



Journal of the Senate

Number 3—Special Session B

Wednesday, May 26, 1993

CALL TO ORDER

The Senate was called to order by the President at 6:20 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: Senator Myers; Senator Kirkpatrick until 7:30 p.m.; periodically, the following conferees on CS for HB 39-B and SB 26-B: Senators Wexler, Siegel, Dantzler, Burt, Meadows and Bankhead.

PRAYER

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

Good evening loving Mother - Father.

As we prepare to commence tackling the business before us today, we ask:

"That your strength pilot us.
That your power preserve us.
That your wisdom instruct us.
That your hand protect us.
That your way direct us. And,
That the shield of your presence defend us." Amen.
St. Patrick (389-461)

PLEDGE

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

MOTIONS RELATING TO COMMITTEE REFERENCE

On motions by Senator Jennings, by two-thirds vote **SB 12-B** was withdrawn from the Committee on Transportation and **SB 52-B** was withdrawn from the Committee on Appropriations.

MOTIONS

On motions by Senator Jennings, the rules were waived and by two-thirds vote **SB 22-B**, **CS for SB 42-B**, **SB 20-B**, proposed **Senate Rule 1.444**, **SB 52-B** and **SB 58-B** were established as the Special Order Calendar for this day.

SPECIAL ORDER

SB 22-B—A bill to be entitled An act relating to insurance; amending s. 627.707, F.S.; prohibiting nonrenewal of a property insurance policy because of a claim for loss caused by sinkhole damage or clay shrinkage under certain conditions; repealing minimum standards to be followed by insurers in investigating sinkhole claims; providing an effective date.

—was read the second time by title.

The Committee on Commerce recommended the following amendment which was moved by Senator Grant:

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

Section 1. Subsection (2) and paragraph (c) of subsection (6) of section 627.351, Florida Statutes, 1992 Supplement, as amended by section 3 of chapter 92-345, Laws of Florida, are amended to read:

627.351 Insurance risk apportionment plans.—

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

(a) Agreements may be made among property insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but are unable to procure, such insurance through ordinary methods; and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance. Such agreements and rate modifications shall be subject to the applicable provisions of this chapter.

(b) The department shall require all insurers licensed to transact property insurance on a direct basis in this state to provide windstorm coverage to applicants from areas determined to be eligible pursuant to paragraph (c) who in good faith are entitled to, but are unable to procure, such coverage through ordinary means; or it shall adopt a reasonable plan or plans for the equitable apportionment or sharing among such insurers of windstorm coverage. The commissioner shall promulgate rules which provide a formula for the recovery and repayment of any deferred assessments.

1. For the purpose of this section, properties eligible for such windstorm coverage are defined as dwellings, buildings, and other structures, including mobile homes which are used as dwellings and which are tied down in compliance with mobile home tie-down requirements prescribed by the Department of Highway Safety and Motor Vehicles pursuant to s. 320.8325, and the contents of all such properties.

2. All insurers required to be members of such plan shall participate in its writings, expenses, profits, and losses. Such gross participation shall be in the proportion that the net direct premiums of each member written on property in this state during the preceding calendar year bears to the aggregate net direct premiums of all members of the plan written on property in this state during the preceding calendar year. The commissioner, after review of annual statements, other reports, and any other statistics which he deems necessary, shall certify to the plan the aggregate net direct premiums written on property in this state by all members. The plan of operation shall provide that one additional domestic member of the board of directors be elected by the domestic companies of this state on the basis of cumulative weighted voting based on the net written premiums of domestic companies in this state. Any such plan shall provide a formula whereby a company voluntarily providing windstorm coverage in affected areas will be relieved wholly or partially from apportionment. A company which is a member of a group of companies under common management may elect to have its credits applied on a group basis, and any company or group may elect to have its credits applied to any other company or group.

3. The plan shall also provide that any member with a surplus as to policyholders of \$20,000,000 or less writing 25 percent of its total country-wide property insurance premiums in this state may petition the department, within 90 days of the effective date of chapter 76-96, Laws of Florida, and thereafter within the first 90 days of each calendar year, to qualify as a limited apportionment company. The apportionment of such a company in any calendar year for which it is qualified shall not exceed its gross participation, which shall not be affected by the formula for voluntary writings. In no event shall a limited apportionment company be

required to participate in any apportionment of losses in the aggregate which exceeds \$50,000,000 after payment of available plan funds in any calendar year. The plan shall provide that, if the department determines that any assessment will result in an impairment of the surplus of a limited apportionment company, the department may direct that all or part of such assessment be deferred.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of a member insurer if, in the opinion of the commissioner, payment of the assessment would endanger or impair the solvency of the member insurer. In the event an assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in subparagraph 2.

5. The plan may include deductibles and rules for classification of risks and rate modifications consistent with the objective of providing and maintaining funds sufficient to pay catastrophe losses.

6. The plan may authorize the formation of a private nonprofit corporation, a private nonprofit unincorporated association, or a nonprofit mutual company which may be empowered, among other things, to borrow money and to accumulate reserves or funds to be used for the payment of insured catastrophe losses. The plan shall incorporate and continue the plan of operation and articles of agreement in effect on the effective date of chapter 76-96, Laws of Florida, to the extent that it is not inconsistent with chapter 76-96, Laws of Florida, and as subsequently modified consistent with chapter 76-96, Laws of Florida. The board of directors and officers currently serving shall continue to serve until their successors are duly qualified as provided under the plan. The assets and obligations of the plan in effect immediately prior to the effective date of chapter 76-96, Laws of Florida, shall be construed to be the assets and obligations of the successor plan created herein.

7. On such coverage, an agent's remuneration shall be that amount of money payable to him by the terms of his contract with the company with which the business is placed. However, no commission will be paid on that portion of the premium which is in excess of the standard premium of that company.

(c) *The provisions of paragraph (b) are applicable only with respect to any county or area that the department has heretofore designated or as to which the department, after public hearing, finds that the following criteria exist:*

1. *Due to the lack of windstorm insurance coverage in the county or area, economic growth and development is deterred or otherwise stifled, mortgages are in default, and financial institutions are unable to make loans;*

2. *The county or area has adopted and is enforcing the structural requirements of the Southern Standard Building Code, or its equivalent, for new construction and has included adequate minimum floor elevation requirements for structures in areas subject to inundation; and*

3. *Extending windstorm insurance coverage to the county or area is consistent with and will implement and further the policies and objectives in applicable state laws, rules, and regulations governing coastal management, coastal construction, comprehensive planning, beach and shore preservation, barrier island preservation, coastal zone protection, and the Coastal Zone Protection Act of 1985.*

Any time after the department determines that the criteria in this subparagraph do not exist with respect to any county or area, it may, after a subsequent public hearing, declare that such county or area is no longer eligible for windstorm coverage through the plan.

(6) RESIDENTIAL PROPERTY AND CASUALTY JOINT UNDERWRITING ASSOCIATION.—

(c) The plan of operation of the association:

1. May provide for one or more designated insurers, able and willing to provide policy and claims service, to act on behalf of the association to provide such service. If more than one insurer is designated, each licensed agent shall be entitled to select the insurer who will service the business placed by the agent.

2. Must provide for adoption of residential property and casualty insurance policy forms, which forms must be approved by the department prior to use. For the purpose of this section, residential property and casualty insurance includes:

a. As to homeowners' insurance, a policy that provides coverage for accidental loss or damage to a structure with losses to be adjusted on the basis of costs of repair or replacement not to exceed a stated amount, with liability coverage up to \$100,000 per claim and \$300,000 per occurrence, and with coverages for personal property and contents as are customarily provided without additional premium charge in connection with such policy forms; provided that such coverage and other terms, conditions, limitations, and exclusions of such policy shall be as would be considered standard within the insurance industry.

b. As to mobile homeowners' insurance, a policy that provides coverage for accidental loss or damage to a structure consistent with s. 627.702, with liability coverage in amounts up to \$100,000 per claim and \$300,000 per occurrence, and with coverages for personal property and contents as are customarily provided without additional premium charge in connection with such policy forms. Other terms, conditions, limitations, and exclusions of such policy shall be as would be considered standard within the insurance industry.

c. As to condominium unit owners' insurance, coverage for accidental loss or damage to portions of the structure and fixtures of the unit owner that are not the responsibility of the condominium association as provided by Florida law, with losses to be adjusted on the basis of costs of repair or replacement not to exceed stated amounts; coverage for personal property and contents as is normally included in such policy forms without additional premium charge; and liability coverages not to exceed limits of \$100,000 per claim and \$300,000 aggregate per occurrence; provided that such coverage and other terms, conditions, limitations, and exclusions of such policy shall be as would be considered standard within the insurance industry.

d. As to rental dwelling insurance, coverage for accidental loss or damage to a structure with coverage to be based on costs of repair or replacement not to exceed a stated amount, and with liability coverage in amounts up to \$100,000 per claim and \$300,000 per occurrence; provided that such coverage and other terms, conditions, limitations, and exclusions of such policy shall be as would be considered standard within the insurance industry.

e. As to tenants' insurance, coverage for accidental loss or damage to betterments and improvements in the rented dwelling unit, with losses to be adjusted on the basis of costs of repair or replacement not to exceed stated amounts; coverage for personal property and contents in such limits as may be selected by the board; and liability coverages in amounts up to \$100,000 per claim and \$300,000 per occurrence; provided that such coverage and other terms, conditions, limitations, and exclusions of such policy shall be as would be considered standard within the insurance industry.

Any policy under this subparagraph must provide deductibles for residential property and casualty insurance in a minimum of \$500 per occurrence, or such higher limits as may be selected by the insured. Policies issued under this subparagraph shall not cover loss or damage caused by the enforcement of any ordinance or law regulating the construction, use, or repair of any property, or requiring the tearing down of any property, including the cost of removing its debris.

3. May provide that the association may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan, and shall have the power to borrow funds and other powers reasonably necessary to effectuate the requirements of this subsection.

4. Must require that the association operate subject to the supervision and approval of a board of governors consisting of 11 individuals, including one who is elected as chairman. The board shall consist of the insurance consumer advocate appointed under s. 627.0613, five members designated by the insurance industry, ~~and five members designated one consumer representative appointed by the Insurance Commissioner, and four representatives of the insurance industry appointed by the Insurance Commissioner.~~ Of the ~~four insurance industry~~ representatives designated appointed by the Insurance Commissioner, at least two must be individuals who are minority persons as defined in s. 288.703(3). *At no time may more than five members be affiliated with the insurance industry. A member may not be affiliated with any insurer or person that provides compensated services to the association.* Any board member may be disapproved or removed and replaced by the Insurance Commissioner at any time ~~for cause~~. All board members, including the chairman, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan.

5. Must provide that a risk is eligible to be insured under the plan only after coverage is activated pursuant to paragraph (e) and an attempt has been made to place the risk with an admitted insurer through the market assistance plan under s. 627.3515, which attempt was not successful, and only if the risk is determined to be insurable by the risk underwriting committee. A risk shall cease to be eligible if it receives a premium quotation from an admitted carrier at that carrier's filed rate.

6. Must include rules for classifications of risks and rates therefor.

7. Must provide that if premium and investment income attributable to a particular plan year are in excess of projected losses and expenses of the plan attributable to that year, such excess shall be held in surplus. Such surplus shall be available to defray deficits as to future years and shall be used for that purpose prior to assessing member insurers as to any plan year.

8. Must provide for a Risk Underwriting Committee of the association composed of three members experienced in evaluating insurance risks, to review and determine insurability of risks rejected by the voluntary market for which application is made for insurance through the association. The committee shall consist of a representative of the market assistance plan created under s. 627.3515 and two members named by the board. The Risk Underwriting Committee shall appoint such advisory committees as are provided for in the plan and are necessary to conduct its functions. The salaries and expenses of the members of the Risk Underwriting Committee and its advisory committees shall be paid by the association. The plan approved by the department shall establish objective criteria and procedures for use by the Risk Underwriting Committee to be uniformly applied for all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

- a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and
- b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the underwriting committee shall be construed as the private placement of insurance and the provisions of chapter 120 shall not apply.

