felony offense not listed in s. 921.0012 is ranked with respect to offense severity level by the Legislature, commensurate with the harm or potential harm that is caused by the offense to the community. Prior to the time the Legislature ranks an offense which has not been ranked, the severity level is within the following parameters:

- (1) A felony of the third degree within offense level 4.
- (2) A felony of the second degree within offense level 7.
- (3) A felony of the first degree within offense level 8.
- (4) A felony of the first degree punishable by life within offense level 9.
- (5) A life felony within offense level 10.

Section 10. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 921.0014, Florida Statutes, is created to read:

921.0014 Sentencing guidelines; worksheet computations; scoresheets.—

(1) The sentencing guidelines worksheet is used to compute the subtotal and total sentence points. If two or more sentencing enhancements apply, only the enhancement with the highest multiplier is used in the total sentence points computation. The worksheet is used as follows:

FLORIDA SENTENCING GUIDELINES WORKSHEET
OFFENSE SCORE

Primary Offense			
Level	Sentence Points		Total
10	126	=	
9	99	=	
8	81	=	
7	42	=	
6	36	=	
5	28	=	
4	22	=	
3	16	=	
2	10	=	
1	4	=	
			Total

Additional Offenses

Level	Sentence Points	Counts	Total
10	12.0	x	_____ =
9	10.8	x	_____ =
8	9.6	x	_____ =
7	8.4	x	_____ =
6	7.2	x	_____ =
5	5.4	x	_____ =
4	3.6	x	_____ =
3	2.4	x	_____ =
2	1.2	x	_____ =
1	0.7	x	_____ =
M	0.2	x	_____ =
			Total

Additional Offenses if the Primary Offense is Level 7 or Above and the Additional Offense is Level 7 or Above

Level	Sentence Points	Counts	Total
10	42	x	_____ =
9	33	x	_____ =
8	27	x	_____ =
7	21	x	_____ =
			Total

Victim Injury

Level	Sentence Points	Number	Total
Death	60	x	_____ =

Section 9. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 921.0013, Florida Statutes, is created to read:

Second degree murder, s. 782.04(2) (no)(yes) (× multiplier)				
Severe Sexual penetration	40	x	_____	=
Moderate Sexual contact	18	x	_____	=
Slight	4	x	_____	=

Total

Primary Offense + Additional Offenses + Victim Injury =

TOTAL OFFENSE SCORE
PRIOR RECORD SCORE

Prior Record

Level	Sentence Points		Number	Total
10	8.0	x	_____	=
9	7.2	x	_____	=
8	6.4	x	_____	=
7	5.6	x	_____	=
6	4.8	x	_____	=
5	3.6	x	_____	=
4	2.4	x	_____	=
3	1.6	x	_____	=
2	0.8	x	_____	=
1	0.5	x	_____	=
M	0.2	x	_____	=

Total

Prior Record if the Primary Offense is Level 7 or Above and the Prior Offense is Level 7 or Above

Level	Sentence Points		Counts	Total
10	42	x	_____	=
9	33	x	_____	=
8	27	x	_____	=
7	21	x	_____	=

Total

Legal Status Violation

Sentence Points	Total
4	

Release Program Violation

Sentence Points	Total
8 for each violation, up to a total of 24	

Prior Record Score + Legal Status Violation + Release Program Violation = TOTAL PRIOR RECORD SCORE

TOTAL OFFENSE SCORE
TOTAL PRIOR RECORD SCORE
FIREARM OR DESTRUCTIVE DEVICE
SEMIAUTOMATIC WEAPON
SUBTOTAL

DRUG TRAFFICKER (no)(yes) (× multiplier)

TOTAL

Recommended Sentences:

If the total sentence points are less than or equal to 40, the recommended sentence shall not be a state prison sentence; however, the court, in its discretion, may increase the total sentence points by up to, and including, 25 percent.

If the total sentence points are greater than 40 and less than or equal to 52, the decision to incarcerate in a state prison is left to the discretion of the court.

If the total sentence points are greater than 52, the sentence must be a state prison sentence calculated by total sentence points. A state prison sentence is calculated as follows:

State prison months = total sentence points minus 28.

The recommended sentence length in state prison months may be increased by up to, and including, 25 percent or decreased by up to, and including, 25 percent, at the discretion of the court. The recommended sentence length may not be increased if the total sentence points have been increased for that offense by up to, and including, 25 percent. If a recommended sentence under the guidelines exceeds the maximum sentence otherwise authorized by s. 775.082, the sentence recommended under the guidelines must be imposed absent a departure.

Legal status violation includes escape from incarceration, flight to avoid prosecution, failure to appear for a criminal proceeding, and violation of any condition of a supersedeas bond.

Release program violation includes violation of any condition of parole, control release, probation, community control, pretrial intervention or diversion, provisional release supervision, conditional release supervision, supervised community release supervision, or conditional medical release supervision.

Possession of a firearm or destructive device: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his possession a firearm as defined in s. 790.001(6), an additional 18 sentence points are added to the offender's subtotal sentence points.

Possession of a semiautomatic weapon: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his possession a semiautomatic firearm as defined in s. 775.087(2) or a machine gun as defined in s. 790.001(9), an additional 25 sentence points are added to the offender's subtotal sentence points.

If two or more of the following sentencing enhancements are applicable, only the enhancement with the highest multiplier is used:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, then the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7, level 8, or level 9 offense, if the offender provides substantial assistance as described in s. 893.135(4).

(2) A single guidelines scoresheet shall be prepared for each defendant. The scoresheet must cover all the defendant's offenses pending before the court for sentencing. Either the office of the state attorney or the Probation Services Office, or both where appropriate, shall prepare the scoresheet and the scoresheet must be presented to the defense counsel for review for accuracy in all cases unless the judge directs otherwise. The defendant's scoresheet must be approved by the sentencing judge.

(3) The Department of Corrections shall develop and submit the revised sentencing guidelines scoresheet to the Sentencing Commission by September 1, 1993. Following the Supreme Court's approval of the revised procedures, the Department of Corrections shall produce and provide the revised scoresheets to the clerks of the circuit courts by no later than December 31, 1993.

(4) Beginning January 1, 1994, the clerks of the circuit courts for the individual counties shall distribute sufficient copies of the sentencing guidelines scoresheets to those persons charged with the responsibility for preparing sentencing guidelines scoresheets, either the office of the state attorney or the Probation Services Office, or both where appropriate.

(5) The clerk of the circuit court shall transmit a complete, accurate, and legible copy of the guidelines scoresheet utilized in each guidelines sentencing proceeding to the Department of Corrections. Scoresheets must be transmitted no less frequently than monthly, by the first of each month, and may be sent collectively.

(6) A copy of the individual offender's sentencing guidelines scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Florida Rules of Criminal Procedure, must be attached to the copy of the uniform judgment and sentence form provided to the Department of Corrections.

Section 11. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 921.0016, Florida Statutes, is created to read:

921.0016 Recommended sentences; departure sentences; aggravating and mitigating circumstances.—

(1)(a) The recommended guidelines sentence provided by the total sentence points is assumed to be appropriate for the offender.

(b) A trial court judge may impose a state prison sentence which varies upward or downward by up to, and including, 25 percent from the recommended guidelines state prison sentence without issuing a written statement delineating the reasons for the variation.

(c) A state prison sentence which varies upward or downward from the recommended guidelines prison sentence by more than 25 percent is a departure sentence and must be accompanied by a written statement delineating the reasons for the departure, filed within 15 days after the date of sentencing. A written transcription of orally stated reasons for departure from the guidelines at sentencing is permissible if it is filed by the court within 15 days after the date of sentencing.

(d) The imposition of a split sentence of incarceration followed by community control or probation does not by itself constitute a departure from sentencing guidelines. For the purpose of determining the maximum sentence authorized by law, any community control portion of a split sentence does not constitute a term of imprisonment.

(e) A departure sentence must be within any relevant maximum sentence limitations provided by s. 775.082.

(2) A departure from the recommended guidelines sentence is discouraged unless there are circumstances or factors which reasonably justify the departure. Aggravating and mitigating factors to be considered include, but are not limited to, those listed in subsections (3) and (4). The failure of a trial court to impose a sentence within the sentencing guidelines is subject to appellate review under chapter 924, but the extent of departure from a guidelines sentence is not subject to appellate review.

(3) Aggravating circumstances under which a departure from the sentencing guidelines is reasonably justified include, but are not limited to:

(a) The departure results from a legitimate, uncoerced plea bargain.

(b) The offense was one of violence and was committed in a manner that was especially heinous, atrocious, or cruel.

(c) The offenses before the court for sentencing arose out of separate episodes; the primary offense is scored at offense level 4 or higher; and the defendant has committed five or more offenses within a 180-day period that have resulted in convictions.

(d) The primary offense is scored at offense level 3 and the defendant has committed eight or more offenses within a 180-day period that have resulted in convictions.

(e) The offense before the court for disposition was committed within 6 months after the defendant was discharged from a release program, as defined in s. 921.0011(6), or released from state prison, whichever is later.

(f) The defendant occupied a leadership role in a criminal organization.

(g) The offense was committed by a public official under color of office.

(h) The defendant knew the victim was a law enforcement officer at the time of the offense; the offense was a violent offense; and that status is not an element of the primary offense.

(i) The offense created a substantial risk of death or great bodily harm to many persons or to one or more small children.

(j) The victim was especially vulnerable due to age or physical or mental disability.

(k) The offense was motivated by prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, or national origin of the victim.

(l) The victim suffered extraordinary physical or emotional trauma or permanent physical injury, or was treated with particular cruelty.

(m) The victim was physically attacked by the defendant in the presence of one or more members of the victim's family.

(n) The offense resulted in substantial economic hardship to a victim and consisted of an illegal act or acts committed by means of concealment, guile, or fraud to obtain money or property, to avoid payment or loss of money or property, or to obtain business or professional advantage, when two or more of the following circumstances were present:

1. The offense involved multiple victims or multiple incidents per victim;

2. The offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

3. The defendant used position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationship; or

4. The defendant was in the past involved in other conduct similar to that involved in the current offense.

(o) The offense was committed in order to prevent or avoid arrest, to impede or prevent prosecution for the conduct underlying the offense, or to effect an escape from custody.

(p) The defendant is not amenable to rehabilitation or supervision, as evidenced by an escalating pattern of criminal conduct as described in s. 921.001(8).

(q) The defendant induced a minor to participate in any of the offenses pending before the court for disposition.

(r) The primary offense is scored at offense level 7 or higher and the defendant has been convicted of one more offense that scored, or would have scored, at an offense level 8 or higher.

