4-13-1971

Session Law 71-146

Florida Senate & House of Representatives

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<th>HB 935</th>
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<th>Comp./Sim. Bills</th>
<th>None</th>
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<tr>
<td>JLMC Hist. Leg. Cites</td>
<td>Senate</td>
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<td>Senate</td>
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### Committee Records

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<tr>
<th>H/S Committee</th>
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<tr>
<td>H Crim J</td>
<td>1971</td>
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<td>&quot;</td>
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<td>Meetings 1969(part 2) - 1971</td>
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<td>S Crim 1971</td>
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### Tape Recordings

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<tr>
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<th>Committee/subcommittee</th>
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<th>Location Cite</th>
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### Other Documentation

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<tr>
<th>Record series title, folder title, etc.</th>
<th>Location Cite</th>
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</tr>
</thead>
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LRC. (over)
Staff Report on Legislation

HB 935 by the Committee on Criminal Justice, relating to criminal penalty classifications.

I. Purpose of bill

To provide uniform penalty classifications in an effort to eliminate the myriad inconsistencies in the language of penalty provisions now in effect. This bill is the first major step in the process of criminal code revision.

II. Background and explanation

This bill represents the implementation of recommendations of the American Bar Association Minimum Standards on Criminal Justice relating to sentencing alternatives, the Model Penal Code, and the Florida Law Revision Commission. As the summary indicates, this bill is the first major step in criminal code revision. Because the majority of criminal penalties prescribed (over 1,150) occur outside TITLE 44, it was determined by the Committee to introduce this measure as a prelude to specific areas of criminal conduct.

Another consideration is that during the 1971 session will be incorporated into the Official Florida Statutes
III. Summary of bill

HB 935 amends chapter 775 by adding additional language creating classifications of penalties for all criminal offenses. The changes made in chapter 775 are contained in the first 7 pages of the bill. Briefly, by section number, the changes are as follows:

Section 1. Amends present §775.08, elaborating the definition of felony by incorporating the effect of case law, and relegating other crimes to misdemeanor status.

Section 2. Adds new §775.081, listing the classes of felonies and misdemeanors.

Section 3. Adds new §775.082, to provide, by classification, penalties of imprisonment upon conviction of a crime.

Section 4. Adds new §775.083 to provide, by classification, penalties by fine upon conviction of a crime. It is provided that the fine may be imposed in lieu of or in addition to any penalty of imprisonment imposed under §775.082. The purpose of the separate section providing fines is to accommodate those penalty provisions of Florida Statutes providing punishment by fine only.

Section 5. Adds new §775.084 to provide, by classification, penalties of imprisonment for second and subsequent felony offenders. There are no increased penalties for second and subsequent misdemeanants except as provided in specific existing penalty sections. This section provides specific findings to be determined by the court in imposing the increased penalties.

Section 6. Repeals existing sections 775.05, 775.06 and 775.07. Section 775.05: The need for this section is obviated by the language in the amended form of §775.08.
Section 775.06: When the penalty classifications are enacted, each penalty provision in the Florida Statutes will refer to the classifications as set out in §§775.082, 775.083, and 775.084; the institution to which convicted persons may be committed for imprisonment is specifically set out. The language in §775.083 provides that fines are in lieu of or in addition to penalties of imprisonment. As a result, there is no need to retain §775.06.

Section 775.07: the effect of this section is incorporated in bill section 2, page 3, lines 4 - 6.

Starting on page 8 and following, are sections amending each penalty provision of Florida Statutes which prescribes a criminal penalty. The following is an index to the order in which the statute sections occur by bill page number.