Section 2. Section 627.3517, Florida Statutes, is created to read:

627.3517 Florida Property Insurance Study Commission.—

(1) There is created within the Executive Office of the Governor the Florida Property Insurance Study Commission for the review of the commercial viability and competitiveness of the personal lines property insurance industry in this state and of the adequacy of statutory regulation of the reinsurance industry. The commission shall be composed of 11 members appointed by the Governor. Of the appointments, four shall be made from a list of names provided by the President of the Senate and four shall be made from a list of names provided by the Speaker of the House of Representatives.

(2) The commission members shall serve from June 1, 1993, until September 15, 1993. Vacancies shall be filled for the unexpired terms by appointment by the Governor.

(3) The commission shall elect one of its members as chairman.

(4) The members of the commission shall serve without compensation, but shall be reimbursed for per diem and travel expenses while engaged in commission duties, as provided in section 112.061, Florida Statutes.

(5) The commission shall submit before September 15, 1993, a report to the Legislature and the Governor outlining its recommendations for legislative changes to improve the commercial viability and competitiveness of the personal lines property insurance industry in this state and legislative changes to assure the adequacy of the statutory regulation of the reinsurance industry.

Section 3. Section 627.707, Florida Statutes, 1992 Supplement, is amended to read:

627.707 ~~Nonrenewals based on sinkhole claims~~ ~~Minimum standards for investigation of sinkhole claims by insurers.~~—An insurer may not refuse to renew any policy of property insurance on the basis of filing

~~of claims for partial loss caused by sinkhole damage or clay shrinkage if the total of such payments does not exceed the current policy limits of coverage for property damage, and if the insured has repaired the structure in accordance with the engineering recommendations upon which any payment or policy proceeds was based. Upon receipt of a claim for a sinkhole loss, an insurer must meet the following minimum standards in investigating a claim:~~

~~(1) Upon receipt of a claim for a sinkhole loss, the insurer must make an inspection of the insured's premises to determine if there has been physical damage to the structure which might be the result of sinkhole activity.~~

~~(2) If, upon the investigation pursuant to subsection (1), the insurer discovers damage to a structure which is consistent with sinkhole activity or if the structure is located in close proximity to a structure in which sinkhole damage has been verified, then prior to denying a claim, the insurer must obtain a written certification from an individual qualified to determine the existence of sinkhole activity, stating that the cause of the claim is not sinkhole activity, and that the analysis conducted was of sufficient scope to eliminate sinkhole activity as the cause of damage within a reasonable professional probability. The written certification must also specify the professional discipline and professional licensure or registration under which the analysis was conducted. Effective July 1, 1993, this section is repealed.~~

Section 4. Section 628.371, Florida Statutes, is amended to read:

628.371 Dividends to stockholders.—

(1) A domestic stock insurer shall not pay any dividend or distribute cash or other property to stockholders except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and net realized capital gains. ~~Dividend payments or distributions to stockholders shall not exceed 10 percent of such surplus in any one year unless otherwise approved by the department. In addition to such limited payments, an insurer may make dividend payments or distributions out of the insurer's entire net operating profits and realized net capital gains derived during the immediately preceding calendar year.~~

(2) *Dividend payments or distributions to stockholders, without prior written approval of the department, may not exceed the larger of:*

(a) *The lesser of 10 percent of surplus or net gain from operations for life and health companies or net income for property and casualty companies, not including realized capital gains, plus a 2-year carry forward for property and casualty companies:*

(b) *Ten percent of surplus, with dividends payable constrained to unassigned funds minus 25 percent of unrealized capital gains; or*

(c) *The lesser of 10 percent of surplus or net investment income (net gain before capital gains for life and health companies) plus a 3-year carry forward (2-year carry forward for life and health companies) with dividends payable constrained to unassigned funds minus 25 percent of unrealized capital gains.*

(3) *In lieu of the provisions in subsection (2), an insurer may pay a dividend or make a distribution without the prior written approval of the department if:*

(a) The dividend is equal to or less than the greater of:

1. Ten percent of the insurer's surplus as to policyholders derived from realized net operating profits on its business and net realized capital gains; or

2. *The insurer's entire net operating profits and realized net capital gains derived during the immediately preceding calendar year;*

(b) *The insurer will have surplus as to policyholders equal to or exceeding 115 percent of the minimum required statutory surplus as to policyholders after the dividend or distribution is made;*

(c) *The insurer has filed notice with the department at least 10 business days before the dividend payment or distribution, or such shorter period as approved by the department on a case-by-case basis. Such notice does not give the department the right to approve or disapprove a dividend otherwise properly payable hereunder; and*

(d) ~~The notice includes a certification by an officer of the insurer attesting that after payment of the dividend or distribution the insurer will have at least 115 percent of required statutory surplus as to policyholders. A stock dividend may be paid out of any available surplus funds in excess of the aggregate amount of surplus advanced to the insurer under s. 628.401.~~

~~(3) A dividend otherwise lawful may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.~~

Section 5. Effective upon this act becoming a law, paragraph (a) of subsection (1) of section 631.57, Florida Statutes, as amended by section 5 of chapter 92-345, Laws of Florida, is amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination.

2. The obligation under subparagraph 1. shall include only that amount of each covered claim which is in excess of \$100 and is less than \$300,000, except that:

a. The association shall pay the full amount of any covered claim arising out of a workers' compensation policy.

b. *With respect to policies covering condominium associations, or homeowner's associations, which associations have a responsibility to provide insurance coverage on residential units within the association, the obligation shall include that amount of each covered property insurance claim which is less than \$100,000 multiplied by the number of condominium units or other residential units; however, this subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.*

3. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

The foregoing notwithstanding, the association shall have no obligation to pay covered claims to be paid from the proceeds of bonds issued under s. 166.111(2). However, the association shall cause assessments to be made under s. 631.57(3)(e) for such covered claims, and such assessments shall be assigned and pledged under s. 631.57(3)(e) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

Section 6. Moratorium on cancellation and nonrenewal of residential property coverages.—

(1) The Legislature finds that:

(a) Hurricane Andrew, which caused over \$16 billion of insured losses in south Florida, has reinforced the need of consumers to have reliable homeowners insurance coverage.

(b) The enormous monetary impact to insurers of Hurricane Andrew claims has prompted insurers to propose substantial cancellation or nonrenewal of homeowners policyholders.

(c) These proposed cancellations and nonrenewals, occurring as a new hurricane season approaches, adversely affect the public health, safety, and welfare by creating an unstable environment, jeopardizing the resources that would be necessary if another hurricane occurs.

(d) The Department of Insurance has issued an emergency rule, Rule 4ER93-18, F.A.C., placing a moratorium on cancellation and nonrenewal of residential property coverages.

(e) There is a great and overwhelming public need for clarifying that Rule 4ER93-18 is lawful and necessary to protect the public health, safety, and welfare of the people of this state.

(2) It is the intent of the Legislature to retroactively authorize and ratify the emergency action taken by the Department of Insurance in response to proposed cancellations and nonrenewals. Therefore, this section shall take effect upon becoming law and shall apply retroactively to May 19, 1993.

(3) As of August 17, 1993, upon expiration of the department's Rule 4ER93-18, no insurer authorized to transact insurance in this state shall, for a period of 90 days, cancel or nonrenew any personal lines residential property insurance policy in this state, or issue any notice of cancellation or nonrenewal, on the basis of risk of hurricane claims. All cancellations or nonrenewals must be substantiated by underwriting rules established and in effect on August 23, 1992.

(4) This section applies to personal lines residential property insurance in this state. The term "personal lines residential property insurance" includes homeowners' insurance, condominium unit owners' insurance; mobile homeowners' insurance, including mobile home coverage written on auto physical damage type policies; and dwelling fire insurance, including rental dwelling coverages. This section does not apply to commercial coverages and does not apply to commercial or private passenger auto coverages.

(5)(a) This section does not apply if the insurer can affirmatively demonstrate to the Department of Insurance that the proposed cancellation or nonrenewal is necessary for the insurer to avoid an unreasonable risk of insolvency. In reaching this determination the department shall consider the insurer's size, its market concentration, its general financial condition, the degree to which personal lines residential property insurance comprises its insurance business in this state, and the way in which these factors impact on the risk to the insurer's solvency in relation to its probable maximum loss in the event of a hurricane. In no event shall any insurer be required to risk more than its total surplus to any objectively defined probable maximum loss resulting from one Florida hurricane loss event. In the event that the department determines that the moratorium does not apply in whole or in part and the department further determines that the exception affects more than 1 percent of any class of business within the personal lines residential property insurance market in this state, the department shall in the order set forth a nonrenewal, cancellation, or withdrawal schedule that avoids unnecessary market disruption or exposure to the insureds statewide or in any locale.

(b) The department shall expedite any determination requested under this subsection, and, if a proceeding is requested pursuant to section 120.57, Florida Statutes, the insurer shall bear the burden of proof and the proceeding shall be held on an expedited basis.

(6) The Department of Insurance is granted all necessary power to carry out the provisions of this section.

Section 7. 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 insurance; amending s. 627.351, F.S.; revising requirements relating to coverage under the windstorm insurance risk apportionment plan and membership of the board of the Residential Property and Casualty Joint Underwriting Association; creating s. 627.3517, F.S.; creating the Florida Property Insurance Study Commission; providing its duties; amending s. 627.707, F.S.; revising provisions related to the nonrenewal of property insurance on the basis of sinkhole claims; amending s. 628.371, F.S.; limiting the payment of dividends to stockholders of domestic stock insurers; amending s. 631.57, F.S.; specifying obligations of the Florida Insurance Guaranty Association with respect to homeowner's association and condominium association policies; providing for a moratorium on cancellation and nonrenewal of specified residential property coverages; providing for retroactive operation; providing an effective date.

Senator Kiser moved the following amendment to **Amendment 1** which was adopted:

Amendment 1A—On page 18, between lines 20 and 21, insert:

(7) Any violation of the moratorium imposed by Department of Insurance emergency Rule 4ER93-18, F.A.C., ratified herein, or the mora-

torium set forth in subsection (3) herein, constitutes a violation of the Insurance Code. In addition to any other penalties provided by law, and notwithstanding the aggregate penalty limits set forth in section 624.4211(3), Florida Statutes, for a willful violation, the Department of Insurance may impose an administrative penalty of up to \$20,000 per occurrence with respect to any willful violation of the section, with no aggregate limit.

Amendment 1 as amended was adopted.

On motion by Senator Kiser, by two-thirds vote **SB 22-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—38 Nays—None

On motion by Senator Thomas, by two-thirds vote—

CS for 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; creating ch. 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 limitations; 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; expediting the process for the first two facilities; providing an effective date.

—was read the second time by title.

Senator Kurth moved the following amendment which was adopted:

Amendment 1—On page 2, line 6, after “sheriff,” insert: a member of S.T.O.P.,

Senator Silver moved the following amendment which failed:

Amendment 2—On page 9, between lines 24 and 25, insert:

(3) “Private correctional facility” includes a private forensic medical facility unless the context clearly requires otherwise.

Senators Silver and Forman offered the following amendment which was moved by Senator Silver and failed:

Amendment 3—On page 18, line 9, after the period (.) insert: In addition, there shall be 450 nonviolent drug offender beds, for individuals between 17-25, at five facilities located in different cities throughout the state.