(s) The defendant has an extensive unscorable juvenile record.

(4) Mitigating circumstances under which a departure from the sentencing guidelines is reasonably justified include, but are not limited to:

(a) The departure results from a legitimate, uncoerced plea bargain.

(b) The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.

(c) The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired, the defendant requires specialized treatment for addiction, mental disorder, or physical disability, and the defendant is amenable to treatment.

(d) The victim was an initiator, willing participant, aggressor, or provoker of the incident.

(e) The defendant acted under extreme duress or under the domination of another person.

(f) Before the identity of the defendant was determined, the victim was substantially compensated.

(g) The defendant is to be sentenced as a youthful offender.

Section 12. Section 921.0017, Florida Statutes, is created to read:

921.0017 Credit upon recommitment of offender serving split sentence.—Effective for offenses committed on or after October 1, 1993, if probation or community control is revoked and the offender is serving a split sentence pursuant to s. 948.01, upon recommitment to the Department of Corrections, the court shall order credit for time served only, without considering any type of gain-time earned before release to supervision, or any type of sentence reduction granted to avoid prison overcrowding, including, but not limited to, any sentence reduction resulting from administrative gain-time, provisional credits, or control release. The court shall determine the amount of jail-time credit to be awarded for time served between the date of arrest as a violator and the date of recommitment and shall direct the Department of Corrections to compute and apply credit for all other time served previously on the prior sentence for the offense for which the offender is being recommitted. This section does not affect or limit the department's authority to forfeit gain-time under s. 944.28(1).

Section 13. Notwithstanding sections 921.0015 and 921.001(4)(c), Florida Statutes, the Department of Corrections shall develop and submit the sentencing guidelines scoresheet to the Sentencing Commission no later than September 1, 1993. Pursuant to the revision of chapter 921, Florida Statutes, by this act, the Sentencing Commission shall prepare, adopt, and, no later than October 1, 1993, submit to the Supreme Court for its approval procedures for implementing the 1994 revised sentencing guidelines in strict accordance with chapter 921, Florida Statutes, as revised by this act, applicable to sentencing for offenses committed on or after January 1, 1994. The Supreme Court shall have the new procedures in place no later than December 1, 1993.

Section 14. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 775.0875, Florida Statutes, is amended to read:

775.0875 Unlawful taking, possession, or use of law enforcement officer's firearm; crime reclassification; penalties.—

(1) A person who, without authorization, takes a firearm from a law enforcement officer lawfully engaged in law enforcement duties commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, ~~and shall serve a sentence of imprisonment for a mandatory minimum period of 3 calendar years before eligibility for release.~~

(2) A person who violates subsection (1) and commits any other crime involving the firearm taken from the law enforcement officer commits a crime which shall be reclassified as follows:

- (a) In the case of a life felony, to a capital felony.
- (b) In the case of a felony of the first degree, to a life felony.
- (c) In the case of a felony of the second degree, to a felony of the first degree.
- (d) In the case of a felony of the third degree, to a felony of the second degree.
- (e) In the case of a misdemeanor, to a felony of the third degree.

(3) A person who possesses a firearm which he knows was unlawfully taken from a law enforcement officer commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 15. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 784.08, Florida Statutes, 1992 Supplement, is amended to read:

784.08 Assault or battery on persons 65 years of age or older; reclassification of offenses; minimum sentence.—

(1) A person who is convicted of an aggravated assault or aggravated battery upon a person 65 years of age or older shall be sentenced *pursuant to the sentencing guidelines to a mandatory minimum term of 3 calendar years* and fined not more than \$10,000 and shall also be ordered by the sentencing judge to make restitution to the victim of such offense and to perform up to 500 hours of community service work. Restitution and community service work shall be in addition to any fine or sentence which may be imposed and shall not be in lieu thereof.

(2) Whenever a person is charged with committing an assault or aggravated assault or a battery or aggravated battery upon a person 65 years of age or older, regardless of whether he knows or has reason to know the age of the victim, the offense for which the person is charged shall be reclassified as follows:

- (a) In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.
- (b) In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- (c) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- (d) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(3) Notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld.

Section 16. Effective January 1, 1994, and applicable to offenses committed on or after that date, section 790.161, Florida Statutes, is amended to read:

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

(1) Commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084.

(2) If the act is perpetrated with the intent to do bodily harm to any person, or with the intent to do property damage, or if the act results in a disruption of governmental operations, commerce, or the private affairs of another person, commits a felony of the second degree, punishable as provided in s. 775.082 or s. 775.084, ~~and the person shall be required to serve a term of imprisonment of not less than 5 calendar years before becoming eligible for parole.~~

(3) If the act results in bodily harm to another person or in property damage, commits a felony of the first degree, punishable as provided in s. 775.082 or s. 775.084, ~~and the person shall be required to serve a term of imprisonment of not less than 10 calendar years before becoming eligible for parole.~~

(4) If the act results in the death of another person, commits a capital felony, punishable by death. In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment, and such person shall be required to serve a term of imprisonment of not less than 25 calendar years before becoming eligible for parole.

Section 17. Effective January 1, 1994, and applicable to offenses committed on or after that date, section 790.165, Florida Statutes, is amended to read:

790.165 Planting of "hoax bomb" prohibited; penalties.—

(1) For the purposes of this section, "hoax bomb" means any device or object that by its design, construction, content, or characteristics appears to be, or to contain, or is represented to be or to contain, a destructive device or explosive as defined in this chapter, but is, in fact, an inoperative facsimile or imitation of such a destructive device or explosive, or contains no destructive device or explosive as was represented.

(2) Any person who manufactures, possesses, sells, or delivers a hoax bomb or mails or sends a hoax bomb to another person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who, while committing or attempting to commit any felony, possesses, displays, or threatens to use any hoax bomb commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. ~~Any person violating the provisions of this subsection shall be sentenced to a minimum term of imprisonment of 3 calendar years. Notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld. However, the state attorney or defense attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, coconspirators, or principals.~~

(4) The provisions of subsection (2) shall not apply to any law enforcement officer, fireman, person, or corporation licensed pursuant to chapter 493, or member of the armed forces of the United States while engaged in training or other lawful activity within the scope of his employment, or to any person properly authorized to test a security system, or to any security personnel, while operating within the scope of their employment, including, but not limited to, security personnel in airports and other controlled access areas, or to any member of a theatrical company or production utilizing a hoax bomb as property during the course of a rehearsal or performance.

Section 18. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 790.221, Florida Statutes, is amended to read:

790.221 Possession of short-barreled rifle, short-barreled shotgun, or machine gun; penalty.—

(1) It is unlawful for any person to own or to have in his care, custody, possession, or control any short-barreled rifle, short-barreled shotgun, or machine gun which is, or may readily be made, operable; but this section shall not apply to antique firearms.

(2) A person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. ~~Upon conviction thereof he shall be sentenced to a mandatory minimum term of imprisonment of 5 years.~~

(3) Firearms in violation hereof which are lawfully owned and possessed under provisions of federal law are excepted.

Section 19. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 893.13, Florida Statutes, as amended by section 1 of chapter 93-59, Laws of Florida, section 2 of chapter 93-92, Laws of Florida, section 1 of chapter 93-194, Laws of Florida, and this act, is amended to read:

(Substantial rewording of section. See s. 893.13, F.S., for present text).

893.13 Prohibited acts, penalties.—

(1)(a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, it is unlawful to sell or deliver in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 and must be sentenced to a minimum term of imprisonment of 3 calendar years and is not eligible for release under the Control Release Authority pursuant to s. 947.146, before serving such minimum sentence.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, shall be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(d) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 200 feet of the real property comprising a public housing facility, within 200 feet of the real property comprising a public or private college, university, or other postsecondary educational institution, or within 200 feet of any public park. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, shall be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(2)(a) Except as authorized by this chapter and chapter 499, it is unlawful for any person to purchase, or possess with intent to purchase, a controlled substance. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, it is unlawful to purchase in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Except as authorized by this chapter, it is unlawful for any person to purchase, or possess with intent to purchase, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully purchased, shall be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(d) Except as authorized by this chapter, it is unlawful for any person to purchase, or possess with intent to purchase, a controlled substance in, on, or within 200 feet of the real property comprising a public housing facility, within 200 feet of the real property comprising a public or private college, university, or other postsecondary educational institution, or within 200 feet of any public park. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully purchased, shall be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(3) Any person who delivers, without consideration, not more than 20 grams of cannabis, as defined in this chapter, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For the purposes of this paragraph, "cannabis" does not include the resin extracted from the plants of the genus *Cannabis* or any compound manufactured, salt, derivative, mixture, or preparation of such resin.

(4) Except as authorized by this chapter, it is unlawful for any person 18 years of age or older to deliver any controlled substance to a person under the age of 18 years, or to use or hire a person under the age of 18

years as an agent or employee in the sale or delivery of such a substance, or to use such person to assist in avoiding detection or apprehension for a violation of this chapter. Any person who violates this provision with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Imposition of sentence shall not be suspended or deferred, nor shall the person so convicted be placed on probation.

(5) It is unlawful for any person to bring into this state any controlled substance unless the possession of such controlled substance is authorized by this chapter or unless such person is licensed to do so by the appropriate federal agency. Any person who violates this provision with respect to:

(a) A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A controlled substance named or described in s. 893.03(5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6)(a) It is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. Any person who violates this provision commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is the possession of not more than 20 grams of cannabis, as defined in this chapter, that person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For the purposes of this subsection, "cannabis" does not include the resin extracted from the plants of the genus *Cannabis*, or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

(c) Except as provided in this chapter, it is unlawful to possess in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof. Any person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Notwithstanding any provision to the contrary of the laws of this state relating to arrest, a law enforcement officer may arrest without warrant any person who he has probable cause to believe is violating the provisions of this chapter relating to possession of cannabis.

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

1. To distribute or dispense a controlled substance in violation of the provisions of this chapter relating thereto.

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

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

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

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

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

7. To withhold information from a practitioner from whom he seeks to obtain a controlled substance or a prescription for a controlled substance that the person has received a controlled substance or a prescription for a controlled substance of like therapeutic use from another practitioner within the last 30 days.

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

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

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

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

(b) Any person who violates the provisions of subparagraphs 1.-8. of paragraph (a) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; except that, upon a second or subsequent violation, the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who violates the provisions of subparagraphs 9.-11. of paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) Notwithstanding any provision to the contrary of the laws of this state:

(a) The court may assess for alcohol and other drug abuse programs as provided in s. 893.165 any defendant who pleads guilty or nolo contendere to, or is convicted of, a violation of any provision of this chapter or which involves a criminal violation of s. 316.193, s. 856.011, s. 856.015, chapter 562, chapter 567, or chapter 568 in addition to any fine and other penalty provided by law, an amount up to the amount of the fine authorized for the violation.