<table>
<thead>
<tr>
<th>Statute Sections</th>
<th>Bill Page Number</th>
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</thead>
<tbody>
<tr>
<td>§§941.11 - 951.19</td>
<td>8 - 14</td>
</tr>
<tr>
<td>§§775.13 - 877.14</td>
<td>15 - 250</td>
</tr>
<tr>
<td>§§11.05 - 771.07</td>
<td>251 - 634</td>
</tr>
<tr>
<td>§§811.17 - 843.09</td>
<td>635</td>
</tr>
<tr>
<td>§§933.15 - 933.17</td>
<td>636</td>
</tr>
</tbody>
</table>
I. Chapter 71-136 differs with the recommendations of the American Bar Association Minimum Standards on Criminal Justice and the Model Penal Code in the following respects:

1. Fines: Chapter 71-136 authorizes courts to impose fines in lieu of imprisonment for all types of crimes except capital felonies and for all types of defendants.

ABA Standard §2.7 recommends that the legislature determine the offenses for which a fine would be an appropriate sentence. Except for offenses committed by a corporation, the legislature should not authorize the imposition of a fine for a felony unless defendant has gained money or property by committing the offense. Thus limited, punishment by fines should be discretionary with the court within guidelines prescribed in §2.7(c).

Model Penal Code §7.02 sets forth the criteria for imposing fines and prohibits the imposition of a fine as the only penalty except in certain cases.

2. Minimum Sentence: Chapter 71-136 deletes all minimum sentences even for habitual offenders except the six months minimum for an indeterminate sentence under §921.10, and a one year minimum under §779.07 and 779.08 involving interference with war preparations. Chapter 71-110 repealed the requirement that a prisoner serve a minimum of six months (or 1/3 of an 18 months or shorter term) prior to being eligible for parole.

ABA Standard 3.2 recommends that the legislature not fix a mandatory minimum which must be imposed regardless of the circumstances, but that the courts should be given discretionary power to take affirmative action to prescribe a minimum term to be served before a prisoner is eligible for parole when the court determines that the need is warranted. The four arguments advanced in the commentary are:

1. "The basic purpose of the criminal law is the protection of the public, and the public can only be assured that this purpose will be carried out if dangerous offenders are removed from society for at least a minimum period of time."

2. "It is destructive of the effective operation of parole boards to give them total freedom to determine length of imprisonment in every case. The parole decision should be a shared responsibility, and the minimum term is the way in which other agencies can participate in the process."

3. "A minimum period of incarceration is an institutional necessity in order for any valid correctional program to have a meaningful chance to operate."

4. "If a consensus can be reached on the minimum time needed in order to implement a valid correctional program, legislative specification of that term for every case will serve to emphasize to the sentencing court the nature of the decision being made, and to point up the difference between probation and institutionalization in more meaningful terms."

The Standard authorizes the sentencing court to reduce any minimum sentence upon motion of the correction authorities made at any time. [Note: The commentary describes Florida's six months minimum for an indeterminate sentence as "very low."] The Standard recommends a "reasonably short" minimum, endorses those authorized by the Model Penal Code, and recommends that the legislature specify the highest minimum that can be imposed and that minimum not exceed one-third of the maximum sentence imposed.
The Model Penal Code reflects the view that the timing of parole should not be entirely beyond legislative and judicial control, but minima should be limited to felonies only. It provides:

<table>
<thead>
<tr>
<th>Felonies</th>
<th>ORDINARY TERM</th>
<th>EXTENDED TERM</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Minimum</td>
<td>Maximum*</td>
</tr>
<tr>
<td>1st degree</td>
<td>1-10 yrs.</td>
<td>5-10 yrs.</td>
</tr>
<tr>
<td>2nd degree</td>
<td>1-3 yrs.</td>
<td>10 yrs.</td>
</tr>
<tr>
<td>3rd degree</td>
<td>1-2 yrs.</td>
<td>5 yrs.</td>
</tr>
</tbody>
</table>

Misdemeanors

| Misdemeanors      | None          | 0-1 yr.       | 0-1 yr.       | 3 yrs.       |
|                   | Petty         | None          | 0-30 days     | 0-6 mos.     |

*Alternate §6.06 permits fluctuation of the maximum term for ordinary offenders within the following limits: first degree: 20 yrs.-life; second degree: 1-10 yrs.; third degree: 1-5 yrs.