Senator Silver moved the following amendment which failed:

Amendment 4 (with Title Amendment)—On page 18, between lines 19 and 20, insert:

Section 5. Paragraph (k) of subsection (3) of section 119.07, Florida Statutes, as amended by section 1 of chapter 93-87, Laws of Florida, is amended to read:

119.07 Inspection and examination of records; exemptions.—

(3)

(k)1. The home addresses, telephone numbers, *social security numbers*, and photographs of active or former law enforcement personnel, including *correctional and correctional probation officers*, and personnel of the Department of Health and Rehabilitative Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities; the home addresses, telephone numbers, *social security numbers*, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from the provisions of subsection (1). The home addresses, telephone numbers, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from subsection (1). The

home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1). These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

2. An agency that is the custodian of the personal information specified in subparagraph 1. and that is not the employer of the officer, employee, justice, or judge specified in subparagraph 1. shall maintain the confidentiality of the personal information only if the officer, employee, justice, judge, or employing agency of the designated employee submits a written request for confidentiality to the custodial agency.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 21, after the semicolon (;) insert: amending s. 119.07, F.S.; clarifying the exemption from public records requirements for personal information relating to correctional and correctional probation officers;

Reconsideration of Amendment

On motion by Senator Thomas, the Senate reconsidered the vote by which **Amendment 4** failed. **Amendment 4** was adopted.

Senator Dudley moved the following amendments which were adopted:

Amendment 5—On page 12, strike lines 3 through 5, and insert:

3. The ability to comply with applicable laws, court

Amendment 6—On page 13, line 23, strike “other tax-exempt financing methods.” and insert: other tax-exempt financing methods. However, the provision shall state that the State of Florida is not liable for defaults on any financing arrangements entered into by the contractor.

Senators Dudley and Jones offered the following amendment which was moved by Senator Dudley and adopted:

Amendment 7—On page 16, strike lines 7 through 24, and insert: facilities or services. Such cost savings as determined by the commission shall be based upon the actual costs associated with the construction and operation of similar facilities or services as certified to the commission by the Auditor General.

Senator Jones moved the following amendment which was adopted:

Amendment 8—On page 12, line 28 through page 13, line 3, strike all of said lines and insert:

(f) Require the contractor to be responsible for a range of dental, medical, and psychological services and diet programs at least equal to those provided by the department in comparable facilities, and education and work programs that exceed those provided by the department in comparable facilities.

Senator Diaz-Balart moved the following amendment which failed:

Amendment 9 (with Title Amendment)—On page 18, between lines 19 and 20, insert:

Section 5. Paragraph (a) of subsection (1) of section 316.640, Florida Statutes, 1992 Supplement, is amended to read:

316.640 Enforcement.—The enforcement of the traffic laws of this state is vested as follows:

(1) STATE.—

(a)1. The Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles, the Division of Law Enforcement of the Game and Fresh Water Fish Commission, and the Division of Law Enforcement of the Department of Natural Resources, and law enforcement officers of the Department of Transportation each have authority to enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel by motor vehicle. University police officers shall have authority to enforce all of the traffic laws of this state only when such violations occur on any property or facilities which are under the guidance,

supervision, regulation, or control of the State University System, except that traffic laws may be enforced off campus when hot pursuit originates on campus.

2. An agency of the state as described in subparagraph 1. is prohibited from establishing a traffic citation quota. A violation of this subparagraph is not subject to the penalties provided in s. 316.655.

3. Any disciplinary action taken or performance evaluation conducted by an agency of the state as described in subparagraph 1. of a law enforcement officer's traffic enforcement activity must be in accordance with written work performance standards. Such work performance standards must be approved by the agency and any collective bargaining unit representing such law enforcement officer. A violation of this subparagraph is not subject to the penalties provided in s. 316.655.

Section 6. If any law that is amended by this act was also amended by a law enacted at the 1993 Regular Session of the Legislature, such laws shall be construed as if they had been enacted by the same session of the Legislature, and full effect should be given to each if that is possible.

(Renumber subsequent section.)

And the title is amended as follows:

In title, on page 1, line 21, after the semicolon (;) insert: amending s. 316.640, F.S.; clarifying traffic enforcement powers of certain law enforcement officers; providing for construction of laws;

Senator Hargrett moved the following amendment which was adopted:

Amendment 10—On page 2, line 7, after the period (.) insert: At least two members of the task force must be minority persons as defined in section 288.703(3), Florida Statutes.

On motion by Senator Thomas, by two-thirds vote **CS for SB 42-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—32 Nays—6

REPORTS OF COMMITTEES

The Committee on Health and Rehabilitative Services recommends the following pass: **SB 52-B** with 3 amendments

The bill was referred to the Committee on Appropriations under the original reference.

The Committee on Commerce recommends the following pass: **SB 22-B** with 1 amendment

The Committee on Health and Rehabilitative Services recommends the following pass: **SB 58-B** with 3 amendments

The Committee on Rules and Calendar recommends the following pass: **SB 20-B** with 3 amendments, **HB 41-B**

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

The Committee on Rules and Calendar recommends a committee substitute for the following: **SB's 14-B, 16-B** and **18-B**

The Committee on Rules and Calendar recommends a committee substitute for the following: **SB 42-B**

The bills with committee substitutes attached were placed on the calendar.

INTRODUCTION AND REFERENCE OF BILLS

FIRST READING

By Senator Boczar—

SB 34-B—A bill to be entitled An act relating to unlawful activity in or near medical facilities; creating s. 870.08, F.S.; providing findings and intent; establishing medical facility access zones; providing definitions

and criminal acts and penalties for interference with access to medical facilities; providing enhanced penalties for repeat violations; providing for civil and administrative penalties and damages; providing an effective date.

—was referred to the Committees on Criminal Justice and Appropriations.

By Senator Casas—

SB 36-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; 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; 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 abroga-

tion 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; 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.

—was referred to the Committees on Criminal Justice and Appropriations.

By Senator Kirkpatrick—

SB 38-B—A bill to be entitled An act relating to drivers' licenses; amending s. 322.21, F.S.; increasing delinquent license fees; providing for the disposition of the additional funds; providing an effective date.

—was referred to the Committees on Transportation; Finance, Taxation and Claims; and Appropriations.

By Senator Diaz-Balart—

SB 40-B—A bill to be entitled An act relating to operating a vehicle while under the influence; amending s. 316.193, F.S.; requiring that a specified amount of the mandatory minimum term of imprisonment for a second conviction of driving under the influence must be served consecutively; amending ss. 322.2615, 322.64, F.S.; providing a time period during which certain persons whose licenses have been suspended may not be eligible to receive a driver's license; providing an effective date.

—was referred to the Committees on Criminal Justice and Appropriations.

SB 42-B was introduced out of order and referenced May 25.

SB 44-B was introduced out of order and referenced May 24.

By Senator Burt—

SB 46-B—A bill to be entitled An act relating to correctional education; amending s. 242.68, F.S.; expanding the contract monitoring functions of the Board of Correctional Education; expanding and setting priorities for the goals of correctional education; eliminating the appointment process and designation of the education program manager; expanding the responsibility of the Director of Correctional Education for the solicitation of entitlement funds and private donations; requiring the adoption of certain rules; mandating certain contract education services if such services are more cost-effective, cost-efficient, or timely; providing an effective date.

—was referred to the Committees on Corrections, Probation and Parole; and Appropriations.

By Senator Siegel—

SB 48-B—A bill to be entitled An act relating to sentencing guidelines; 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 an effective date.

—was referred to the Committees on Criminal Justice and Appropriations.

By Senator Dantzer—

SB 50-B—A bill to be entitled An act relating to special corrections districts; 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; providing effective dates.

—was referred to the Committees on Corrections, Probation and Parole; Community Affairs; and Appropriations.

SB 52-B was introduced out of order and referenced May 25.

By Senator Johnson—

SB 54-B—A bill to be entitled An act relating to firearms and ammunition; creating s. 212.30, F.S.; providing for a surcharge to be levied on retail sales of firearms and ammunition; providing for collection of proceeds of the surcharge by the Department of Revenue; requiring the department to keep certain records; providing that such records are exempt from public disclosure requirements; providing for future legislative review of this exemption under the Open Government Sunset Review Act; providing for surcharge proceeds to be deposited into the Displaced Homemaker Trust Fund and the School Safety Trust Fund; providing for moneys in the trust funds to be used to operate domestic abuse centers and for school safety programs; authorizing the department to adopt rules; providing penalties; providing an effective date.

—was referred to the Committees on Finance, Taxation and Claims; and Appropriations.

By Senator Silver—

SB 56-B—A bill to be entitled An act relating to fleeing and eluding law enforcement officers; creating s. 901.1501, F.S.; providing penalties for the crime of aggravated fleeing and eluding; providing an effective date.

—was referred to the Committees on Criminal Justice and Appropriations.

SB 58-B was introduced out of order and referenced May 25.

By Senators Brown-Waite, Dudley, Harden, Kiser, Johnson and Holdendorf—

SB 60-B—A bill to be entitled An act relating to criminal justice; providing an appropriation to fund certain programs of grantees under the Victims of Crime Act; providing an effective date.

—was referred to the Committee on Appropriations.

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.

—was referred to the Committee on Rules and Calendar.

COMMITTEE SUBSTITUTES

FIRST READING

By the Committee on Rules and Calendar; and Senator Jennings—

CS for SB's 14-B, 16-B and 18-B—A bill to be entitled An act relating to funeral, cemetery, and crematory services; abrogating the repeal, under the Regulatory Sunset Act, of ch. 470, F.S., relating to funeral directing, embalming, and direct disposition; abrogating the repeal under s. 11.61, F.S., the Regulatory Sunset Act, of ch. 497, F.S., relating to cemeteries; abrogating the repeal, under the Regulatory Sunset Act, of ch. 639, F.S., relating to preneed funeral merchandise; providing for future repeal and legislative review of chs. 470, 497, 639, F.S.; providing an effective date.

By the Committee on Rules and Calendar; and Senators Thomas, Holzendorf, Williams, Dyer, Meadows, Jones, Grogan, Forman, Weinstein, Turner, Dantzer, Kurth, Johnson and Childers—

CS for 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; creating ch. 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 limitations; 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; expediting the process for the first two facilities; providing an effective date.

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 passed as amended CS for HB 47-B and requests the concurrence of the Senate.

John B. Phelps, Clerk

By the Committee on Criminal Justice and Representative Gordon and others—

CS for HB 47-B—A bill to be entitled An act relating to unlawful activity in or near medical facilities; creating s. 870.08, F.S.; providing findings and intent; establishing medical facility access zones; providing definitions and criminal acts and penalties for interference with access to medical facilities; providing enhanced penalties for repeat violations; providing for civil and administrative penalties and damages; providing an effective date.

—was referred to the Committees on Criminal Justice and Appropriations.

RETURNING MESSAGE ON SENATE BILL

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has passed SB 26-B, with amendment, and requests the concurrence of

the Senate, or failing to concur, requests the Senate to appoint a committee of conference to meet with a like committee appointed from the House to resolve the differences between the houses.

The Speaker has appointed the following Representatives to the conference committee: Representatives Martinez (Chair), Smith, Logan, Clemons, Mortham and Hanson.

John B. Phelps, Clerk

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; creating s. 944.278, F.S.; cancelling all administrative gain-time and provisional credits; 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 of 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; 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; providing effective dates.

House Amendment 1 (with Title Amendment)—On page 2, line 28, 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 for the period beginning upon this act becoming a law through September 30, 1993, paragraph (e) of subsection (4) of section 775.084, Florida Statutes, is amended to read:

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

(4)

(e) A sentence imposed under this section is shall not be subject to the provisions of s. 921.001. The provisions of s. 947.146 Chapter 947 shall not be applied to persons sentenced as habitual offenders under paragraph (1)(a), but shall not be applied to persons sentenced as habitual violent felony offenders under paragraph (1)(b) such person. The provisions of s. 947.1405 shall apply to persons sentenced as habitual felony offenders and persons sentenced as habitual violent felony offenders. 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).