(b) The court may assess any defendant who pleads guilty or nolo contendere to, or is convicted of, a violation of any provision of this section, without regard to whether adjudication was withheld, in addition to any fine and other penalty provided or authorized by law, an amount of \$100, to be paid to the clerk of the court, who shall forward it to the Operating Trust Fund of the Department of Law Enforcement to be used by the statewide criminal analysis laboratory system for the purposes specified in s. 943.361.

The court is authorized to order a defendant to pay an additional assessment if it finds that the defendant has the ability to pay the fine and the additional assessment and will not be prevented thereby from being rehabilitated or from making restitution.

(9) The provisions of subsections (1) through (7) are not applicable to the delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by persons included in any of the following classes, or to the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

(a) Pharmacists.

(b) Practitioners.

(c) Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

(d) Hospitals that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

(e) Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

(f) Common carriers.

(g) Manufacturers, wholesalers, and distributors.

(h) Law enforcement officers for bona fide law enforcement purposes in the course of an active criminal investigation.

(10) Notwithstanding any provision of s. 921.001 or s. 775.084 to the contrary, any defendant who:

(a) Violates subparagraph (1)(a)1., subparagraph (1)(c)2., subparagraph (1)(d)2., subparagraph (2)(a)1., subparagraph (2)(c)2., subparagraph (2)(d)2., or paragraph (5)(a); and

(b) Has not previously been convicted, regardless of whether adjudication was withheld, of any felony, other than a violation of subparagraph (1)(a)1., subparagraph (1)(c)2., subparagraph (1)(d)2., subparagraph (2)(a)1., subparagraph (2)(c)2., subparagraph (2)(d)2., or paragraph (5)(a),

may be required by the court to successfully complete a term of probation pursuant to the terms and conditions set forth in s. 948.034(1), in lieu of serving a term of imprisonment.

(11) Notwithstanding any provision of s. 921.001 or s. 775.084 to the contrary, any defendant who:

(a) Violates subparagraph (1)(a)2., subparagraph (2)(a)2., paragraph (5)(b), or paragraph (6)(a); and

(b) Has not previously been convicted, regardless of whether adjudication was withheld, of any felony, other than a violation of subparagraph (1)(a)2., subparagraph (2)(a)2., paragraph (5)(b), or paragraph (6)(a),

may be required by the court to successfully complete a term of probation pursuant to the terms and conditions set forth in s. 948.034(2), in lieu of serving a term of imprisonment.

Section 20. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 893.135, Florida Statutes, as amended by section 3 of chapter 93-92, Laws of Florida, is amended to read:

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

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

(a) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of 100 pounds of cannabis commits a felony of the first degree, which felony shall be known as "trafficking in cannabis." If the quantity of cannabis involved:

1. Is in excess of 100 pounds, but less than 2,000 pounds, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and to pay a fine of \$25,000.

2. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 5 calendar years~~ and to pay a fine of \$50,000.

3. Is 10,000 pounds or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of \$200,000.

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

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and to pay a fine of \$50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~a mandatory minimum term of imprisonment of 5 calendar years~~ and to pay a fine of \$100,000.

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

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 150 kilograms or more of cocaine, as described in s. 893.03(2)(a)4., or of any mixture containing cocaine, commits the first degree felony of trafficking in cocaine, punishable by a *mandatory minimum* term of life imprisonment without the possibility of parole *and by a fine of \$250,000*. However, if, in addition to the commission of any act specified in this paragraph, that person:

a. Intentionally kills an individual or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results; or

b. Is determined, with respect to the commission of that act, to have had a highly culpable mental state and, as a result of that act, the defendant's conduct led to a natural, though not inevitable, lethal result, which state may be taken into account in any capital sentencing judgment,

such person commits the capital felony of trafficking in cocaine, punishable as provided in ss. 775.082 and 921.142. Such person shall also be sentenced to pay the maximum fine provided under subparagraph 1. For the purposes of this paragraph, a highly culpable mental state is represented by a reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death.

(c)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, or any *derivative*, salt, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b) or (2)(a), or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 10 calendar years~~ and to pay a fine of \$100,000.

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

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 30 kilograms or more of any morphine, opium, or any *derivative*, salt, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b) or (2)(a), or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs, punishable by a *mandatory minimum* term of life imprisonment without the possibility of parole *and by a fine of \$500,000*. However, if, in addition to the commission of any act specified in this paragraph, that person:

a. Intentionally kills an individual or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results; or

b. Is determined, with respect to the commission of that act, to have had a highly culpable mental state and, as a result of that act, the defendant's conduct led to a natural, though not inevitable, lethal result, which state may be taken into account in any capital sentencing judgment,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. Such person shall also be sentenced to pay the maximum fine provided under subparagraph 1. For the purposes of this paragraph, a highly culpable mental state is represented by a reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death.

(d) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of phencyclidine or of any mixture containing phencyclidine, as described in s. 893.03(2)(b), commits a felony of the first degree, which felony shall be known as "trafficking in phencyclidine." If the quantity involved:

1. Is 28 grams or more, but less than 200 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and to pay a fine of \$50,000.

2. Is 200 grams or more, but less than 400 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 5 calendar years~~ and to pay a fine of \$100,000.

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

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

1. Is 200 grams or more, but less than 5 kilograms, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and to pay a fine of \$50,000.

2. Is 5 kilograms or more, but less than 25 kilograms, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 5 calendar years~~ and to pay a fine of \$100,000.

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

(f) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine, as described in s. 893.03(2)(c)2., or methamphetamine, as described in s. 893.03(2)(c)4., or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine commits a felony of the first degree, which felony shall be known as "trafficking in amphetamine." If the quantity involved:

1. Is 14 grams or more, but less than 28 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 3 calendar years~~ and to pay a fine of \$50,000

2. Is 28 grams or more, but less than 200 grams, such person shall be sentenced *pursuant to the sentencing guidelines* ~~to a mandatory minimum term of imprisonment of 5 calendar years~~ and to pay a fine of \$100,000.

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

(2) A person acts knowingly under subsection (1) if that person intends to sell, purchase, manufacture, deliver, or bring into this state, or to actually or constructively possess, any of the controlled substances listed in subsection (1), regardless of which controlled substance listed in subsection (1) is in fact sold, purchased, manufactured, delivered, or brought into this state, or actually or constructively possessed.

(3) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, ~~nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section.~~

(4) The state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification,

arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if the judge finds that the defendant rendered such substantial assistance.

(5) Any person who agrees, conspires, combines, or confederates with another person to commit any act prohibited by subsection (1) commits a felony of the first degree and is punishable as if he had actually committed such prohibited act. Nothing in this subsection shall be construed to prohibit separate convictions and sentences for a violation of this subsection and any violation of subsection (1).

Section 21. Effective January 1, 1994, and applicable to sentencing for offenses committed on or after that date, section 893.20, Florida Statutes, is amended to read:

893.20 Continuing criminal enterprise.—

(1) Any person who commits three or more felonies under this chapter in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.

(2)(a) A person who commits the offense of engaging in a continuing criminal enterprise is guilty of a life felony, punishable by a term of imprisonment for life or by a *mandatory minimum* term of imprisonment of not less than 25 years and by a fine of \$500,000.

(b) A violation of this section is exempt from the application of sentencing guidelines pursuant to s. 921.001.

(3) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence may not be suspended, deferred, or withheld, nor is such person eligible for parole or provisional credits under s. 944.277 prior to serving the mandatory minimum term of imprisonment prescribed in this section.

(4) This section does not prohibit separate convictions and sentences for violation of this section and for felony violations of this chapter.

(5) This section must be interpreted in concert with its federal analog, 21 U.S.C. s. 848.

Section 22. Effective January 1, 1994, section 944.275, Florida Statutes, is amended to read:

944.275 Gain-time.—

(1) The department is authorized to grant deductions from sentences in the form of gain-time in order to encourage satisfactory prisoner behavior, to provide incentive for prisoners to participate in productive activities, and to reward prisoners who perform outstanding deeds or services.

(2)(a) The department shall establish for each prisoner sentenced to a term of years a "maximum sentence expiration date," which shall be the date when the sentence or combined sentences imposed on a prisoner will expire. In establishing this date, the department shall reduce the total time to be served by any time lawfully credited.

(b) When a prisoner with an established maximum sentence expiration date is sentenced to an additional term or terms without having been released from custody, the department shall extend the maximum sentence expiration date by the length of time imposed in the new sentence or sentences, less lawful credits.

(c) When an escaped prisoner or a parole violator is returned to the custody of the department, the maximum sentence expiration date in effect when the escape occurred or the parole was effective shall be extended by the amount of time the prisoner was not in custody plus the time imposed in any new sentence or sentences, but reduced by any lawful credits.

(3)(a) The department shall also establish for each prisoner sentenced to a term of years a "tentative release date" which shall be the date

projected for the prisoner's release from custody by virtue of gain-time granted or forfeited as described in this section. The initial tentative release date shall be determined by deducting basic gain-time granted from the maximum sentence expiration date. Other gain-time shall be applied when granted or restored to make the tentative release date proportionately earlier; and forfeitures of gain-time, when ordered, shall be applied to make the tentative release date proportionately later.

(b) When an initial tentative release date is reestablished because of additional sentences imposed before the prisoner has completely served all prior sentences, any gain-time granted during service of a prior sentence and not forfeited shall be applied.

(c) The tentative release date may not be later than the maximum sentence expiration date.

(4)(a) As a means of encouraging satisfactory behavior, the department shall grant basic gain-time at the rate of 10 days for each month of each sentence imposed on a prisoner, subject to the following:

1. Portions of any sentences to be served concurrently shall be treated as a single sentence when determining basic gain-time.

2. Basic gain-time for a partial month shall be prorated on the basis of a 30-day month.

3. When a prisoner receives a new maximum sentence expiration date because of additional sentences imposed, basic gain-time shall be granted for the amount of time the maximum sentence expiration date was extended.

(b) For each month in which a prisoner works diligently, participates in training, uses time constructively, or otherwise engages in positive activities, the department may grant up to 25 20 days of incentive gain-time, which shall be credited and applied monthly.

(c) An inmate who performs some outstanding deed, such as saving a life or assisting in recapturing an escaped inmate, or who in some manner performs an outstanding service that would merit the granting of additional deductions from the term of his sentence may be granted meritorious gain-time of from 1 to 60 days.