Parole eligibility under federal law is fixed at one-third the maximum sentence, 18 U.S.C. §4202 unless the court takes the initiative to set the minimum at some lower point, §4208(a). Under the proposed federal code the only minimum allowed is by affirmative action of the court not to exceed one-third of the prison component actually imposed. The parole component is one-third for sentences of nine years or less, three years for sentences between nine to 15 years, and five years for sentences exceeding 15 years; the balance is the prison component.

3. Habitual Offenders: Chapter 71-136 fixes no minimum term, authorizes use for persons over age 17, and for the second conviction.

ABA Standard §3.3 recommends approximately the same criteria as does the Florida law except it limits the maximum term to 25 years, applies only to persons over 21 years of age, and requires that offender be previously convicted of two (2) felonies. [Note: The ABA Standard in addition to the longer sentence for the habitual offender also authorizes "special" (longer) terms based on exceptional characteristics of the defendant under §§2.5[b] and 3.1[c] and contains provisions for imposing consecutive sentences, §3.4.)

The Model Penal Code, §§7.03 and 7.04, authorizes the use of extended prison terms for a number of alternative types of defendants, such as for a dangerous mentally abnormal person. For the persistent offender over 21, previous conviction of one (1) felony and two (2) misdemeanors committed while over the juvenile age can be considered in lieu of two (2) previous felonies. It also authorizes extended terms for certain classes of persons being convicted of a misdemeanor.

CRIMINAL HISTORY OF FLORIDA FELONS CONVICTED IN THE YEAR 1969-70 (TOTAL 3829)

<table>
<thead>
<tr>
<th>Prior Felonies</th>
<th>Prior Misdemeanors</th>
<th>Prior Escapes</th>
<th>Prior Probation</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>2191</td>
<td>1934</td>
<td>3429</td>
</tr>
<tr>
<td>One</td>
<td>750</td>
<td>678</td>
<td>280</td>
</tr>
<tr>
<td>Two</td>
<td>317</td>
<td>392</td>
<td>67</td>
</tr>
<tr>
<td>Three to Eight</td>
<td>396</td>
<td>650</td>
<td>51</td>
</tr>
<tr>
<td>Nine or More</td>
<td>17</td>
<td>175</td>
<td>2</td>
</tr>
</tbody>
</table>

Percentages

<table>
<thead>
<tr>
<th>Prior Felonies</th>
<th>Prior Misdemeanors</th>
<th>Prior Escapes</th>
<th>Prior Probation</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>60.69%</td>
<td>50.50%</td>
<td>89.55%</td>
</tr>
<tr>
<td>One</td>
<td>20.24%</td>
<td>17.71%</td>
<td>7.31%</td>
</tr>
<tr>
<td>Two or More</td>
<td>19.07%</td>
<td>31.79%</td>
<td>3.14%</td>
</tr>
</tbody>
</table>
II. Omissions:

Approximately 20 crimes were inadvertently left out of the Act. In addition, a number of acts passed in the 1971 session were not coded to the penalty classifications.

III. Errors:

Under the act the second offense for trespass with malice was changed from a ten year felony to a 60 day misdemeanor, although first offense is a one year misdemeanor. Section 821.38(2) relative to the second offense should be amended to change the word "misdemeanor" to "felony."

IV. Jurisdiction:

Misdemeanor trial jurisdiction for minor courts is affected by the act. The Justice of the Peace Courts in eight counties presently have jurisdiction limited to misdemeanors punishable by fine not exceeding $100 or by imprisonment not exceeding three months. Under Chapter 71-136 a misdemeanor of the second degree is punishable by $500 or 60 days. Attorney General’s Opinion, 061-197, Dec. 20, 1961, stated that when the fine penalty for the crime exceeds the J. P.’s jurisdictional fine limit or when the length of imprisonment exceeds his jurisdictional limit, the J. P. has no jurisdiction. If this opinion is correct, Chapter 71-136 has abolished the misdemeanor trial jurisdiction of the Justice of the Peace for those eight counties, and there will be some affect on J. P. courts having jurisdiction limited to six months or $500.