Section 3. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 775.084, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 775.084, F.S., for present text.)

775.084 Habitual felony offenders and habitual violent felony offenders; enhanced sentencing.—

(1) **HABITUAL FELONY OFFENDERS.**—A person who is convicted of a primary offense as defined in s. 921.001(4) that is scored at offense level 4 or higher on the offense severity ranking chart in s. 921.0012 and who has four or more convictions in his prior record as described in s. 921.0011(5) that are, were, or would have been scored at offense level 4 or higher is a habitual felony offender and the subtotal sentence points are multiplied by 1.5, at the discretion of the court.

(2) **HABITUAL VIOLENT FELONY OFFENDERS.**—A person who is convicted of a primary offense as defined in s. 921.001(4) that is scored at offense level 7 or higher on the offense severity ranking chart in s. 921.0012 and who has one or more convictions in his prior record as described in s. 921.0011(5) that are, were, or would have been scored at offense level 7 or higher is a habitual violent felony offender and the subtotal sentence points are multiplied by 2, at the discretion of the court.

(3) **HABITUAL OFFENDER FINDING.**—In order to find that an offender is a habitual offender, the court must find that:

(a) The felony for which the defendant is to be sentenced was committed within 5 years after the date of the conviction of the last qualifying felony or within 5 years after 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 qualifying felony, whichever is later.

(b) The defendant has not received a pardon on the ground of innocence for any qualifying felony.

(c) A conviction of a qualifying felony has not been set aside in any post-conviction proceeding.

(d) As used in this section, a "qualifying felony" is a primary offense as defined in s. 921.001(4) that is, was, or would have been scored at offense level 4 or higher on the offense severity ranking chart in s. 921.0012 for habitual felony offenders and at offense level 7 or higher for habitual violent felony offenders.

(4) **CONVICTION.**—

(a) "Conviction," for the purposes of this section, includes a sentence of probation or community control, whether or not adjudication is withheld.

(b) In order to be counted as a qualifying prior felony, the felony must have resulted in a conviction sentenced separately prior to the current offense and sentenced separately from any other felony conviction that is to be counted as a prior felony.

Section 4. Effective October 1, 1993, 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, ranked for purposes of sentencing and shall, when no express provision is made by law for the punishment of such conspiracy, be punished as provided in subsection (4).

(4)(a) 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 two levels below the offense attempted, solicited, or conspired to is, was, or would have been ranked on the offense severity ranking chart.

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

(c) 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 a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) 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 a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) 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 a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(f) 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 a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

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

(a) ~~If the offense attempted, solicited, or conspired to is a capital felony, 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.~~

(b) ~~If the offense attempted, solicited, or conspired to is a life felony or a felony of the first degree, 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.~~

(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 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.~~

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

(e) ~~If the offense attempted, solicited, or conspired to is a misdemeanor of the first or second degree, 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 5. Effective upon this act becoming a law and applicable to sentencing for offenses committed on or after October 1, 1993, 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. The Chief Justice or the member of the Supreme Court designated by the Chief Justice ~~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 1993 guidelines apply to sentencing for all felonies, except capital felonies, committed on or after October 1, 1993, and to sentencing for all felonies, except capital felonies, committed before October 1, 1993, for which sentencing occurs after such date when the defendant affirmatively selects to be sentenced pursuant to the 1993 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 chairs 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 Representa-

tives, and the chairs 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 is 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 1993 revised sentencing guidelines on or after October 1, 1993, must be in all cases within the 1993 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, 1988, whose presumptive sentence is any non-state 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 sen-

tence 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)(a)(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.

(b) On or after October 1, 1993, any legislation which:

1. Creates a felony offense;
2. Enhances a misdemeanor offense to a felony offense;
3. Moves a felony offense from a lesser offense severity level to a higher offense severity level in the offense severity ranking chart in s. 921.0012; or
4. Reclassifies an existing felony offense to a greater felony classification

must provide that such a change results in a net zero sum impact in the overall prison population, as determined by the Criminal Justice Estimating Conference, unless the legislation contains a funding source sufficient in its base or rate to accommodate such change or a provision which specifically abrogates the application of this paragraph.

(10)(a)(11) A person who is convicted of a crime committed on or after October 1, 1983, but before October 1, 1993, 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 October 1, 1993, 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 6. 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 7. Section 924.07, Florida Statutes, as amended by 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 chapter 921 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 8. Effective October 1, 1993, 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 state-wide 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 9. Effective October 1, 1993, 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.

(6) "Release program" includes:

- (a) Parole.
- (b) Control release.
- (c) Probation.
- (d) Community control.
- (e) Pretrial intervention or diversion.
- (f) Provisional release supervision.

817.60(6)(b)	3rd	Possess two or more false credit cards.	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.	944.47(1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
831.01	3rd	Forgery.			
831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.	231.06(2)	3rd	Battery of school employee.
831.07	3rd	Forging bank bills or promissory note.	240.381(2)	3rd	Battery of community college security officer.
831.08	3rd	Possession of 10 or more forged notes.			Battery of HRS employee.
831.09	3rd	Uttering forged bills; passes as bank bill or promissory note.	381.0025(4)(b)	3rd	Battery of law enforcement officer, firefighter, intake officer, etc.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.	784.07(2)(b)	3rd	Interference with custody; wrongly takes child from appointed guardian.
843.08	3rd	Falsely impersonating an officer.	787.03(1)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.	787.04(2)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
		LEVEL 3			
39.061	3rd	Escapes from juvenile facility (secure detention or residential commitment facility).	787.04(3)	3rd	Carrying a concealed firearm.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.	790.01(2)	3rd	Burglary of an unoccupied conveyance or structure; unarmed; attempted burglary.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.	810.02(3)	3rd	Burglary; possession of tools.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.	810.06	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.	812.014(2)(c)1.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.	812.014(2)(c)2.-8.	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.	817.563(1)	3rd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.	828.125(1)	2nd	Perjury in official proceedings.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.	837.02(1)	3rd	Make contradictory statements in official proceedings.
796.05(1)	3rd	Live on earnings of a prostitute.	837.021(1)	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.	843.025	3rd	Failure to appear while on bail for felony (bond estreatment or bond jumping)
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.			Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), or (2)(a) or (b) drugs).
810.08(2)(c)	3rd	Trespass on property armed with firearm or dangerous weapon.	843.15(1)(a)	3rd	Witnesses accepting bribes to withhold testimony, information, document, or thing.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.	893.13(2)(a)1.	2nd	Force, threaten, etc., witness to withhold testimony, documents, or objects.
812.014(2)(c)1.	3rd	Grand theft; \$5,000 or more but less than \$10,000.	914.14(1)(b)	3rd	Force, threaten, bribe, etc., witness to testify falsely.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.	914.22(1)(a)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.	914.22(1)(f)	3rd	
817.233	3rd	Burning to defraud insurer.	914.23(2)	3rd	LEVEL 5
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.			Accidents involving death or personal injuries, failure to stop; leaving scene.
831.29	2nd	Possession of instruments for counterfeiting drivers' licenses.	316.027(2)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.	322.34(3)	3rd	Donate blood, plasma, or organs knowing HIV positive.
843.19	3rd	Injure, disable, or kill police dog or horse.			Exploit an aged person or disabled adult by the improper or illegal use of funds, assets, property, power of attorney, or guardianship.
870.01(2)	3rd	Riot; inciting or encouraging.	381.0041(11)(b)	3rd	Threat to throw or discharge destructive device.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs).	415.111(5)	3rd	False report of deadly explosive.
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c), (3), or (4) drugs within 200 feet of university, public housing facility, or public park.	790.162	2nd	False report of deadly explosive or act of arson or violence to state property.
893.13(6)(a)	3rd	Possession of cocaine.	790.163	2nd	Manufacture, sell, possess, or deliver hoax bomb.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.	790.164(1)	2nd	Possession of short-barreled shotgun or machine gun.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.	790.165(2)	3rd	
			790.221(1)	2nd	

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.	2nd	Aggravated battery; using deadly weapon.
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).	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
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.	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
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.	796.03	2nd	Procuring any person under 16 years for prostitution.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs).	800.04	2nd	Handle, fondle, or assault child under 16 years in lewd, lascivious, or indecent manner.
951.075	2nd	Prisoner commits assault or battery.	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
		LEVEL 6			
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.	810.02(3)	2nd	Burglary of occupied conveyance or dwelling.
775.087(2)(a)2.	3rd	Battery upon law enforcement officer or firefighter while possessing firearm.	812.014(2)(a)	1st	Property stolen, valued at \$100,000 or more; 1st degree grand theft.
775.0875(1)	3rd	Taking firearm from law enforcement officer.	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.	827.04(1)	3rd	Deprive child of necessities causing great bodily harm or disfigurement.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.	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.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.	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).
787.02(1)(a)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 100 lbs., less than 2,000 lbs.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.	893.135(1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.	893.135(1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
794.041(2)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.	893 135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
794.05(1)	2nd	Unlawful carnal intercourse with unmarried person under 18 of previous chaste character.	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
810.02(3)	2nd	Burglary of occupied structure or unoccupied dwelling; not armed, no assault.	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
812.014(2)(b)	2nd	Property stolen over \$20,000 and less than \$100,000, grand theft in 2nd degree.			LEVEL 8
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).	316.193(3)(c)3.	2nd	DUI manslaughter.
817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.	782.04(4)	2nd	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.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
836.05	2nd	Threats; extortion.	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
836.10	2nd	Written threats to kill or do bodily injury.	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
843.12	3rd	Aids or assists person to escape.	810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.	812.13(2)(b)	1st	Robbery with a weapon.
944.40	2nd	Escapes.	827.03(1)(a)	2nd	Commits aggravated battery on a child.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.	893.13(1)(b)	1st	Sell or deliver 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	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
		LEVEL 7	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
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.

Section 11. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 921.0013, Florida Statutes, is created to read:

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

Section 12. Effective October 1, 1993, 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 are applicable, 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	84	=	
9	66	=	
8	54	=	
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

Victim Injury			
Level	Sentence Points	Number	Total
Death	60	x	_____ =
Severe	40	x	_____ =
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

Level	Sentence Points	Prior Record 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			

Legal Status Violation	
Sentence Points	Total
4	_____
Release Program Violation	
Sentence Points	Total
4 for each violation, up to a total of 12	_____

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
 VIOLENT HABITUAL OFFENDER
 (no)(yes) (× multiplier)
 HABITUAL OFFENDER (no)(yes) (× multiplier)
 DRUG TRAFFICKER (no)(yes) (× multiplier)
 LAW ENF. PROTECT. (no)(yes) (× multiplier)
 TOTAL

WORKSHEET KEY:

Recommended Sentences:

If the total sentence points are less than or equal to 40, the recommended sentence shall not be a state prison sentence.

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. 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 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 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:

Violent habitual offender: If the primary offense is level 7 or higher, and the offender has one or more convictions in his prior record of a level 7 or higher offense, then the subtotal sentence points are multiplied by 2.0, at the discretion of the court.

Habitual offender: If the primary offense is level 4 or higher, and the offender has four or more convictions in his prior record of level 4 or higher offenses, then the subtotal sentence points are multiplied by 1.5, at the discretion of the court.

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. For a level 9 offense, the court must multiply the subtotal sentence points by 2.0. 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).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), (4), or (5), then the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 775.087(2)(a)2. or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(6) or (7), then the subtotal sentence points are multiplied by 1.5.

(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 sentencing judge.