(d) Notwithstanding paragraph (b), the education program manager shall recommend, and the Department of Corrections may grant, a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is awarded a general educational development certificate or vocational certificate. Under no circumstances may an inmate receive more than 60 days for educational attainment pursuant to this section.

(5) When a prisoner is found guilty of an infraction of the laws of this state or the rules of the department, gain-time may be forfeited according to law.

(6)(a) Basic gain-time under this section shall be computed on and applied to all sentences imposed for offenses committed on or after July 1, 1978, and before January 1, 1994.

(b) ~~On the effective date of the act, All incentive and meritorious gain-time is shall be granted according to this section the provisions of this act.~~

(c) All additional gain-time previously awarded under former subsections (2) and (3) and all forfeitures ordered prior to the effective date of ~~the this act that created this section~~ shall remain in effect and be applied in establishing an initial tentative release date.

(7) The department shall ~~adopt promulgate~~ rules to implement the granting, forfeiture, and restoration, and deletion of gain-time.

Section 23. Section 775.084, Florida Statutes, is amended to read:

775.084 Habitual felony offenders and habitual violent felony offenders; extended terms; definitions; procedure; penalties.—

(1) As used in this act:

(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in this section, if it finds that:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses;

2. The felony for which the defendant is to be sentenced was committed within 5 years of the date of the conviction of the last prior felony or other qualified offense of which he was convicted, or within 5 years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later;

3. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this section; and

4. A conviction of a felony or other qualified offense necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(b) "Habitual violent felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in this section, if it finds that:

1. The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

a. Arson,

b. Sexual battery,

c. Robbery,

d. Kidnapping,

e. Aggravated child abuse,

f. Aggravated assault,

g. Murder,

h. Manslaughter,

i. Unlawful throwing, placing, or discharging of a destructive device or bomb,

j. Armed burglary, or

k. Aggravated battery;

2. The felony for which the defendant is to be sentenced was committed within 5 years of the date of the conviction of the last prior enumerated felony or within 5 years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for an enumerated felony, whichever is later;

3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this section; and

4. A conviction of a crime necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(c) "Qualified offense" means any offense, substantially similar in elements and penalties to an offense in this state, which is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction, that was punishable under the law of such jurisdiction at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

(2) For the purposes of this section, the placing of a person on probation without an adjudication of guilt shall be treated as a prior conviction if the subsequent offense for which he is to be sentenced was committed during such probationary period.

(3) In a separate proceeding, the court shall determine if the defendant is a habitual felony offender or a habitual violent felony offender. The procedure shall be as follows:

(a) The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a habitual felony offender or a habitual violent felony offender.

(b) Written notice shall be served on the defendant and his attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence so as to allow the preparation of a submission on behalf of the defendant.

(c) Except as provided in paragraph (a), all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

(d) Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.

(e) For the purpose of identification of a habitual felony offender or a habitual violent felony offender, the court shall fingerprint the defendant pursuant to s. 921.241.

(4)(a) The court, in conformity with the procedure established in subsection (3), shall sentence the habitual felony offender as follows:

1. In the case of a felony of the first degree, for life.
2. In the case of a felony of the second degree, for a term of years not exceeding 30.
3. In the case of a felony of the third degree, for a term of years not exceeding 10.

(b) The court, in conformity with the procedure established in subsection (3), may sentence the habitual violent felony offender as follows:

1. In the case of a felony of the first degree, for life, and such offender shall not be eligible for release for 15 years.
2. In the case of a felony of the second degree, for a term of years not exceeding 30, and such offender shall not be eligible for release for 10 years.
3. In the case of a felony of the third degree, for a term of years not exceeding 10, and such offender shall not be eligible for release for 5 years.

(c) If the court decides that imposition of sentence under this section is not necessary for the protection of the public, sentence shall be imposed without regard to this section. At any time when it appears to the court that the defendant is a habitual felony offender or a habitual violent felony offender, the court shall make that determination as provided in subsection (3).

(d) A sentence imposed under this section shall not be increased after such imposition.

(e) A sentence imposed under this section ~~is shall not be subject to the provisions of s. 921.001. The provisions of chapter 947 shall not be applied to such person.~~ A defendant sentenced under this section ~~is shall~~ not be eligible for gain-time granted by the Department of Corrections, except that the department may grant up to 20 days of incentive gain-time each month as provided ~~for~~ in s. 944.275(4)(b).

(f) *In order to be counted as a prior felony for purposes of sentencing under this section, the felony must have resulted in a conviction sentenced separately prior to the current offense and sentenced separately from any other conviction for a felony that is to be counted as a prior felony.*

(5) *The purpose of this section is to provide uniform punishment for those crimes made punishable under this section, and to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.*

Section 24. Paragraphs (e) and (i) of subsection (1) of section 893.13, Florida Statutes, as amended by section 1 of chapter 83-59, Laws of Florida, section 2 of chapter 93-92, Laws of Florida, and section 1 of chapter 93-194, Laws of Florida, are amended to read:

893.13 Prohibited acts; penalties.—

(1)

(e) Except as authorized by this chapter, it is unlawful for any person to sell, purchase, manufacture, or deliver, or to possess with the intent to sell, purchase, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 and *must shall* be sentenced to a minimum term of imprisonment of 3 calendar years and *is shall* not be eligible for parole or release under the Control Release Authority pursuant to s. 947.146 or statutory gain-time under s. 944.275 ~~before prior to~~ serving such minimum sentence.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, purchased, manufactured, delivered, or possessed, *must shall* be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(i) Except as authorized by this chapter, it is unlawful for any person to sell, purchase, manufacture, or deliver, or to possess with the intent to sell, purchase, manufacture, or deliver, a controlled substance in, on, or within 200 feet of the real property comprising a public housing facility, within 200 feet of the real property comprising a public or private college, university, or other postsecondary educational institution, or within 200 feet of any public park. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 and *is shall* not be eligible for parole or release under the Control Release Authority pursuant to s. 947.146 or statutory gain-time under s. 944.275.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, purchased, manufactured, delivered, or possessed, *must shall* be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

Section 25. Section 947.146, Florida Statutes, 1992 Supplement, as amended by section 6 of chapter 93-61, Laws of Florida, is amended to read:

947.146 Control Release Authority.—

(1) There is created a Control Release Authority which shall be composed of the members of the Parole Commission and which shall have the same chairman as the commission. The authority shall utilize such commission staff as it determines is necessary to carry out its purposes.

(2) The authority ~~has shall have~~ as its primary purpose the implementation of a system of uniform criteria for the determination of the number and type of inmates who must be released into the community under control release in order to maintain the state prison system below ~~99 97.5~~ percent of its lawful capacity as defined in s. 944.096. No inmate has a right to control release. Control release is an administrative function solely used to manage the state prison population within lawful capacity. *An inmate may not receive an advancement of his control release date by an award of control release award allotments for any period of time before the date the inmate becomes statutorily eligible for control release or before the subsequent date of establishment of his advanceable control release date.*

~~(3) There shall be no award of provisional credits by the secretary of the department pursuant to s. 944.277 unless either:~~

~~(a) The chairman of the Control Release Authority certifies in writing to the secretary of the department that the authority is unable to maintain the state prison system below 97.5 percent of its lawful capacity; or~~

~~(b) Based upon the failure of the authority to act, the state prison system reaches 98 percent of its lawful capacity as provided in s. 944.277.~~

(3)(4) A panel of no fewer than two members of the authority shall establish a control release date for each parole ineligible inmate committed to the department and incarcerated within the state, within 90 days following notification by the department of receipt of the inmate or within 90 days following the completion of proceedings revoking an offender's release and notification by the department of receipt of the inmate, except an inmate who:

(a) Is serving a sentence *that which* includes a mandatory minimum provision for a capital offense, or drug trafficking offense, and has not served the number of days equal to the mandatory minimum term less any jail-time credit awarded by the court;

(b) Is serving the mandatory minimum portion of a sentence enhanced under s. 775.087(2);

(c) Is convicted, or has been previously convicted, of committing or attempting to commit sexual battery, incest, or any of the following lewd or indecent assaults or acts: masturbating in public; exposing the sexual organs in a perverted manner; or nonconsensual handling or fondling of the sexual organs of another person;

(d) Is convicted, or has been previously convicted, of committing or attempting to commit assault, aggravated assault, battery, or aggravated battery, and a sex act was attempted or completed during commission of such offense;

(e) Is convicted, or has been previously convicted, of committing or attempting to commit kidnapping, burglary, or murder, and the offense was committed with the intent to commit sexual battery or a sex act was attempted or completed during commission of the offense;

(f) Is convicted, or has been previously convicted, of committing or attempting to commit false imprisonment upon a child under the age of 13 and, in the course of committing the offense, the inmate committed aggravated child abuse, sexual battery against the child, or a lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(g) Is sentenced, has previously been sentenced, or has been sentenced at any time under s. 775.084(1)(b) for a crime committed on or after October 1, 1988 ~~s. 775.084~~, or has been sentenced at any time in another jurisdiction as a violent habitual offender;

(h) Is convicted, or has been previously convicted, of committing or attempting to commit assault, aggravated assault, battery, aggravated battery, kidnapping, manslaughter, or murder against an officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against a state attorney or assistant state attorney; or against a justice or judge of a court described in Article V of the State Constitution; or against an officer, judge, or state attorney employed in a comparable position by any other jurisdiction; ~~or~~

(i) Is convicted, or has been previously convicted, of committing or attempting to commit murder in the first, second, or third degree under s. 782.04(1), (2), (3), or (4), or has ever been convicted of any degree of murder or attempted murder in another jurisdiction;

(j) Is convicted, or has been previously convicted, of DUI manslaughter under s. 316.193(3)(c)3., and is sentenced, or has been sentenced at any time, under s. 775.084 for such offense, or has been sentenced at any time in another jurisdiction as a habitual offender for such offense;

(k) Is serving a sentence for an offense committed on or after January 1, 1994, for possession of a firearm or destructive device in which additional points are added to the offender's subtotal sentence points pursuant to s. 921.0014; or

(l) Is serving a sentence for an offense committed on or after January 1, 1994, for possession of a semiautomatic weapon, and additional points are added to the offender's subtotal sentence points pursuant to s. 921.0014.

In making control release eligibility determinations under this subsection, the authority may rely on any document leading to or generated during the course of the criminal proceedings, including, but not limited to, any presentence or postsentence investigation or any information contained in arrest reports relating to circumstances of the offense. *The 90-day requirement for the establishment of a control release date for all eligible inmates for control release consideration does not apply to a person sentenced under s. 775.084(1)(a).*

(4)(5) Control release dates shall be based upon a system of uniform criteria which shall include, but not be limited to, present offenses for which the person is committed, past criminal conduct, length of cumulative sentences, and age of the offender at the time of commitment, together with any aggravating or mitigating circumstances.