Crimes presently punishable by a maximum of six months in jail appear to have been equally divided between first and second degree misdemeanors. A sampling of 44 such crimes reflects that the penalty in 20 have been increased from six months to one year and 24 have been decreased from six months to 60 days.

Examples of changes which may affect criminal trial jurisdiction and case loads of criminal courts:

<table>
<thead>
<tr>
<th>SECTION</th>
<th>SUBJECT</th>
<th>CHANGE IN PENALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>790.01</td>
<td>Carrying concealed weapon</td>
<td>3-6 months - 1 year</td>
</tr>
<tr>
<td>800.03</td>
<td>Indecent exposure</td>
<td>6 months - 1 year</td>
</tr>
<tr>
<td>811.021(3)</td>
<td>Petit Larceny</td>
<td>6 months - 1 year</td>
</tr>
<tr>
<td>817.481(3)(b)</td>
<td>Petit Larceny by credit card</td>
<td>6 months - 1 year</td>
</tr>
<tr>
<td>817.49</td>
<td>False report of a crime</td>
<td>6 months - 1 year</td>
</tr>
<tr>
<td>828.13</td>
<td>Cruelty to animals</td>
<td>6 months - 1 year</td>
</tr>
<tr>
<td>828.20</td>
<td>Interfering with ward of court</td>
<td>6 months - 1 year</td>
</tr>
<tr>
<td>828.201</td>
<td>Misuse of child support money</td>
<td>6 months - 1 year</td>
</tr>
<tr>
<td>823.05(2)(b)</td>
<td>Worthless check (under $50.00)</td>
<td>6 months - 1 year</td>
</tr>
<tr>
<td>832.05(3)(b)</td>
<td>Obtaining property for worthless check (under $50.00)</td>
<td>6 months - 1 year</td>
</tr>
<tr>
<td>SECTION</td>
<td>SUBJECT</td>
<td>CHANGE IN PENALTY</td>
</tr>
<tr>
<td>----------</td>
<td>----------------------------------------------</td>
<td>------------------------------------</td>
</tr>
<tr>
<td>784.02</td>
<td>Bare assault</td>
<td>1 year - 60 days</td>
</tr>
<tr>
<td>796.07</td>
<td>Prostitution</td>
<td>6 months - 60 days</td>
</tr>
<tr>
<td>817.52(1)</td>
<td>Obtaining vehicle by trick or fraud</td>
<td>Felony 1 year - 1 year Misde.</td>
</tr>
<tr>
<td>817.52(2)</td>
<td>Hiring vehicle with intent to defraud</td>
<td>6 months - 60 days</td>
</tr>
<tr>
<td>817.52(3)</td>
<td>Failure to redeliver hired vehicle</td>
<td>6 months - 60 days</td>
</tr>
<tr>
<td>817.52(4)</td>
<td>Tampering with mileage device</td>
<td>6 months - 60 days</td>
</tr>
<tr>
<td>821.38(2)</td>
<td>Trespass with malice (1st offense) Note, however, 2nd offense (Error here)</td>
<td>10 years - 60 days</td>
</tr>
<tr>
<td>822.05</td>
<td>Throwing noxious substance against building</td>
<td>6 months - 60 days</td>
</tr>
<tr>
<td>822.18</td>
<td>Other malicious injury (over $15.00)</td>
<td>12 months - 60 days</td>
</tr>
<tr>
<td>828.04(2)</td>
<td>Wilful deprivation of child</td>
<td>Felony 2 years - 1 year Misde.</td>
</tr>
<tr>
<td>828.042</td>
<td>Negligent deprivation of child</td>
<td>6 months - 60 days</td>
</tr>
<tr>
<td>832.041</td>
<td>Stopping payment to defraud (under $50.00)</td>
<td>6 months - 60 days</td>
</tr>
<tr>
<td>849.08</td>
<td>Gambling</td>
<td>90 days - 60 days</td>
</tr>
<tr>
<td>856.01</td>
<td>Drunkenness</td>
<td>3 months - 60 days</td>
</tr>
<tr>
<td>856.03</td>
<td>Vagrancy</td>
<td>6 months - 60 days</td>
</tr>
<tr>
<td>870.02</td>
<td>Unlawful assembly</td>
<td>6 months - 60 days</td>
</tr>
<tr>
<td>877.03</td>
<td>Breach of Peace/Disorderly conduct</td>
<td>90 days - 60 days</td>
</tr>
<tr>
<td>877.011</td>
<td>Inhalation/Possession of harmful chemicals</td>
<td>6 months - 60 days</td>
</tr>
<tr>
<td>562.11</td>
<td>Selling alcohol to minors</td>
<td>6 months - 60 days</td>
</tr>
<tr>
<td>562.23</td>
<td>Conspiracy to violate beverage law</td>
<td>1 year - 60 days</td>
</tr>
<tr>
<td>562.451</td>
<td>Possession of moonshine (less than 1 gallon)</td>
<td>6 months - 60 days</td>
</tr>
</tbody>
</table>