(3) The Department of Corrections shall develop and submit the revised sentencing guidelines scoresheet to the Sentencing Commission by June 1, 1993. Following the Supreme Court's approval of the revised procedures, the Department of Corrections shall produce and provide sufficient copies of the revised scoresheets to the clerks of the circuit courts by no later than September 30, 1993.

(4) Beginning October 1, 1993, 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 13. Effective October 1, 1993, 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 30-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 30-day period that have resulted in convictions.

(e) The offense before the court for disposition was committed within 6 months after the defendant was released from state prison.

(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.

(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.

(d) The defendant requires specialized treatment for addiction, mental disorder, or physical disability, and the defendant is amenable to treatment.

(e) The need for payment of restitution to the victim outweighs the need for a prison sentence.

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

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

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

(i) The defendant cooperated with the state to resolve the current offense or any other offense.

(j) The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.

(k) At the time of the offense the defendant was too young to appreciate the consequences of the offense.

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

Section 14. 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 an offender's 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 ss. 944.28(1) and 948.06(6).

Section 15. Notwithstanding ss. 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 June 1, 1993. Pursuant to the revision of chapter 921, Florida Statutes, by this act, the Sentencing Commission shall prepare, adopt, and, no later than July 1, 1993, submit to the Supreme Court for its approval procedures for implementing the 1993 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 October 1, 1993. The Supreme Court shall have the new procedures in place no later than September 1, 1993.

Section 16. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 775.0823, Florida Statutes, is amended to read:

775.0823 Violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.—Any provision of law to the contrary notwithstanding, the Legislature does hereby provide for an increase and certainty of penalty for any person convicted of a violent offense against any law enforcement or correctional officer, as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against any state attorney elected pursuant to s. 27.01 or assistant state attorney appointed under s. 27.181; or against any justice or judge of a court described in Article V of the State Constitution, which offense arises out of or in the scope of the officer's duty as a law enforcement or correctional officer, the state attorney's or assistant state attorney's duty as a prosecutor or investigator, or the justice's or judge's duty as a judicial officer by imposing a mandatory minimum sentence without possibility of early release through any gain time, provisional release credits, conditional release supervision, supervised community release, transition assistance program, or parole during the mandatory minimum portion of the sentence, as follows:

(1) For murder in the first degree as described in s. 782.04(1), if the death sentence is not imposed, a sentence of imprisonment for life without eligibility for release shall be imposed.

(2) For murder in the second degree as described in s. 782.04(2) and (3), a sentence pursuant to the sentencing guidelines of imprisonment for 25 years before eligibility for release shall be imposed.

(3) For murder in the third degree as described in s. 782.04(4), a sentence pursuant to the sentencing guidelines of imprisonment for 15 years before eligibility for release shall be imposed.

(4) For manslaughter as described in s. 782.07 during the commission of a crime, a sentence pursuant to the sentencing guidelines of imprisonment for 10 years before eligibility for release shall be imposed.

(5) For kidnapping as described in s. 787.01, a sentence pursuant to the sentencing guidelines of imprisonment for 15 years before eligibility for release shall be imposed.

(6) For aggravated battery as described in s. 784.045, a sentence pursuant to the sentencing guidelines of imprisonment for 3 years before eligibility for release shall be imposed.

(7) For aggravated assault as described in s. 784.021, a sentence pursuant to the sentencing guidelines of imprisonment for 1 year before eligibility for release shall be imposed.

Any person convicted of an offense under this section is ineligible to receive provisional release credits during any portion of his sentence. 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.

Section 17. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 775.087, Florida Statutes, is amended to read:

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

(1) Unless otherwise provided by law, whenever a person is charged with a felony, except a felony in which the use of a weapon or firearm is an essential element, and during the commission of such felony the defendant carries, displays, uses, threatens, or attempts to use any weapon or firearm, or during the commission of such felony the defendant commits an aggravated battery, the felony for which the person is charged shall be reclassified as follows:

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

(2)(a) Any person who is convicted of:

1. Any murder, sexual battery, robbery, burglary, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, or aircraft piracy, or any attempt to commit the aforementioned crimes; or

2. Any battery upon a law enforcement officer or firefighter while the officer or firefighter is engaged in the lawful performance of his duties

and who had in his possession a "firearm," as defined in s. 790.001(6), or "destructive device," as defined in s. 790.001(4), shall be sentenced pursuant to the sentencing guidelines to a minimum term of imprisonment of 3 calendar years. Any person who is convicted of any of the crimes listed in this paragraph or the sale, manufacture, delivery, purchase, or possession with intent to distribute any controlled substance and who had in his possession a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun as defined in s. 790.001 shall be sentenced pursuant to the sentencing guidelines to a minimum term of imprisonment of 8 calendar years. Notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall the defendant be eligible for parole or statutory gain time under s. 944.275, prior to serving such minimum sentence.

(b) As used in this subsection, the term:

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

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

Section 18. Effective October 1, 1993, 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 19. Effective October 1, 1993, 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 20. Effective October 1, 1993, 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 21. Effective October 1, 1993, 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 22. Effective October 1, 1993, 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 23. Effective upon this act becoming a law, through September 30, 1993, paragraphs (e) and (i) of subsection (1) of section 893.13, Florida Statutes, 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 *while the real property is in use*. 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 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) ~~commits 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 24. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 893.13, Florida Statutes, as amended by chapters 93-59 and 93-194, Laws of Florida, 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.

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, must 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, must 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.

(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 manufacture, 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 may 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, the 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 the officer 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 this chapter.

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 or her 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 the person 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, or 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 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 the sentencing guidelines to the contrary, on or after October 1, 1993, any defendant who:

1. Violates s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a); and

2. Has not previously been convicted, regardless of whether adjudication was withheld, of any felony, other than a violation of s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (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 the sentencing guidelines to the contrary, on or after October 1, 1993, any defendant who:

1. Violates s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a); and

2. Has not previously been convicted, regardless of whether adjudication was withheld, of any felony, other than a violation of s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (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 25. Effective October 1, 1993, and applicable to sentencing for offenses committed on or after that date, section 893.135, Florida Statutes, as amended by 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 *pursuant to the sentencing guidelines 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 to 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 *pursuant to the sentencing guidelines 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., commits the first degree felony of trafficking in cocaine, punishable by a term of life imprisonment without the possibility of parole. 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 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 *pursuant to the sentencing guidelines 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 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 term of life imprisonment without the possibility of parole. 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 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 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 *pursuant to the sentencing guidelines 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 *pursuant to the sentencing guidelines* ~~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 26. Effective October 1, 1993, 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 *pursuant to the sentencing guidelines* ~~by a term of imprisonment for life or by a 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 27. 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 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 October 1, 1993.

(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 28. Section 947.146, Florida Statutes, 1992 Supplement, as amended by 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 at or below 99 ~~below~~ 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 a mandatory minimum term of imprisonment of more than 5 years for 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 as a violent habitual offender for a crime committed on or after October 1, 1988 ~~under 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, as a habitual offender 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 October 1, 1993, for drug trafficking for a level-9 offense, and the subtotal of the offender's sentence points is fully multiplied pursuant to s. 921.0014;*

(l) *Is serving a sentence for an offense committed on or after October 1, 1993, for a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), (4), or (5), and the subtotal of the offender's sentence points is multiplied pursuant to s. 921.0014;*

(m) *Is serving a sentence for an offense committed on or after October 1, 1993, for possession of a firearm or destructive device in which additional points are added to the subtotal of the offender's sentence points pursuant to s. 921.0014; or*

(n) *Is serving a sentence for an offense committed on or after October 1, 1993, for possession of a semiautomatic weapon, and additional points are added to the subtotal of the offender's 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 as a habitual felony offender.*

(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 99.9 percent of lawful capacity, the Secretary of Corrections shall notify the chair of the Parole Commission and certify to the chair the lawful capacity of the state correctional system and the current population. Upon receiving such certification, the chair 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 this section.*

(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 to 99 percent of lawful capacity and remains at or 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 90 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 grant of 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, the 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 the his sentence or combined sentences.*

Section 29. An offender designated for early release by the Control Release Authority who is serving:

- (1) A mandatory minimum sentence of 5 years or less for a drug trafficking offense under s. 893.135, Florida Statutes (1991);
- (2) A sentence for a controlled substance offense under s. 893.13(1)(e) or (i), Florida Statutes (1991); or
- (3) A sentence, or has previously served a sentence, as a habitual offender under s. 775.084(1)(a), Florida Statutes (1991), for a primary offense involving drug possession, purchase, sale, manufacture, delivery, or trafficking,

may be released into supervision under s. 948.001(3), Florida Statutes. Supervision may include a requirement that a substance-abuse assessment be conducted and, when warranted, appropriate substance-abuse treatment services shall be provided.

Section 30. (1) Any inmate who is sentenced under s. 893.13(1)(e)1. or (1)(i)1., Florida Statutes (1991), or for a mandatory minimum term of imprisonment of 5 years or less for a drug trafficking offense, who has not served such mandatory minimum term, or who is sentenced under s. 775.084(1)(a), Florida Statutes (1991), shall only be placed in an advanceable category as the result of a critical depletion transfer in the following order of priority:

- (a) Inmates sentenced under s. 893.13(1)(e)1. or (1)(i)1., Florida Statutes (1991).
- (b) Inmates sentenced for a mandatory minimum term of imprisonment of 5 years or less for a drug trafficking offense who has not served such mandatory minimum term.
- (c) Inmates sentenced under s. 775.084(1)(a), Florida Statutes (1991), except for those whose primary offense at conviction is for burglary as provided in s. 810.02, Florida Statutes.
- (d) Inmates sentenced under s. 775.084(1)(a), Florida Statutes (1991), whose primary offense at conviction is for burglary as provided in s. 810.02, Florida Statutes.

(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 presumptive 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 presumptive release date, whichever is earlier.

Section 31. Effective on June 1, 1996:

- (1) The amendments to paragraphs (a) and (g) of subsection (3) of s. 947.146, Florida Statutes, contained in this act shall be null and void and those paragraphs shall revert to the language existing in those paragraphs on April 22, 1993.
- (2) Section 29 of this act is repealed.
- (3) Section 30 of this act is repealed.

Section 32. Before the release pursuant to this act under s. 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 s. 775.084(1)(a), Florida Statutes (1991). 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 33. Section 944.277, Florida Statutes, as amended by section 12 of chapter 92-310, Laws of Florida, and s. 944.598, Florida Statutes, as amended by section 10 of chapter 92-47, Laws of Florida, are repealed.