(5)(6) For purpose of determining eligibility for control release, the mandatory minimum portion of a concurrent sentence will begin on the date the sentence begins to run as provided in s. 921.161. The mandatory minimum portions of consecutive sentences shall be served at the beginning of the maximum sentence as established by the Department of Corrections. With respect to offenders who have more than one sentence with a mandatory minimum portion, each mandatory minimum portion of consecutive sentences shall be served consecutively; provided, that in no case shall a sentence begin to run before the date of imposition of that sentence.

(6)(7) The authority has the power and duty to:

(a) Extend or advance the control release date of any inmate for whom a date has been established, based upon one or more of the following:

1. Recently discovered information of:
 - a. Past criminal conduct;
 - b. Verified threats by inmates provided by victims, law enforcement, or the department;
 - c. Potential risk to or vulnerability of a victim;
 - d. Psychological or physical trauma to the victim due to the criminal offense;
 - e. Court-ordered restitution;
 - f. History of abuse or addiction to a chemical substance verified by a presentence or postsentence investigation report;
 - g. The inmate's ties to organized crime;
 - h. A change in the inmate's sentence structure;
 - i. Cooperation with law enforcement;
 - j. Strong community support; and
 - k. A documented mental condition as a factor for future criminal behavior.

2. The recommendation of the department regarding:

- a. A medical or mental health-related condition; or
 - b. Institutional adjustment of the inmate, which may include refusal by the inmate to sign the agreement to the conditions of the release plan.
3. Lawful capacity of the state prison system.

(b) Authorize an individual commissioner to postpone a control release date for not more than 60 days without a hearing for any inmate who has become the subject of a disciplinary proceeding, a criminal arrest, an information, or an indictment; who has been terminated from work release; or about whom there is any recently discovered information as specified in paragraph (a).

(c) Determine the terms, conditions, and period of time of control release for persons released pursuant to this section.

(d) Determine violations of control release and what actions shall be taken with reference thereto.

(e) Provide for victim input into the decisionmaking process which may be used by the authority as aggravation or mitigation in determining which persons shall be released on control release.

(f) Make such investigations as may be necessary for the purposes of establishing, modifying, or revoking a control release date.

(g) Contract with a public defender or private counsel for representation of indigent persons charged with violating the terms of control release.

(h) Create a periodic review process for inmates whose original control release dates are established at the maximum category.

(i) Adopt such rules as the authority deems necessary for implementation of the provisions of this section.

(7) *If the population of the state correctional system, as defined in s. 944.02, exceeds 99.5 percent of lawful capacity, the Secretary of Corrections shall notify the chairman of the Parole Commission and certify to the chairman the lawful capacity of the state correctional system and the current population. Upon receiving such certification, the chairman of the Parole Commission shall advise the Governor that a state of emergency exists. When the Governor verifies the state of emergency to the Control Release Authority by letter, the Control Release Authority shall establish emergency control release dates for inmates who are ineligible for parole, who are excluded from control release under paragraphs (3)(a), (b), (g), or (h), and who the authority determines are the most suitable for release. Under no circumstances shall an inmate convicted of a capital felony be eligible for emergency control release.*

(a) *The authority shall extend or advance emergency control release dates pursuant to subsection (6) and subsection (9)-(12).*

(b) *The authority shall maintain the inmate population below 100 percent of lawful capacity by releasing inmates on emergency control release as well as control release as otherwise provided in this section.*

(c) *A state of emergency ceases to exist when the inmate population drops below 98.5 percent of lawful capacity and remains below that level for 30 consecutive days without requiring the release of inmates through the establishment of additional emergency control release dates.*

(d) *Nothing in this subsection prohibits the establishment of a control release date under other provisions of this section or creates any right to an early release for any inmate. An inmate has no right to be reviewed for the establishment of an emergency control release date. The establishment of emergency control release dates under this subsection is solely an administrative function used to manage the prison population within lawful capacity.*

(e) *When a state of emergency ceases to exist pursuant to paragraph (c), all emergency control release dates must be suspended and no inmate is eligible for release under any previously established emergency control release date.*

(8) The Department of Corrections shall select and contract with public or private organizations for the provision of basic support services for inmates whose term of control release supervision does not exceed 180 99 days. Basic support services shall include, but not be limited to, substance abuse counseling, temporary housing, family counseling, and employment support programs.

(9) The authority shall examine such records as it deems necessary of the department, the Department of Health and Rehabilitative Services, the Department of Law Enforcement, and any other such agency for the purpose of either establishing, modifying, or revoking a control release date. The victim impact statement shall be included in such records for examination. Such agencies shall provide the information requested by the authority for the purposes of fulfilling the requirements of this section.

(10) The authority shall determine the appropriate terms, conditions, and lengths of supervision, if any, for persons placed on control release, except that such lengths of supervision shall be determined as provided in s. 947.24 and may not exceed the maximum period for which the person has been sentenced. If the person's conviction was for a controlled substance violation, the conditions must include a requirement that the person submit to random substance abuse testing intermittently throughout the term of supervision and, when warranted, a requirement that the person participate in substance abuse assessment and substance abuse treatment services, upon the direction of the correctional probation officer as defined in s. 943.10(3). If any inmate placed on control release supervision is also subject to probation or community control, the department shall supervise such person according to the conditions imposed by the court, and the authority shall defer to such supervision. If the court revokes the probation or community control, the authority, as the result of the revocation, may vacate the grant of control release and resulting deferred control release supervision or take other action it considers appropriate. If the term of control release supervision exceeds that of the probation or community control, then supervision shall revert to the authority's conditions upon expiration of the probation or community control.

(11) If an inmate is released on control release supervision subject to a detainer for a pending charge and the pending charge results in a new commitment to incarceration before expiration of the terms of control release supervision, the authority may vacate the control release date and the control release supervision or take other action it considers appropriate.

(12) When the authority has reasonable grounds to believe that an offender released under this section has violated the terms and conditions of control release, such offender shall be subject to the provisions of s. 947.141 and shall be subject to forfeiture of gain-time pursuant to s. 944.28(1).

(13) If it is discovered that any control releasee was placed on control release by error or while statutorily ineligible for such release, his order of control release may be vacated and the Control Release Authority may cause a warrant to be issued for the arrest and return of the control releasee to the custody of the Department of Corrections for service of the unserved portion of his sentence or combined sentences.

Section 26. Effective June 1, 1995, section 947.146, Florida Statutes, 1992 Supplement, as amended by Section 6 of chapter 93-61, Laws of Florida, and by this act is amended to read:

947.146 Control Release Authority.—

(1) There is created a Control Release Authority which shall be composed of the members of the Parole Commission and which shall have the same chairman as the commission. The authority shall utilize such commission staff as it determines is necessary to carry out its purposes.

(2) The authority has as its primary purpose the implementation of a system of uniform criteria for the determination of the number and type of inmates who must be released into the community under control release in order to maintain the state prison system below 99 percent of its lawful capacity as defined in s. 944.096. No inmate has a right to control release. Control release is an administrative function solely used to manage the state prison population within lawful capacity. An inmate may not receive an advancement of his control release date by an award of control release award allotments for any period of time before the date the inmate becomes statutorily eligible for control release or before the subsequent date of establishment of his advanceable control release date.

(3) A panel of no fewer than two members of the authority shall establish a control release date for each parole ineligible inmate committed to the department and incarcerated within the state, within 90 days following notification by the department of receipt of the inmate or within 90 days following the completion of proceedings revoking an offender's release and notification by the department of receipt of the inmate, except an inmate who:

(a) Is serving a sentence that includes a mandatory minimum provision for a capital offense, or a drug trafficking offense, and has not served the number of days equal to the mandatory minimum term less any jail-time credit awarded by the court;

(b) Is serving the mandatory minimum portion of a sentence enhanced under s. 775.087(2);

(c) Is convicted, or has been previously convicted, of committing or attempting to commit sexual battery, incest, or any of the following lewd or indecent assaults or acts: masturbating in public; exposing the sexual organs in a perverted manner; or nonconsensual handling or fondling of the sexual organs of another person;

(d) Is convicted, or has been previously convicted, of committing or attempting to commit assault, aggravated assault, battery, or aggravated battery, and a sex act was attempted or completed during commission of such offense;

(e) Is convicted, or has been previously convicted, of committing or attempting to commit kidnapping, burglary, or murder, and the offense was committed with the intent to commit sexual battery or a sex act was attempted or completed during commission of the offense;

(f) Is convicted, or has been previously convicted, of committing or attempting to commit false imprisonment upon a child under the age of 13 and, in the course of committing the offense, the inmate committed aggravated child abuse, sexual battery against the child, or a lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(g) Is sentenced, has previously been sentenced, or has been sentenced at any time under s. 775.084 ~~s. 775.084(1)(b) for a crime committed on or after October 1, 1988,~~ or has been sentenced at any time in another jurisdiction as a violent habitual offender;

(h) Is convicted, or has been previously convicted, of committing or attempting to commit assault, aggravated assault, battery, aggravated battery, kidnapping, manslaughter, or murder against an officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against a state attorney or assistant state attorney; or against a justice or judge of a court described in Article V of the State Constitution; or against an officer, judge, or state attorney employed in a comparable position by any other jurisdiction;

(i) Is convicted, or has been previously convicted, of committing or attempting to commit murder in the first, second, or third degree under s. 782.04(1), (2), (3), or (4), or has ever been convicted of any degree of murder or attempted murder in another jurisdiction;

(j) Is convicted, or has been previously convicted, of DUI manslaughter under s. 316.193(3)(c)3., and is sentenced, or has been sentenced at any time, under s. 775.084 for such offense, or has been sentenced at any time in another jurisdiction as a habitual offender for such offense;

(k) Is serving a sentence for an offense committed on or after January 1, 1994, for possession of a firearm or destructive device in which additional points are added to the offender's subtotal sentence points pursuant to s. 921.0014; or

(l) Is serving a sentence for an offense committed on or after January 1, 1994, for possession of a semiautomatic weapon, and additional points are added to the offender's subtotal sentence points pursuant to s. 921.0014.

In making control release eligibility determinations under this subsection, the authority may rely on any document leading to or generated during the course of the criminal proceedings, including, but not limited to, any presentence or postsentence investigation or any information contained in arrest reports relating to circumstances of the offense. The 90-day requirement for the establishment of a control release date for all eligible inmates for control release consideration does not apply to a person sentenced under s. 775.084(1)(a).