V. Ambiguity: Section 775.084 provides: "Unless otherwise specifically provided by statute..." the court may impose under this section the sentence for a third felony conviction if five other conditions exist. Compare this language with sections such as 831.10, second conviction for uttering forged bills, the penalty being that "provided in §775.084."
VI. Examples of changes which may interest the committee.

1. Deletion of minimum punishment:
   
   a. Examples of specific crimes:

   398.22 -- Narcotic Drugs, subsequent offenses.
   404.15 -- Dangerous Drugs, subsequent offenses.
   161.052 -- Fines for violating beach and shore preservation act.

   506.05 -- Unlawful use of bottles.
   790.23(3) -- Possession of firearms by felons.
   790.01(1) -- Carrying concealed weapons.
   790.07(4) -- Carrying a weapon during felony.

   b. As to the general provisions for recidivism:

   Sections 775.09 and 775.10 containing mandatory minimums for subsequent convictions have been replaced by §775.084 which is discretionary, unless the law provides otherwise for a particular crime. The discretionary power is dependent upon a finding of all six factors specified. Since the minimum penalties have been deleted, it is possible for a recidivist to be sentenced to token punishment.

2. Crimes which under the act may be punished by fine in lieu of imprisonment:

   98.22 Narcotic Drugs
   04.15 Dangerous Drugs
   61.34 Embezzlement
   741.22 Incest
   782.04(2) and (3) Second and third degree murder.
   82.05 Duel
   82.06 Duel
   96.01 House of Prostitution
   806.01-806.03 First, second and third degree arson.
   06.05 Attempts to burn.
   06.06 Burning to defraud insurer.
   06.09 Destroying fire apparatus before burning.
   806.11(1) Burning insured building.
   806.111(1) Fire bombs.
   810.01 Burglary, not armed.
   810.02 Breaking and entering other buildings.
   811.17 Receiving stolen goods.
   812.08 Embezzlement of bank funds.
   812.10 Embezzlement by government officers.
   812.12 Embezzlement by receiver of bank.
   833.03 Conspiracy to commit capital offense.
   833.04 Conspiracy to commit other felony.