Section 34. Notwithstanding the holdings in *Overstreet v. Blum*, 227 So.2d 197 (Fla. 1969); *Hecht v. Shaw*, 112 Fla. 762, 151 So.333 (1933); and *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So.693 (1918), to the effect that, as a general rule, a cross reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted unaffected by any subsequent amendments to or repeal of the incorporated statute, the Legislature intends that each reference to s. 775.084, Florida Statutes, appearing in each of the following sections of the Florida Statutes, refer to s. 775.084, Florida Statutes, as substantially reworded by this act, and that is hereby declared by the Legislature to be the meaning of each such reference:

Florida Statute Section	Relating to
11.05	Oath by lobbyist; penalty for false swearing.
11.143	Standing or select committees; powers.
24.118	Other prohibited acts; penalties.
39.001	Short title, purposes, and intent.
48.021	Process; by whom served.
48.31	Removal of certified process servers; false return of service.
63.212	Prohibited acts; penalties for violation.
92.525	Verification of documents; perjury by false written declaration, penalty.
103.121	Powers and duties of executive committees.
104.011	False swearing.
104.041	Fraud in connection with casting vote.
104.051	Violations; neglect of duty; corrupt practices.
104.061	Corruptly influencing voting.
104.13	Intermingling ballots.
104.15	Person knowing he is not qualified elector voting at any election.
104.16	Voting fraudulent ballot.
104.17	Voting in person after casting absentee ballot.
104.18	Casting more than one ballot at any election.
104.21	Changing electors' ballots.
104.22	Stealing and destroying records, etc., of election.
104.23	Disclosing how elector votes.
104.30	Voting machine; unlawful possession; tampering.
106.26	Powers of commission; rights and responsibilities of parties; findings by commission.
106.29	Reports by political parties; assessment on contributions.
110.1127	Employee security checks.
116.34	Facsimile signatures.
117.05	Use of notary commission; unlawful use; notary fee; seal; duties; employer liability; name change; advertising; photocopies; penalties.
117.105	False or fraudulent acknowledgements; penalty.
138.11	Unlawful use of money in election to change county seat.
192.037	Fee time-share real property; taxes and assessments; escrow.
198.38	False return; penalty.
198.40	Failure to pay tax, evasion of tax, etc.; penalty.
199.282	Penalties for violation of this chapter.
201.18	Penalties for illegal use of stamps.
206.04	License number and cards; penalties.
206.11	Penalties.
206.18	Discontinuance or transfer of business; liability of tax, procedure; penalty for violation.
206.426	Resale and exemption certificates; offenses; penalties.
206.56	Unlawful use of tax collected; theft of state funds.
206.87	Levy of tax.
207.007	Offenses; penalties and interest.
210.18	Penalties for tax evasion; reports by sheriffs.
210.65	Penalties for tax evasion.
211.25	Tax crimes; punishment for violation of this part.
211.335	Tax crimes; punishment for violation of this part.
212.054	Discretionary sales surtax; limitations, administration, and collection.
212.085	Fraudulent claim of exemption; penalties.

212.15	Taxes declared state funds; penalties for failure to remit taxes; due and delinquent dates; judicial review.	394.458	Introduction or removal of certain articles unlawful; penalty.
212.62	Motor fuel and special fuel sales tax; tax upon ultimate consumer; determination; notification.	396.0427	Penalties.
218.386	Bonds; finder's fees prohibited.	397.0716	False information or lack of probable cause to secure an order to treatment; penalty.
220.181	Enterprise zone jobs credit.	400.407	Penalties.
220.903	Willful failure to pay over.	400.427	License required; fee, display.
231.06	Assault or battery upon district school board employee; penalties.	400.497	Property and personal affairs of residents.
240.381	Assault or battery upon community college security officers; penalties.	401.41	Rules establishing minimum standards; screening of home health agency personnel.
240.5337	Entry into agent contracts by student athletes.	402.3025	Penalties.
255.518	Obligations; purpose, terms, approval, limitations.	402.319	Public and nonpublic schools.
287.094	Minority business enterprise programs; penalty for false representation.	404.161	Penalties.
298.66	Obstruction of drainage canals, etc., prohibited; damages; penalties.	409.176	Licensure of family foster homes, residential child-caring agencies, and child-placing agencies.
316.027	Accidents involving death or personal injuries.	409.325	Registration of residential child-caring agencies.
316.193	Driving under the influence; penalties.	409.920	Fraud.
316.545	Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.	415.111	Medicaid provider fraud.
319.30	Definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.	420.509	Penalties relating to abuse, neglect, or exploitation of aged person or disabled adult.
319.33	Offenses involving vehicle identification numbers, applications, certificates, papers; penalty.	440.10	Bonds; purpose, terms, approval, limitations.
319.35	Unlawful acts in connection with motor vehicle odometer readings; penalties.	440.37	Liability for compensation.
320.26	Counterfeiting license plates, validation stickers, mobile home stickers, cab cards, trip permits, or special temporary operational permits prohibited; penalty.	440.381	Misrepresentation; fraudulent activities; penalties.
322.212	Unauthorized possession of, and other unlawful acts in relation to, driver's license or identification card.	443.071	Application for coverage; reporting payroll; payroll audit procedures; penalties.
325.216	Violations; penalties.	450.151	Penalties.
326.005	Escrow depository, closing transactions.	455.2175	Hiring and employing; infliction of pain or suffering penalty.
327.29	Crimes relating to registration decals; penalties.	455.2275	Penalty for theft or reproduction of an examination.
327.30	Collisions, accidents, and casualties.	458.327	Penalty for giving false information.
328.05	Crimes relating to certificates of title to, or other indicia of ownership of, vessels; penalties.	458.347	Penalty for violations.
328.07	Hull identification number required.	459.013	Physician assistants.
328.13	Manufacturer's statement of origin to be furnished.	459.022	Penalty for violations.
329.10	Aircraft registration.	460.411	Physician assistants.
329.11	Aircraft identification numbers; penalties.	460.4165	Violations and penalties.
330.40	Aircraft fuel tanks.	461.012	Chiropractic physician's assistants.
337.135	Socially and economically disadvantaged business enterprises; punishment for false representation.	462.17	Violations and penalties.
341.329	Bonds; project financing.	463.015	Penalty for offenses relating to naturopathy.
367.081	Rates; procedure for fixing and changing.	464.016	Violations and penalties.
370.036	Dredge or fill activities, records; penalty.	465.015	Violations and penalties.
370.0605	Saltwater fishing license required; fees.	466.026	Prohibitions; penalties.
370.135	Blue crab; regulation.	466.0285	Proprietorship by nondentists.
370.142	Spiny lobster trap certificate program.	468.366	Penalties for violations.
370.15	Shrimp; regulation.	468.453	Registration.
370.17	Sponges; regulation.	468.454	Contracts.
372.0725	Killing or wounding of any species designated as endangered, threatened, or of special concern; criminal penalties.	474.213	Prohibitions; penalties.
372.663	Illegal killing, possessing, or capturing of alligators or other crocodilia eggs; confiscation of equipment.	483.325	Criminal penalties.
372.671	Florida or wild panther; killing prohibited; penalty.	489.133	Pollutant storage systems specialty contractors; definitions; certification; restrictions.
372.99	Illegal taking and possession of deer and wild turkey; evidence; penalty.	491.0112	Sexual misconduct by a psychotherapist; penalties.
376.07	Regulatory powers of department.	493.6405	Sale of motor vehicle, mobile home, or motorboat by a licensee; penalty.
376.12	Liabilities and defenses of terminal facilities and vessels.	494.0018	Penalties.
376.3071	Inland Protection Trust Fund; creation; purposes; funding.	496.413	Contributions solicited for or accepted on behalf of a named individual.
377.2409	Geophysical activities; confidential information; penalties.	496.417	Criminal penalties.
380.0668	Bonds; purpose, terms, approval, limitations.	497.054	Penalties.
381.0041	Donation and transfer of human tissue; testing requirements.	498.022	Jurisdiction over fraudulent acts.
390.001	Termination of pregnancies.	498.059	Penalties.
391.205	License required; fee; exemption; display.	499.03	Possession of new drugs or legend drugs without prescriptions unlawful; exemptions and exceptions.
393.0674	Penalties.	499.06	Embargoing, detaining, or destroying article or processing equipment which is in violation of law or rule.
394.457	Operation and administration.	499.063	Seizure; procedure; prohibition on sale or disposal of article; penalty.
		499.75	Penalties.
		500.174	Seizure; procedure; prohibition on sale or disposal of article; penalty.
		501.019	Health studios; penalties.
		501.055	Home solicitation sale; penalties.
		501.1375	Deposits received for purchase of residential dwelling units; placement in escrow required; exceptions.
		501.623	Criminal penalties.
		509.151	Obtaining food or lodging with intent to defraud; penalty.

509.506	Trust accounts.	687.146	Criminal penalties.
513.121	Obtaining accommodations in a recreational vehicle park with intent to defraud; penalty; rules of evidence.	703.19	Filing untrue copies of abstracts ordered filed for use of public.
517.302	Criminal penalties; alternative fine; Anti-Fraud Trust Fund; time limitation for criminal prosecution.	705.102	Reporting lost or abandoned property.
527.02	License; penalty; fees.	713.245	Conditional payment bond.
538.04	Recordkeeping requirements; penalties.	713.345	Moneys received for real property improvements; penalty for misapplication.
538.23	Violations and penalties.	713.69	Unlawful to remove property upon which lien has accrued.
542.28	Civil investigative demand.	713.78	Liens for recovering, towing, or storing vehicles.
550.24	Conniving to prearrange result of race; using medication or drugs on horse or dog; penalty.	715.07	Vehicles parked on private property; towing.
550.35	Transmission of racing and jai alai information.	718.202	Sales or reservation deposits prior to closing.
550.361	Bookmaking on the grounds of a permitholder; penalties; reinstatement; duties of track employees; penalty; exceptions.	719.202	Sales or reservation deposits prior to closing.
552.22	Penalties.	721.08	Escrow accounts; nondisturbance instruments; alternate security arrangements.
559.815	Penalties.	721.09	Reservation agreements; escrows.
561.24	Licensing manufacturers as distributors or registered exporters prohibited; procedure for issuance and renewal of distributors' licenses and exporters' registrations.	721.13	Management.
562.23	Conspiracy to violate Beverage Law; penalty.	765.310	Falsification, forgery, or willful concealment, cancellation, or destruction of declaration or revocation; penalties.
562.27	Seizure and forfeiture.	767.13	Attack or bite by dangerous dog; penalties; confiscation; destruction.
562.32	Moving or concealing beverage with intent to defraud state of tax; penalty.	775.0842	Persons subject to career criminal prosecution efforts.
562.34	Containers; seizure and forfeiture.	775.0846	Wearing bulletproof vest while committing certain offenses.
562.45	Penalties for violating Beverage Law; local ordinances.	777.03	Accessory after the fact.
562.451	Moonshine whiskey; ownership, possession, or control prohibited; penalties; rule of evidence.	782.04	Murder.
562.455	Adulterating liquor; penalty.	782.07	Manslaughter.
567.14	Penalty for violation.	782.071	Vehicular homicide.
585.145	Control of animal diseases.	782.072	Vessel homicide.
585.19	Duty of practitioners of veterinary medicine and owners of animals to report dangerous transmissible diseases or pests; penalty.	782.08	Assisting self-murder.
585.85	Prohibited transportation of certain animals and animal products.	782.09	Killing of unborn child by injury to mother.
586.15	Penalty for violation.	782.11	Unnecessary killing to prevent unlawful act.
590.14	Penalties.	784.021	Aggravated assault.
590.25	Penalty for preventing or obstructing extinguishment of woods fires.	784.045	Aggravated battery.
590.30	Penalties for violating ss. 590.28 and 590.29.	784.048	Stalking; definitions; penalties.
593.116	Penalty for violation.	784.05	Culpable negligence.
607.0505	Registered agent; duties.	787.01	Kidnapping; kidnapping of child under age 13, aggravating circumstances.
609.06	Penalties.	787.02	False imprisonment; false imprisonment of child under age 13, aggravating circumstances.
620.192	Registered agent; duties.	787.03	Interference with custody.
624.401	Certificate of authority required.	787.04	Removing minors from state or concealing minors contrary to state agency order or court order.
624.424	Annual statement and other information.	790.01	Carrying concealed weapons.
626.561	Reporting and accounting for funds.	790.0655	Purchase and delivery of handguns; mandatory waiting period; exceptions; penalties.
626.8473	Escrow; trust fund.	790.07	Persons engaged in criminal offense, having weapons.
626.9541	Unfair methods of competition and unfair or deceptive acts or practices defined.	790.115	Possessing or discharging weapons or firearms on school property prohibited; penalties; exceptions.
628.255	Person with effective control cannot receive commission unless contract approved; penalties.	790.145	Crimes in pharmacies; possession of weapons; penalties.
628.271	Office and records; penalty for unlawful removal of records.	790.15	Discharging firearm in public.
628.461	Acquisition of controlling stock.	790.1615	Unlawful throwing, projecting, placing, or discharging of destructive device or bomb that results in injury to another; penalty.
628.4615	Specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.	790.162	Threat to throw, project, place, or discharge any destructive device, felony; penalty.
628.803	Sanctions.	790.163	False report about planting bomb or explosive; penalty.
629.401	Insurance exchange.	790.164	False reports of bombing or arson against state-owned property; penalty; reward.
639.17	Penalty.	790.19	Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad cars, streetcars, or other vehicles.
641.432	Providers of service; penalty for unauthorized use of providers; interference with judgment prohibited.	790.23	Felons; possession of firearms or electric weapons or devices unlawful; exception; penalty.
641.52	Suspension, revocation of certificate; administrative fine; notice of action to the Department of Insurance; penalty for use of unlicensed providers.	790.27	Alteration or removal of firearm serial number or possession, sale, or delivery of firearm with serial number altered or removed prohibited; penalties.
655.0322	Prohibited acts and practices; criminal penalties.	790.29	Paramilitary training; teaching or participation prohibited.
655.057	Records; limited restrictions upon public access.	790.31	Armor-piercing or exploding ammunition or dragon's breath shotgun shells, bolo shells, or flechette shells prohibited.
655.059	Access to books and records; confidentiality; penalty for disclosure.		
655.922	Banking business by unauthorized persons; use of name.		
687.071	Criminal usury, loan sharking; shylocking.		

such offender has satisfied his or her sentence or combined sentences, or if it is determined an offender was released in error, or if it is subsequently determined the offender was statutorily ineligible for release, the secretary of the department or the secretary's his designated representative may issue a warrant for retaking the such offender into custody until he or she has served the remainder of the such sentence or combined sentences.