(4) Control release dates shall be based upon a system of uniform criteria which shall include, but not be limited to, present offenses for which the person is committed, past criminal conduct, length of cumulative sentences, and age of the offender at the time of commitment, together with any aggravating or mitigating circumstances.

(5) For purpose of determining eligibility for control release, the mandatory minimum portion of a concurrent sentence will begin on the date the sentence begins to run as provided in s. 921.161. The mandatory minimum portions of consecutive sentences shall be served at the beginning of the maximum sentence as established by the Department of Corrections. With respect to offenders who have more than one sentence with a mandatory minimum portion, each mandatory minimum portion of consecutive sentences shall be served consecutively; provided, that in no case shall a sentence begin to run before the date of imposition of that sentence.

(6) The authority has the power and duty to:

(a) Extend or advance the control release date of any inmate for whom a date has been established, based upon one or more of the following:

1. Recently discovered information of:
 - a. Past criminal conduct;
 - b. Verified threats by inmates provided by victims, law enforcement, or the department;
 - c. Potential risk to or vulnerability of a victim;
 - d. Psychological or physical trauma to the victim due to the criminal offense;
 - e. Court-ordered restitution;
 - f. History of abuse or addiction to a chemical substance verified by a presentence or postsentence investigation report;
 - g. The inmate's ties to organized crime;
 - h. A change in the inmate's sentence structure;
 - i. Cooperation with law enforcement;
 - j. Strong community support; and
 - k. A documented mental condition as a factor for future criminal behavior.

2. The recommendation of the department regarding:

- a. A medical or mental health-related condition; or
- b. Institutional adjustment of the inmate, which may include refusal by the inmate to sign the agreement to the conditions of the release plan.

3. Lawful capacity of the state prison system.

(b) Authorize an individual commissioner to postpone a control release date for not more than 60 days without a hearing for any inmate who has become the subject of a disciplinary proceeding, a criminal arrest, an information, or an indictment; who has been terminated from work release; or about whom there is any recently discovered information as specified in paragraph (a).

(c) Determine the terms, conditions, and period of time of control release for persons released pursuant to this section.

(d) Determine violations of control release and what actions shall be taken with reference thereto.

(e) Provide for victim input into the decisionmaking process which may be used by the authority as aggravation or mitigation in determining which persons shall be released on control release.

(f) Make such investigations as may be necessary for the purposes of establishing, modifying, or revoking a control release date.

(g) Contract with a public defender or private counsel for representation of indigent persons charged with violating the terms of control release.

(h) Create a periodic review process for inmates whose original control release dates are established at the maximum category.

(i) Adopt such rules as the authority deems necessary for implementation of the provisions of this section.

(7) If the population of the state correctional system, as defined in s. 944.02, exceeds 99.5 percent of lawful capacity, the Secretary of Corrections shall notify the chairman of the Parole Commission and certify to the chairman the lawful capacity of the state correctional system and the current population. Upon receiving such certification, the chairman of the Parole Commission shall advise the Governor that a state of emergency exists. When the Governor verifies the state of emergency to the Control Release Authority by letter, the Control Release Authority shall establish emergency control release dates for inmates who are ineligible for parole, who are excluded from control release under paragraphs (3)(a), (b), (g), or (h), and who the authority determines are the most suitable for release. Under no circumstances shall an inmate convicted of a capital felony be eligible for emergency control release.

(a) The authority shall extend or advance emergency control release dates pursuant to subsection (6) and subsection (9)-(12).

(b) The authority shall maintain the inmate population below 100 percent of lawful capacity by releasing inmates on emergency control release as well as control release as otherwise provided in this section.

(c) A state of emergency ceases to exist when the inmate population drops below 98.5 percent of lawful capacity and remains below that level for 30 consecutive days without requiring the release of inmates through the establishment of additional emergency control release dates.

(d) Nothing in this subsection prohibits the establishment of a control release date under other provisions of this section or creates any right to an early release for any inmate. An inmate has no right to be reviewed for the establishment of an emergency control release date. The establishment of emergency control release dates under this subsection is solely an administrative function used to manage the prison population within lawful capacity.

(e) When a state of emergency ceases to exist pursuant to paragraph (c), all emergency control release dates must be suspended and no inmate is eligible for release under any previously established emergency control release date.

(8) The Department of Corrections shall select and contract with public or private organizations for the provision of basic support services for inmates whose term of control release supervision does not exceed 180 days. Basic support services shall include, but not be limited to, substance abuse counseling, temporary housing, family counseling, and employment support programs.

(9) The authority shall examine such records as it deems necessary of the department, the Department of Health and Rehabilitative Services, the Department of Law Enforcement, and any other such agency for the purpose of either establishing, modifying, or revoking a control release date. The victim impact statement shall be included in such records for examination. Such agencies shall provide the information requested by the authority for the purposes of fulfilling the requirements of this section.

(10) The authority shall determine the appropriate terms, conditions, and lengths of supervision, if any, for persons placed on control release, except that such lengths of supervision shall be determined as provided in s. 947.24 and may not exceed the maximum period for which the

person has been sentenced. If the person's conviction was for a controlled substance violation, the conditions must include a requirement that the person submit to random substance abuse testing intermittently throughout the term of supervision and, when warranted, a requirement that the person participate in substance abuse assessment and substance abuse treatment services, upon the direction of the correctional probation officer as defined in s. 943.10(3). If any inmate placed on control release supervision is also subject to probation or community control, the department shall supervise such person according to the conditions imposed by the court, and the authority shall defer to such supervision. If the court revokes the probation or community control, the authority, as the result of the revocation, may vacate the grant of control release and resulting deferred control release supervision or take other action it considers appropriate. If the term of control release supervision exceeds that of the probation or community control, then supervision shall revert to the authority's conditions upon expiration of the probation or community control.

(11) If an inmate is released on control release supervision subject to a detainer for a pending charge and the pending charge results in a new commitment to incarceration before expiration of the terms of control release supervision, the authority may vacate the control release date and the control release supervision or take other action it considers appropriate.

(12) When the authority has reasonable grounds to believe that an offender released under this section has violated the terms and conditions of control release, such offender shall be subject to the provisions of s. 947.141 and shall be subject to forfeiture of gain-time pursuant to s. 944.28(1).

(13) If it is discovered that any control releasee was placed on control release by error or while statutorily ineligible for such release, his order of control release may be vacated and the Control Release Authority may cause a warrant to be issued for the arrest and return of the control releasee to the custody of the Department of Corrections for service of the unserved portion of his sentence or combined sentences.

Section 27. (1) An offender designated for early release by the Control Release Authority who is serving:

(a) A sentence for a controlled substance offense under section 893.13(1)(i), Florida Statutes; or

(b) A sentence, or has previously served a sentence, as an habitual offender under section 775.084(1)(a), Florida Statutes, for a primary offense involving drug possession, purchase, sale, manufacture, delivery, or trafficking,

shall be released into supervision under section 948.001(3), Florida Statutes.

(2) This section expires June 1, 1995.

Section 28. (1) Any inmate who is sentenced under section 775.084(1)(a), Florida Statutes, and whose primary offense at conviction is for a burglary as provided in section 810.02, Florida Statutes, shall only be placed in an advanceable category as the result of a critical depletion transfer.

(2) A critical depletion transfer occurs whenever the release of eligible inmates under control release depletes the total number of eligible inmates with advanceable control release dates to less than 4,000, and inmates in the nonadvanceable subdivision Maximum A category are transferred to the advanceable category with the control release date established at the tentative release date in compliance with the following specifications and criteria:

(a) The number transferred shall be equal to the minimum number needed to return the pool of inmates with control release dates established at tentative release dates or earlier to 4,020.

(b) Those inmates who are closest to their tentative release dates or provisional release dates shall be eligible for transfer.

(c) Inmates shall be ineligible for transfer if subject to disciplinary proceedings during the 60 days prior to the transfer action.

(d) Inmates selected for transfer shall have their control release dates reestablished at their current tentative release date or provisional release date, whichever is earlier.

(3) This section expires June 1, 1995.

Section 29. Before the release under section 947.146, Florida Statutes, of any inmate sentenced as a habitual felony offender pursuant to this act, the Control Release Authority shall develop a uniform procedure for the award of control release dates to inmates sentenced under section 775.084(1)(a), Florida Statutes. The procedure must give priority consideration for early release to habitualized offenders who have been in the state prison system on their current commitment for the longest period of time. It is the intent of the Legislature that the habitual felony offender serve at least a significant portion of the court-imposed sentence before release.

Section 30. The state attorney in each judicial circuit shall adopt uniform criterion to be used in determining if an offender is eligible to be sentenced as a habitual offender or a habitual violent felony offender. The criterion shall be designed to ensure fair and impartial application of the habitual offender statute. A deviation from this criterion must be explained in writing, signed by the state attorney, and placed in the case file maintained by the state attorney. A deviation from the adopted criterion is not subject to appellate review.

Section 31. The Inspector General of the Department of Corrections shall determine, by July 1, 1993, the maximum monthly average of sentenced felony offenders who served a term of imprisonment in each county's jail facilities during calendar year 1992. Further, for calendar years 1988 through 1992, the Inspector General shall determine the average annual growth rate for the number of sentenced felony offenders serving a term of imprisonment in each county's jail facilities. By August 1, 1993, the Inspector General shall notify each county of: the county's maximum monthly average of sentenced felony offenders and the county's average annual growth rate, as determined above. Additionally, by August 1, 1993, the Inspector General shall notify the Senate Committee on Corrections, the Senate Committee on Criminal Justice, the House Committee on Corrections, and the House Committee on Criminal Justice of each county's maximum monthly average of sentenced felony offenders and each county's average growth rate.

Section 32. Effective January 1, 1994, the number of sentenced felony offenders serving a term of imprisonment in each county's jail facilities may not exceed that county's maximum monthly average, adjusted annually for growth, as described in section 31 of this act.

Section 33. Section 944.277, Florida Statutes, as amended by section 12 of chapter 92-310, Laws of Florida, and section 944.598, Florida Statutes, as amended by section 10 of chapter 92-47, Laws of Florida, are repealed.

Section 34. When the population of the state correctional system reaches 99 percent of its lawful capacity the Governor, pursuant to Section 252.36, Florida Statutes, shall use his emergency powers to reduce the capacity of the state correctional system as follows: The Governor shall inform any federal jurisdiction which has a concurrent or consecutive sentence or any active detainer placed on any prisoner in the state correctional system of his intention to transfer custody to that jurisdiction within 30 days. No prisoner shall be so transferred who is convicted of a capital felony in this state nor shall any transfer take place to any county or municipal jurisdiction within the state.