(2) An offender who is arrested as provided in subsection (1) is ineligible for bond, bail, or release on his own recognizance.

(3) A warrant issued under subsection (1) is in effect until the offender has been returned to the custody of the department, or until the sentence is deemed satisfied, whichever occurs first.

(4) The issuance of a warrant pursuant to this section does not negate or interfere with the right to issuance of a warrant under any other provision of law.

Section 40. 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 return to custody.

Section 41. Effective upon this act becoming a law and retroactive to July 1, 1993, section 33 of chapter 93-185, Laws of Florida, is amended to read:

(1) Notwithstanding the provisions of sections 921.001, 921.187, and 775.08, Florida Statutes, or any other law to the contrary, a person who is sentenced to probation or community control for a felony offense contained in Sentencing Guidelines categories five through nine contained in Florida Rules of Criminal Procedure 3.701 and 3.988, or such similar levels as may be set out in substantive legislation revising the sentencing guidelines, except for any such offense in those categories in which the threat or attempted use of physical force or violence was an element, and who is sentenced to a term from 1 year and 1 day to 22 months, may be committed to the custody of a local detention or correctional facility. Any such commitment shall make the county eligible for receipt of a negotiated per diem reimbursement payable by the Department of Corrections for the duration of the confinement, provided that a contractual agreement between the chief correctional officer or the county and the Department of Corrections exists. No commitments by a court under this section may occur in the absence of such an agreement. All forms of contract and contractual language used for contracts governed by this part shall be reviewed by the Department of Legal Affairs.

(2) *This section shall expire on June 30, 1994.*

Section 42. Effective July 1, 1994, and applicable to distributions made beginning in July 1994, subsection (3) of section 210.20, Florida Statutes, 1992 Supplement, is amended to read:

210.20 Employees and assistants; distribution of funds.—

(3) After all distributions hereinabove provided for have been made, the balance of the revenue produced from the tax imposed by this part shall be deposited in the *Grants and Donations Trust Fund of the Department of Corrections General Revenue Fund*.

Section 43. Effective July 1, 1994, and applicable to distributions made beginning in July 1994, section 210.70, Florida Statutes, is amended to read:

210.70 Disposition of funds.—As collections from the taxes imposed under this part are received by the division, it shall pay the same into the *Grants and Donations Trust Fund of the Department of Corrections General Revenue Fund*.

Section 44. 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, 957.11, and 957.12, is created to read:

CHAPTER 957

CORRECTIONAL PRIVATIZATION COMMISSION

957.01 Short title.—This chapter may be cited as the "Correctional Privatization Commission Act."

957.02 Definitions.—As used in this chapter:

(1) "Commission" means the Correctional Privatization Commission.

(2) "Department" means the Department of Corrections.

(3) "Private correctional facility" includes a private forensic medical facility unless the context clearly requires otherwise.

957.03 Correctional Privatization Commission.—

(1) COMMISSION.—The Correctional Privatization Commission is created for the purpose of entering into contracts with contractors for the designing, financing, acquiring, leasing, constructing, and operating of private correctional facilities. For administrative purposes, the commission is created within the Department of Management Services.

(2) MEMBERS; QUALIFICATIONS.—The commission shall consist of five members appointed by the Governor who are not employees of the Department of Corrections.

(3) TERMS, ORGANIZATION, AND MEETINGS.—

(a) The term of office for a member of the commission is 4 years. However, a member may not serve beyond the time the member has ceased to hold the office or employment that was the basis for appointment.

(b) A vacancy shall be filled in the same manner as the original appointment and shall be for the remainder of the unexpired term only.

(c) The members of the commission shall select a chair and a vice chair for terms of 2 years each and may select other officers as needed.

(d) Members of the commission shall serve without compensation but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061.

(e) The commission may employ an executive director and such staff as is necessary, within the limits of legislative appropriation. The executive director shall not have been an employee of the department for 2 years prior to employment with the commission and shall not become an employee of the department for 2 years following termination of employment with the commission.

(f) The commission shall meet at least quarterly. Additional meetings may be held upon the call of the chair or a majority of the members of the commission. A majority of the members of the commission constitutes a quorum.

(g) In accordance with all provisions of law, the commission may lease such office space as is necessary, within the limits of legislative appropriation.

(4) DUTIES.—

(a) The commission shall enter into contracts with contractors for the designing, acquiring, financing, leasing, constructing, and operating of private correctional facilities.

(b) In its request for proposals, the commission shall invite innovation and shall not require prototypes of state correctional facilities or state requirements for land parcel size.

(c) The commission must report to the Speaker of the House of Representatives and the President of the Senate by December 1 each year on the status and effectiveness of the facilities under its management.

957.04 Contract requirements.—

(1) A contract entered into under this chapter shall:

(a) Be negotiated with the firm found most qualified. However, a contract for private correctional services may not be entered into unless the contractor demonstrates that it has:

1. The qualifications, experience, and management personnel necessary to carry out the terms of the contract.

2. The ability to expedite the siting, design, and construction of correctional facilities.

3. Evidence of past satisfactory performance of similar contracts.

4. The ability to comply with applicable laws, court orders, and national correctional standards.

(b) Indemnify the state and the department, including their officials and agents, against any and all liability, including, but not limited to, civil rights liability. Proof of satisfactory insurance is required in an amount to be determined by the commission, following consultation with the Division of Risk Management of the Department of Insurance, not to exceed \$10 million per occurrence.

(c) Require that the contractor seek, obtain, and maintain accreditation by the American Correctional Association. Compliance with amendments to the accreditation standards of the association is required upon the approval of such amendments by the commission.

(d) Require that the proposed facilities and the management plans for the inmates meet applicable American Correctional Association standards and the requirements of all applicable court orders and state law.

(e) Establish design and operations standards for correctional facilities subject to the contract. The commission may waive any rule, policy, or procedure of the department related to the design and operations standards of correctional facilities that are inconsistent with the mission of the commission to establish cost-effective, privately operated correctional facilities.

(f) Require the contractor to be responsible for a range of dental, medical, and psychological services; diet; education; and work programs at least equal to those provided by the department in comparable facilities. The work and education programs must be designed to reduce recidivism.

(g) Require the selection and appointment of a full-time contract monitor. The contract monitor shall be appointed and supervised by the commission and compensated by the contractor. The place of employment of the contract monitor shall be the correctional facility for which a contractor assumes responsibilities for operation and maintenance. It is the obligation of the contractor to provide suitable office space for the contract monitor at the correctional facility.

(h) Include specific language authorizing the use of tax-exempt financing through the issuance of tax-exempt bonds, certificates of participation, or other tax-exempt financing methods secured through a lease purchase arrangement. However, the state is not obligated for any payments beyond the current annual appropriation. The contract shall comply with ss. 255.2502 and 255.2503.

(i) Be for a period of 3 years and may be renewed for successive 2-year periods thereafter for prison operations. However, the state is not obligated for any payments to the contractor beyond current annual appropriations.

(j) Not require the contractor to obtain a performance bond.

(2) A contract entered into under this chapter does not accord third-party beneficiary status to any inmate or to any member of the general public.

957.05 Contractor requirements.—

(1) Each contractor entering into a contract under this chapter is liable in tort with respect to the care and custody of inmates under its supervision and for any breach of contract. Sovereign immunity may not be raised by a contractor or the insurer of that contractor as a defense in any action arising out of the performance of any contract entered into under this chapter.

(2)(a) The training requirements, including inservice training requirements, for employees of a contractor that assumes the responsibility for the operation and maintenance of a private correctional facility shall meet or exceed the requirements for similar employees of the department or the training requirements mandated for accreditation by the American Correctional Association, whichever of those requirements are the more demanding. All employee training expenses are the responsibility of the contractor.

(b) Employees of a contractor who are responsible for the supervision of inmates shall have the same legal authority to rely on nondeadly and deadly force as do similar employees of the department.

957.06 Powers and duties of Department of Corrections.—A contract entered into under this chapter does not authorize, allow, or imply a delegation of authority to the contractor to:

(1) Classify inmates or place inmates in less restrictive or more restrictive custody.

(2) Transfer an inmate, although the contractor may recommend in writing that the commission require the department to transfer a particular inmate.

(3) Formulate rules of inmate behavior, violations of which may subject inmates to sanctions, except to the extent that they are accepted by the commission.

(4) Take any disciplinary action against an inmate.

(5) Grant, deny, or revoke sentence credits.

(6) Recommend that the Parole Commission either deny or grant parole, although the contractor may submit written reports that have been prepared in the ordinary course of business and shall respond to any proper requests for information received from the Parole Commission.

(7) Develop and implement procedures for calculating sentence credits or inmate release and parole eligibility dates.

(8) Develop and implement requirements that inmates engage in any type of work, except to the extent that those requirements are accepted by the commission.

(9) Determine inmate eligibility for any form of conditional, temporary, or permanent release from a correctional facility.

957.07 Cost saving requirements.—A contract may not be entered into under this chapter unless it will result in a cost savings to the state of at least 5 percent over the public provision of similar facilities or services. Such cost savings must be established to the commission's satisfaction. In determining the cost savings, the commission shall calculate all of the cost components that determine the inmate per diem in correctional facilities of a substantially similar size and type that are operated by the department, including all administrative costs associated with central administration. Services that are provided to the department by other governmental agencies at no direct cost to the department shall be assigned an equivalent cost and included in the per diem. Reasonable projections of payments of any kind for which the private entity would be liable because of its status as a private rather than a public entity, including, but not limited to, corporate income and sales tax payments, shall be considered as cost savings in all such determinations. In addition, the costs associated with the appointment and activities of each contract monitor shall be considered in such determination.

957.08 Capacity requirements.—The department shall transfer and assign prisoners, at a rate to be determined by the commission, to each private correctional facility opened pursuant to this chapter in an amount not less than 90 percent of lawful capacity but not exceeding that capacity.

957.09 Applicability of chapter to other provisions of law.—

(1)(a) Any offense that, if committed at a state correctional facility, would be a crime shall be a crime if committed by or with regard to inmates at private correctional facilities operated pursuant to a contract entered into under this chapter.

(b) All laws relative to commutation of sentences, release and parole eligibility, and the award of sentence credits shall apply to inmates incarcerated in a private correctional facility operated pursuant to a contract entered into under this chapter.

(2) The provisions of this chapter are supplemental to the provisions of ss. 944.105 and 944.710-944.719. However, in any conflict between a provision of this chapter and a provision of such other sections, the provision of this chapter shall prevail.

(3) The provisions of law governing the participation of minority business enterprises are applicable to this chapter.

957.11 Evaluation of costs and benefits of contracts.—The Auditor General shall develop and implement an evaluation of the costs and benefits of each contract entered into under this chapter. This evaluation must include a comparison of the costs and benefits of constructing and operating prisons by the state versus by private contractors. The Auditor General shall also evaluate the performance of the private contractor at the end of the term of each management contract and make recommendations to the Speaker of the House of Representatives and the President of the Senate on whether to continue the contract.

957.12 Prohibition on contact.—A bidder or potential bidder is not permitted to have any contact, except in writing, with any officer, employee, or agent of the Department of Management Services, the Department of Corrections, or any relevant county, municipal, or local agency concerning the procurement until after the contract is executed.

Section 45. In order to expedite the resolution of the current prison overcrowding crisis, the Correctional Privatization Commission shall expedite the contracting process for the first two private correctional facilities in fiscal year 1993-1994. These first two facilities shall be designed to have a minimum capacity of 750 beds each and to house medium-security inmates. All buildings of the facilities must be of durable permanent construction, and all building materials used must be in accordance with uniform building code requirements. It is not permissible to substitute wood or cloth construction. The commission shall issue a request for proposals no later than August 19, 1993; bids shall be due to the commission no later than October 1, 1993; and contracts shall be awarded by the commission no later than November 1, 1993, and must be executed no later than December 1, 1993. The contracts shall stipulate that the facilities must be operating and ready to accept and house state prisoners no later than March 1, 1995.

Section 46. (1) In order to expedite the resolution of the current prison overcrowding crisis, the Correctional Privatization Commission shall expedite the contracting process for the first private forensic medical facility.

(2) The commission shall issue a request for proposals and select a private vendor to construct and operate a correctional health care facility to serve those inmates who are sentenced to or placed in the custody of the Department of Corrections. The facility may also serve inmates from local jurisdictions on a space-available basis at the same rate applicable to inmates from the Department of Corrections. The facility shall be a state-of-the-art health care facility with the capability of providing acute and subacute health care and outpatient services. The facility shall have the capability of serving minimum, medium, and maximum custody inmates with a facility minimum capacity of 300 beds but not more than 600 beds. The department shall determine the most feasible location based upon current utilization of outside-contracted health care facilities and the costs of transportation to and security at such facilities. The selected site and construction design shall allow for expansion of the facility in terms of additional inmate beds and related space. The site may be contiguous with or remote from an existing Department of Corrections facility. At the option of the commission, the vendor may be required to acquire the land for the facility as a part of the capital construction cost or to construct the facility on land supplied by the Department of Corrections.

(3) The commission shall enter into a lease purchase agreement and a separate management agreement, as provided in this section, with the private vendor selected by the commission. The management agreement shall provide for facility management and health care services and may, at the option of the commission, provide for security. The management agreement shall be for a term of 5 years, but may be renewed for three additional 5-year terms at the option of the commission. At the end of each 5-year contract period, the commission may change the security component from contracted to in-house or vice versa. The lease purchase agreement shall state separately the interest component. The performance and obligation of the commission to pay under either of these agreements shall be contingent upon an annual appropriation by the Legislature. If it is determined to be in the best interest of the state, the commission may also include in its request for proposals the option to contract any or all in-house medical services currently provided in any of the 46 major institutions, including medical, dental, and mental health.

(4) For purposes of compliance with s. 957.07, Florida Statutes, the department shall include in its per diem rate calculation the amortized cost of construction of similar state-constructed facilities. In determining the health care component of the per diem rate, the department shall use a 3-year average of procedure by type, by cost, including the cost of transportation and the cost of special security provisions.

(5) The facility management and health care services components of the proposal shall contain strong minority participation with a racial makeup approximating the racial distribution of the inmate population. Proposals shall also contain a plan to develop, in cooperation with the Division of Community Colleges of the Department of Education, an on-the-job training program to provide inmates with college credit toward an A.A. or A.S. degree.

(6) The commission shall issue a request for proposals no later than August 19, 1993. Bids shall be due to the commission no later than October 1, 1993. Contracts shall be awarded by the commission no later than November 1, 1993, and must be executed no later than December 1, 1993. The contracts shall stipulate that the facilities must be operating and ready to accept and house state prisoners no later than March 1, 1995.

Section 47. Subsection (5) is added to section 794.022, Florida Statutes, as amended by chapter 93-156, Laws of Florida, to read:

794.022 Rules of evidence.—

(5) *An offender's use of a prophylactic device, by itself, or a victim's request that an offender use a prophylactic device shall not be relevant to the issue of whether or not the offense was committed or to the issue of whether or not the victim consented.*

Section 48. *Rules 3.701 and 3.988, Florida Rules of Criminal Procedure, as revised by the Florida Supreme Court on February 11, 1993, are hereby adopted and implemented in accordance with s. 921.001, Florida Statutes.*

Section 49. *Except as otherwise specifically provided herein, amendments to sections of the Florida Statutes enacted by this act shall not operate to repeal or otherwise negate amendments to the same sections which may have been enacted at the 1993 Regular Session of the Florida Legislature and which are not indicated herein, and full effect shall be given to each, if that is possible. If provisions of this act are in direct conflict with amendments enacted at the 1993 Regular Session of the Legislature, the provisions of this act shall control.*

Section 50. Except as otherwise provided herein, this act shall take effect upon becoming a law.

And the title is amended as follows:

On page 1, line 1, strike the entire title and insert: 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; 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.

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

WHEREAS, in 1983, the Legislature created the sentencing guidelines to achieve sentencing uniformity by reducing unwarranted disparities in sentencing, meaning that similar offenders should be given similar sentences, regardless of the judge who imposes the sentence or the circuit in which the offender is sentenced, and substantial progress was made toward this policy goal until the 1988 Legislature enacted changes which allowed habitual offenders to be sentenced outside the guidelines system and also allowed all felony offenders to receive a state prison sentence, and these changes undermined the progress toward uniform sentencing based on the severity of the offense and the offender's criminal history, 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 accompanying 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 receive sentences outside of the guidelines system, and

WHEREAS, the current sentencing guidelines tend to be inflexible and do not allow a penalty to be enhanced for a specific crime without simultaneously raising the penalty for additional, similar crimes, and

WHEREAS, the inflexibility of the current sentencing guidelines coupled with the need to protect the public from violent and repeat offenders has led to an increase in both the use of mandatory minimum sentencing laws, which allow offenders to be sentenced outside the guidelines system, and also the use of habitual offender sentencing, which is based on the number, but not necessarily the severity, of the prior crimes or the severity of the current offense, and

WHEREAS, although intended to target the "worst of the worst" offenders, the habitual offender statute has been found to be applied more frequently to less serious, nonviolent offenders and when comparing offenders with similar criminal histories, the habitual offender statute is much more likely to be used against a black offender than a nonblack offender, and

WHEREAS, statutory restrictions on awarding gain-time as well as the increasing number of offenders serving mandatory minimum and habitual offender sentences have effectively restricted the Control Release Authority from reviewing approximately 70 percent of the state prison population for early release and this situation exacerbates the prison capacity problem, and

WHEREAS, the Department of Corrections will be forced, in the next fiscal year, to indiscriminately release inmates from the state correctional system, regardless of the severity of the crimes those inmates committed, unless the Legislature provides both short-term and long-term solutions, and

WHEREAS, the state has a primary responsibility to its citizens to ensure that their communities are as safe and free from crime as possible and, to that end, should use all means available to ensure that those who violate the law serve the sentences imposed on them by the courts, and

WHEREAS, the primary way to ensure that individuals who are sentenced to the state correctional system serve their complete sentences is to provide a sufficient amount of prison bed space to house them; however, over the last two decades the state has not expanded the state correctional system sufficiently to cover the growth in crime and, as a result, the prisons have become overcrowded, and

WHEREAS, meanwhile, the state is being forced by federal court order to eliminate that overcrowding, and

WHEREAS, because of the overcrowding and the federal court order, inmates in the state correctional system are being released early, with many serving less than one-third of their sentences, and

WHEREAS, these inmates return to their communities without having paid their full debt to society and, in many cases, continue the types of crimes for which they were sentenced in the first place, and

WHEREAS, therefore, for many criminals the knowledge that the state correctional system is overcrowded and subject to the federal court order assures them that they will serve little prison time if convicted for a crime, and

WHEREAS, as a result of this prison crisis, the state must find ways to increase the capacity of the state correctional system in an efficient and cost-effective manner and as quickly as possible, and

WHEREAS, in other states the private sector has demonstrated that it can provide an efficient and cost-effective means of incarcerating criminals and can, therefore, provide a capable supplement to this state in its efforts to construct prisons as quickly as possible, and

WHEREAS, in addition, the procedures for the operation of a private correctional facility can provide a substantial savings to the taxpayer while adhering to all applicable laws, court orders, and national standards, and

WHEREAS, in 1989, the state authorized the Department of Corrections to contract for the construction and operation of private correctional facilities; however, the department has yet to be successful in opening a private correctional facility under the 1989 statutory provisions, and

WHEREAS, it is therefore the intent of the Legislature to create an independent commission to issue requests for proposals, and to enter into, award, and administer contracts, to construct and operate private correctional facilities and to report annually to the Legislature the status and effectiveness of all such facilities under its management, 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 a new, more flexible sentencing guidelines system is necessary for the fair and uniform sentencing of all offenders, the most cost-effective use of correctional resources, and also to enhance the safety of Florida's streets, NOW, THEREFORE,

On motion by Senator Siegel, the Senate refused to concur in the House amendment and acceded to the request for a conference committee.

The action of the Senate was certified to the House.

CONFEREES ON SB 26-B AND CS FOR HB 39-B APPOINTED

The President had previously appointed Senator Wexler, Chairman; Senators Siegel, Dantzler, Burt, Meadows and Bankhead.

RETURNING MESSAGE ON HOUSE BILL

The Honorable Ander Crenshaw, President

I am directed to inform the Senate that the House of Representatives has refused to concur in Senate Amendments to CS for HB 39-B and has acceded to the request of the Senate for the appointment of a conference committee.

The Speaker has appointed the following Representatives to the conference committee: Representatives Martinez (Chair), Smith, Logan, Clemons, Mortham and Hanson.

John B. Phelps, Clerk

CONFEREES ON SB 26-B AND CS FOR HB 39-B APPOINTED

The President had previously appointed Senator Wexler, Chairman; Senators Siegel, Dantzler, Burt, Meadows and Bankhead.

ROLL CALLS ON SENATE BILLS

SB 22-B

Yeas—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	

Nays—None

Vote after roll call:

Yea—Kirkpatrick

CS for SB 42-B

Yeas—32

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

Nays—6

Foley	Meadows	Weinstein
Grogan	Siegel	Wexler

Vote after roll call:

Yea—Kirkpatrick

VOTES RECORDED AFTER ROLL CALL

On motion by Senator Thomas, by unanimous consent of the Senate, he was recorded as voting "yea" on **SB 22-B** in the original roll call.

On motion by Senator Kirkpatrick, by unanimous consent of the Senate, he was recorded as voting "yea" on **SB 22-B** and **CS for SB 42-B**.

CORRECTION AND APPROVAL OF JOURNAL

The Journal of May 25 was corrected and approved.

RECESS

On motion by Senator Jennings, the Senate recessed at 7:39 p.m. for the purpose of holding committee meetings and conducting other Senate business until 10:30 a.m., Thursday, May 27.