Section 35. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

And the title is amended as follows:

In title, strike everything before the enacting clause and insert: A bill to be entitled An act relating to sentencing, excluding capital felonies; creating the "Safe Streets Initiative of 1993"; providing legislative intent; amending s. 777.04, F.S., relating to criminal attempts, criminal solicitation, and criminal conspiracy, to conform to the sentencing guidelines revision; amending s. 921.001, F.S.; providing the purpose of and additional requirements for the sentencing guidelines that are recommended to the Supreme Court by the Sentencing Commission; providing for certain representation on the commission; requiring the commission, with the Department of Corrections, to estimate rates of incarceration in the state correctional system and make funding and other recommendations to the Legislature; deleting obsolete provisions pertaining to alternative sentencing guideline recommendations; providing that a departure sentence must be within any relevant statutory maximum sentence; amending ss. 924.06, 924.07, 958.04, F.S., relating to appeal by defendant, appeal by the state, and judicial disposition of youthful offenders, to conform; providing an additional circumstance under which the state may appeal certain orders to dismiss; creating s. 921.0011, F.S.; providing definitions;

creating s. 921.0012, F.S.; providing sentencing guidelines offense levels based on severity rankings for specified crimes, including drug trafficking; providing a victim injury multiplier for second degree murder; providing multipliers for drug trafficking violations; providing additional points for possession of a firearm or destructive device, and providing for scoring criminal attempt, solicitation, or conspiracy; creating s. 921.0013, F.S.; providing requirements for ranking unlisted felony offenses; creating s. 921.0014, F.S.; providing sentencing guidelines worksheet computations; creating s. 921.0016, F.S.; providing nonexclusive aggravating and mitigating circumstances supporting departure by increasing or decreasing the length of the guidelines sentence; creating s. 921.0017, F.S.; providing for credit for time served upon recommitment of offender serving split sentence; providing requirements for the Department of Corrections, the Sentencing Commission, and the Supreme Court in adopting and implementing revised sentencing guidelines; amending ss. 775.0875, 784.08, 790.161, 790.165, 790.221, 893.13, 893.135, 893.20, F.S., relating to unlawful taking of a law enforcement officer's firearm, assault or battery on persons 65 years of age or older, unlawful activities involving destructive devices, planting of hoax bombs, unlawful possession of certain guns, controlled substances violations, trafficking violations, and continuing criminal enterprise; deleting provisions relating to certain mandatory minimum sentences and certain release, to conform to the sentencing guidelines revision; amending s. 944.275, F.S.; increasing the maximum permissible amount of incentive gain time; prohibiting the granting of basic gain-time for offenses committed after a specified date; amending s. 775.084, F.S.; deleting the exemption from consideration for parole and control release provided for persons sentenced as habitual felony offenders; providing certain exceptions; providing circumstances under which a felony is a prior felony; providing that references to s. 775.084, F.S., are general references for purposes of incorporating that section by reference; amending s. 893.13, F.S.; deleting the exemption from consideration for parole and control release provided for persons convicted of possessing controlled substances in the vicinity of a school; amending s. 947.146, F.S.; providing for certain persons sentenced as habitual felony offenders to be eligible for control release; increasing the threshold capacity of the correctional system above which inmates will be given control release; prohibiting the award of control release to persons convicted of DUI manslaughter and sentenced as habitual offenders; providing circumstances under which the Control Release Authority may establish emergency control release dates for certain inmates; prohibiting the award of control release to certain persons convicted of offenses involving firearms or destructive devices; providing for future abrogation of certain amendments to s. 947.146, F.S.; providing for certain offenders who are eligible for control release to be released into supervision; providing for critical depletion transfers of certain offenders; providing for the expiration of such provisions; requiring the development of uniform procedures for awarding control release credits to habitual felony offenders; requiring the state attorneys to adopt criterion to be used in determining an offender's eligibility for sentencing as a habitual offender or a habitual violent felony offender; directing the Inspector General of the Department of Corrections to determine the maximum monthly average of sentenced felony offenders for each county; providing that the sentenced felony offenders incarcerated in each county's jail facilities shall not exceed such average, adjusted for growth; repealing s. 944.277, F.S., relating to provisional release credits; repealing s. 944.598, F.S., relating to the emergency release of inmates; providing emergency powers for the Governor to reduce the capacity of the state correctional system; providing effective dates.

WHEREAS, the state has the solemn duty and responsibility to protect the public from criminal acts against persons and property, and

WHEREAS, current projections of prison admissions indicate that present and planned capacity in the state correctional system is insufficient to prevent the early release of thousands of offenders and, even when the revised guidelines in this act are in place, it will be necessary to release offenders through early release mechanisms for several years until the revised guidelines have restored the balance in the prison population, and

WHEREAS, the effectiveness of the sentencing guidelines, and the goal of truth in sentencing, have been eroded by the awarding of basic gain-time and use of other release mechanisms necessary to maintain lawful prison capacity, and also by the increasing numbers of offenders who are eligible for control release, and

WHEREAS, the state Supreme Court has ruled that legislative delegations of procedural authority to the judiciary are valid if such delegation is accompanied by adequate guidelines, and

WHEREAS, the state Supreme Court has ruled that the Legislature is the exclusive policymaking branch of government, and it is clear that greater efforts must be made to enhance the safety of Florida's streets, NOW, THEREFORE,

On motion by Senator Wexler, by two-thirds vote **CS for HB 39-B** as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—33 Nays—5

RECESS

The Senate recessed at 5:51 p.m. to reconvene upon call of the President.

CALL TO ORDER

The Senate was called to order by the President at 6:05 p.m. A quorum present.

CONFEREES ON SENATE BILL 26-B AND CS for HB 39-B APPOINTED

The President announced the appointment of the following conferees on **SB 26-B** and **CS for HB 39-B**: Senator Wexler, Chairman; Senators Siegel, Dantzer, Burt, Meadows and Bankhead.

REPORTS OF COMMITTEES

The Committee on Corrections, Probation and Parole recommends the following pass: **SB 2-B**

The Committee on Criminal Justice recommends the following pass: **SB 44-B** with 2 amendments

The bills contained in the foregoing reports were referred to the Committee on Appropriations under the original reference.

The Committee on Corrections, Probation and Parole recommends the following pass: **SM 4-B, SB 26-B** with 3 amendments

The Committee on Transportation recommends the following pass: **SB 10-B** with 2 amendments

The bills contained in the foregoing reports were placed on the calendar.

The Committee on Appropriations recommends a committee substitute for the following: **SB 8-B**

The bill with committee substitute attached was placed on the calendar.

INTRODUCTION AND REFERENCE OF BILLS

FIRST READING

By Senators Thomas, Holzendorf, Williams, Dyer, Meadows, Jones, Grogan, Forman, Weinstein, Turner, Dantzer, Kurth, Johnson and Childers—

SB 42-B—A bill to be entitled An act relating to criminal justice and corrections; creating the Task Force for Review of the Criminal Justice and Corrections Systems; providing for the composition of the task force; providing for the term of the task force; providing for organization and compensation; providing for powers and duties; providing an appropriation; providing an effective date.

—was referred to the Committee on Rules and Calendar.

By Senators Thomas, Silver, Holzendorf, Williams, Dyer, Meadows, Forman, Weinstein, Turner, Dantzler, Kurth, Johnson, Hargrett and Childers—

SB 52-B—A bill to be entitled An act relating to corrections; amending s. 20.315, F.S.; creating the Youth Corrections Authority within the Department of Corrections; providing for an executive director of the authority; providing for the budget of the authority to be independent of the department; deleting the Youth Offender Program Office within the department; amending s. 958.011, F.S.; redesignating the Florida Youthful Offender Act as the Florida Serious and Chronic Young Offender Act; creating s. 958.022, F.S.; providing legislative policy with respect to serious and chronic young offenders; amending s. 958.03, F.S.; providing definitions; amending s. 958.04, F.S.; providing for judicial disposition of serious and chronic young offenders; creating s. 958.16, F.S.; limiting eligibility of a serious and chronic young offender or a youthful offender for gain-time, provisional release, or control release; authorizing the court to recommend a release from incarceration for such offenders upon a recommendation by the Youth Corrections Authority; amending s. 958.19, F.S.; redesignating the Youth Corrections Program as the Serious and Chronic Young Offender Program; repealing s. 958.021, F.S., relating to legislative intent; providing an effective date.

—was referred to the Committees on Health and Rehabilitative Services; and Appropriations.

By Senators Bankhead and Forman—

SB 58-B—A bill to be entitled An act relating to juvenile justice; amending s. 39.025, F.S., relating to district juvenile justice boards; providing technical amendments; repealing section 1 of ch. 93-196, Laws of Florida, (1993), relating to juvenile delinquency and gang prevention councils; reenacting s. 39.042, F.S., relating to use of detention; revising membership of the Task Force on the Use of Department of Health and Rehabilitative Services Detention Facilities and Resources; providing an effective date.

—was referred to the Committee on Health and Rehabilitative Services.

COMMITTEE SUBSTITUTES

FIRST READING

By the Committee on Appropriations and Senators Scott, Diaz-Balart, Casas, Burt, Dudley, Brown-Waite, Bankhead, Sullivan, Grant, Thomas, Jones, McKay, Williams, Dantzler, Beard, Childers and Hargrett—

CS for SB 8-B—A bill to be entitled An act making supplemental appropriations; providing or adjusting moneys from the named funds for the annual periods beginning July 1, 1992, and ending June 30, 1993, and beginning July 1, 1993 and ending June 30, 1994, to pay salaries, and other expenses, capital outlay - buildings and other improvements, and for other specified purposes of the various agencies of State government; supplementing or adjusting appropriations as provided in Chapters 92-293 and 93-184, Laws of Florida, providing effective dates.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

FIRST READING

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has admitted for introduction by the required Constitutional two-thirds vote and passed HB 41-B; has passed as amended CS for HB 39-B, HB 63-B, HB 75-B and requests the concurrence of the Senate.

John B. Phelps, Clerk

By Representative Tobin—

HB 41-B—A bill to be entitled An act relating to funeral, cemetery, and crematory services; saving chapters 470, 497, and 639, F.S., from Sunset repeal; providing for future review and repeal; providing an effective date.

MOTION TO INTRODUCE BILL

On motion by Senator Jennings, by the required constitutional two-thirds vote of the Senate **HB 41-B** was admitted for introduction.

Motions

On motion by Senator Jennings, by two-thirds vote **HB 41-B** was referred to the Committee on Rules and Calendar.

On motion by Senator Jennings, the rules were waived and the Committee on Rules and Calendar was granted permission to consider **HB 41-B** on Wednesday, May 26.

By the Committee on Criminal Justice and Representative Martinez and others—

CS for HB 39-B—A bill to be entitled An act relating to criminal justice; creating the "Safe Streets Initiative of 1993"; providing legislative intent; amending s. 775.084, F.S.; redefining habitual felony offenders and habitual violent felony offenders; stating legislative intent that all cross references to s. 775.084, F.S., refer to that section as amended and enumerating said references; clarifying that provisions of s. 947.1405, F.S., apply to persons sentenced as habitual offenders; amending s. 777.04, F.S.; providing for scoring criminal attempt, criminal solicitation, and criminal conspiracy, to conform to the sentencing guidelines revision; amending s. 921.001, F.S.; providing the purpose of and additional requirements for the sentencing guidelines that are recommended to the Supreme Court by the Sentencing Commission; requiring the commission, with the Department of Corrections, to estimate rates of incarceration in the state correctional system and make funding and other recommendations to the Legislature; requiring a net zero sum impact for increases or additions in criminal penalties; deleting obsolete provisions pertaining to alternative sentencing guideline recommendations; providing that a departure sentence must be within any relevant statutory maximum sentence; amending ss. 924.06, 924.07, and 958.04, F.S., relating to appeal by defendant, appeal by the state, and judicial disposition of youthful offenders, to conform; creating s. 921.0011, F.S.; providing definitions; creating s. 921.0012, F.S.; providing sentencing guidelines offense levels based on severity rankings for specified crimes, including drug trafficking; creating s. 921.0013, F.S.; providing requirements for ranking unlisted felony offenses; creating s. 921.0014, F.S.; providing sentencing guidelines worksheet computations; providing multipliers for drug trafficking and Law Enforcement Protection Act violation; providing additional points for possession of a firearm or destructive device; creating s. 921.0016, F.S.; providing nonexclusive aggravating and mitigating circumstances supporting departure by increasing or decreasing the length of the guidelines sentence; creating s. 921.0017, F.S.; providing for credit for time served upon recommitment of offender serving split sentence; requiring the Sentencing Commission to adopt procedures for implementing revised sentencing guidelines; providing timeframes for the new scoresheets; amending ss. 775.0823, 775.087, 775.0875, 784.08, 790.161, 790.165, 790.221, 893.13, 893.135, and 893.20, F.S., relating to violent offenses committed against certain law enforcement officials, possession of a firearm or destructive device, unlawful taking of a law enforcement officer's firearm, assault or battery on persons 65 years of age or older, unlawful activities involving destructive devices, planting of hoax bombs, unlawful possession of certain guns, controlled substances violations, trafficking violations, and continuing criminal enterprise; revising elements of certain offenses; deleting provisions relating to mandatory minimum sentences and certain release mechanisms, to conform to the sentencing guidelines revision; amending s. 944.275, F.S.; prohibiting the granting of basic gain-time for offenses committed after a specified date; amending s. 947.146, F.S.; providing that an inmate may not receive control release award allotments before he is statutorily eligible for control release or before the date his advanceable control release date is established; providing for certain persons convicted of drug trafficking offenses and sentenced to less than a specified term of imprisonment to be eligible for control release; providing for certain persons sentenced as habitual felony offenders to be eligible for control release; excluding certain persons from control release consideration; providing for the Control Release Authority to establish a control release date for offenders whose release has been revoked; providing additional circumstances under which the authority may extend, advance, or postpone an inmate's control release date; providing circumstances under which the authority may vacate a grant of control release; increasing the threshold capacity of the correctional system above which inmates will be given control release;

providing that certain offenders who are eligible for control release may be released into supervision; providing for critical depletion transfers of certain offenders; providing for the expiration of such provisions; providing for the emergency control release of prisoners; increasing the threshold capacity of the correctional system above which inmates will be granted emergency control release; providing emergency control release dates for certain parole ineligible inmates; requiring the Control Release Authority to develop uniform procedures for awarding control release to certain habitual offenders; providing for future abrogation of certain amendments to s. 947.146, F.S.; repealing s. 944.277, F.S., relating to provisional release credits; repealing s. 944.598, F.S., relating to the emergency release of inmates; listing statutory cross references to s. 775.084, F.S., and providing directives to the Division of Statutory Revision; directing the Inspector General of the Department of Corrections to determine the maximum monthly average number of sentenced felony offenders for each county; providing that the number of sentenced felony offenders incarcerated in each county's jail facilities shall not exceed such number, adjusted for growth; amending s. 944.405, F.S.; providing for issuance of warrants to retake offenders who are ineligible for release and have been erroneously released; creating s. 944.278, F.S.; providing for cancellation of administrative gain-time and provisional credits; amending ss. 210.20 and 210.70, F.S.; revising the distribution of revenues from the tax on cigarettes and other tobacco products; creating chapter 957, F.S., the Correctional Privatization Commission Act; providing definitions; creating the commission and providing for its membership, organization, meetings, and duties; providing requirements for contracts, contractors, cost savings, and inmate capacity; providing powers and duties not delegable to contractors; providing applicability of chapter to other provisions of law; providing for evaluation of costs and benefits of contracts; prohibiting certain contact by bidders; expediting the process for the first two facilities; requiring a request for proposals for construction and operation of a private correctional health care facility capable of forensic medical custody, and providing required components, amending s. 794.022, F.S.; providing evidentiary considerations in sexual battery cases; providing for legislative adoption and implementation of revisions to sentencing guidelines promulgated by the Florida Supreme Court in accordance with s. 921.001, F.S.; providing effective dates.

(Substituted for **SB 44-B** on the Special Order Calendar this day.)

By the Committee on Judiciary and Representative Trammell—

HB 63-B—A bill to be entitled An act relating to criminal justice and corrections; creating the Academic Task Force for Review of the Criminal Justice and Corrections Systems; providing for the composition of the task force; providing for the term of the task force; providing for organization and compensation; providing for powers and duties; providing an appropriation; providing an effective date.

—was referred to the Committees on Rules and Calendar; and Appropriations.

By the Committee on Criminal Justice and Representative Martinez—

HB 75-B—A bill to be entitled An act relating to juvenile justice; amending s. 39.025, F.S., relating to district juvenile justice boards; providing technical amendments; repealing section 1 of ch. 93-196, Laws of Florida, (1993), relating to juvenile delinquency and gang prevention councils; reenacting s. 39.042, F.S., relating to use of detention; revising membership of the Task Force on the Use of Department of Health and Rehabilitative Services Detention Facilities and Resources; amending s. 944.095, F.S.; revising provisions relating to the siting of facilities study; providing an effective date.

—was referred to the Committee on Health and Rehabilitative Services.

ROLL CALLS ON SENATE BILLS

SB 2-B

Yeas—35

Mr. President	Beard	Brown-Waite	Casas
Bankhead	Boczar	Burt	Childers

Crist
Dantzler
Diaz-Balart
Dudley
Dyer
Foley
Forman

Nays—None

Grant
Gutman
Harden
Holzendorf
Jenne
Jennings
Johnson

Jones
Kiser
Kurth
McKay
Meadows
Siegel
Silver

Sullivan
Thomas
Turner
Weinstein
Wexler
Williams

SM 4-B

Yeas—37

Mr. President
Bankhead
Beard
Boczar
Brown-Waite
Burt
Casas
Childers
Crist
Dantzler

Nays—None

Diaz-Balart
Dudley
Dyer
Foley
Forman
Grant
Grogan
Gutman
Harden
Hargrett

Holzendorf
Jenne
Jennings
Johnson
Jones
Kiser
Kurth
McKay
Meadows
Siegel

Silver
Sullivan
Thomas
Turner
Weinstein
Wexler
Williams

SB 10-B

Yeas—37

Mr. President
Bankhead
Beard
Boczar
Brown-Waite
Burt
Casas
Childers
Crist
Dantzler

Nays—None

Diaz-Balart
Dudley
Dyer
Foley
Forman
Grant
Grogan
Gutman
Harden
Hargrett

Holzendorf
Jenne
Jennings
Johnson
Jones
Kiser
Kurth
McKay
Meadows
Siegel

Silver
Sullivan
Thomas
Turner
Weinstein
Wexler
Williams

SB 26-B—Amendment 7

Yeas—31

Mr. President
Beard
Boczar
Brown-Waite
Burt
Casas
Childers
Crist

Nays—6

Dantzler
Diaz-Balart
Dudley
Dyer
Foley
Forman
Grogan
Gutman

Hargrett
Holzendorf
Jenne
Johnson
Jones
Kiser
Kurth
McKay

Meadows
Siegel
Silver
Thomas
Turner
Weinstein
Wexler

Bankhead
Grant

Harden
Scott
Sullivan
Williams

SB 26-B

Yeas—27

Mr. President
Beard
Brown-Waite
Burt
Casas
Crist
Dantzler

Nays—10

Diaz-Balart
Dudley
Dyer
Foley
Grant
Gutman
Harden

Hargrett
Holzendorf
Jennings
Jones
Kiser
McKay
Meadows

Scott
Siegel
Sullivan
Thomas
Weinstein
Williams

Boczar	Grogan	Kurth	Wexler
Childers	Jenne	Silver	
Forman	Johnson	Turner	

ROLL CALLS ON HOUSE BILLS

CS for HB 39-B

Yeas—33

Mr. President	Dudley	Jenne	Silver
Bankhead	Foley	Jennings	Sullivan
Beard	Forman	Johnson	Thomas
Boczar	Grant	Jones	Turner
Brown-Waite	Grogan	Kiser	Weinstein
Burt	Gutman	McKay	Wexler
Casas	Harden	Meadows	
Crist	Hargrett	Scott	
Diaz-Balart	Holzendorf	Siegel	

Nays—5

Childers	Dyer	Williams
Dantzler	Kurth	

VOTES RECORDED AFTER ROLL CALL

On motion by Senator Bankhead, by unanimous consent of the Senate, he was recorded as changing his vote from “nay” to “yea” in the original roll call on SM 4-B.

CORRECTION AND APPROVAL OF JOURNAL

The Journal of May 24 was corrected and approved.

CO-SPONSORS

Senators Diaz-Balart, Casas, Burt, Dudley, Brown-Waite, Bankhead, Sullivan, Grant, Thomas, Jones, McKay, Williams, Dantzler, Beard, Childers and Hargrett—SB 8-B

RECESS

On motion by Senator Jennings, the Senate recessed at 6:28 p.m. for the purpose of holding committee meetings and conducting other Senate business until 6:00 p.m., Wednesday, May 26.