3. Crimes which under the present law may be punished either in the state prison or county jail:

   County Jail provision deleted by the act:

   782.07-782.15 Manslaughter.
   799.01 Bigamy.
   806.08 Burning crops or timber.
   806.10 Prevention extinguishment of fire.
   810.051 Breaking and entering auto.
   811.02(2) Grand Larceny.
   817.22-817.23 False invoice to defraud insurer.
   822.02 Throwing explosives.
   831.01 Forgery.
   831.02 Uttering forged instruments.
   831.09 Uttering forged bills.
   831.11 Bringing into state forged bills.
   831.13 POSSESSION OF UNCURRENT BILLS.
   831.14 Uttering uncurrent bills.
   832.05(3)(b) Obtaining property with worthless checks. ($50 or more)
Felony provision deleted by the act:

798.01 Open adultery.
798.02 Lewd and lascivious behavior.

Since one purpose of criminal code revision is deletion of obsolete statutes, the committee staff is preparing a list of old statutes which the committee may wish to consider for obsolence.

MAB:rhr
71-1361 sec. 654
RE F5 631.262 (AMO.)

HB 935

HCMT (mn. Bill) 5. 19-450 4

SCMR 6/1/71 (3)
BF 5.18/23, 24
MF 5.18/25, 26

major. reclass of crim. penalties
 Doubtful if any relevant material
on sect. will be in free
HB 931 -CONTINUED-

HB 932 GENERAL BILL, BY COMMUNITY AFFAIRS
REPEALS SPECIFIED GENERAL LAWS OF LOCAL APPLICATION; PRESERVES CERTAIN MATTERS RELATING TO THE JUDICIARY, ETC.
4/09/71 HOUSE- INTRODUCED, PLACED ON CALENDAR -HJ 0105
4/15/71 SENATE- RECEIVED, REFERRED TO GOVERNMENTAL EFFICIENCY -SJ 0110
4/20/71 SENATE- COMM. REPRT: FAVORABLE, PLACED ON CALENDAR BY GOVERNMENTAL EFFICIENCY -SJ 0129
5/03/71 SENATE- PASSED AS AMENDED; YEAS 036 NAYS 001 -SJ 0220
5/04/71 HOUSE- CONCURRED; PASSED AS AMENDED; YEAS 107 NAYS 000 -HJ 0359
5/05/71 HOUSE- SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR -HJ 0437
5/12/71 APPROVED BY GOVERNOR 05/12/71 -HJ 0507

HB 933 GENERAL BILL, BY FIRESTONE
PROVIDES AN APPROPRIATION FROM THE FUNDS DUE TO THE FLORIDA ATLANTIC UNIVERSITY TO COMPENSATE VAHAKN N. DADRIAN FOR HIS LOSS OF SALARY.
4/12/71 HOUSE- INTRODUCED, REFERRED TO CLAIMS -HJ 0137
4/27/71 HOUSE- WITHDRAWN FROM CLAIMS; WITHDRAWN FROM FURTHER CONSIDERATION -HJ 0282

HB 934 GENERAL BILL, BY MATTHEWS, H., ADOS sec. 476.061(4) - (7) TO PROVIDE QUALIFICATIONS FOR A CERTIFICATE OF REGISTRATION AS A JUNIOR BARBER TEACHER, ETC., ADOS secs. 476.071(2)(H), & 476.161(1)(O) AND (2).
4/12/71 HOUSE- INTRODUCED, REFERRED TO MANPOWER AND DEVELOPMENT, FINANCE AND TAXATION -HJ 0137
5/07/71 HOUSE- COMM. REPRT: FAVORABLE WITH AMEND. BY MANPOWER AND DEVELOPMENT; NOW IN FINANCE AND TAXATION -HJ 0457
6/04/71 HOUSE- DIED IN COMMITTEE

HB 935 GENERAL BILL, BY CRIM. JUSTICE
RECLASSIFIES CRIMINAL PENALTIES, ETC.
4/12/71 HOUSE- INTRODUCED, PLACED ON CALENDAR -HJ 0137
4/23/71 HOUSE- WITHDRAWN FROM CALENDAR; REFERRED TO CRIMINAL JUSTICE -HJ 0239
5/05/71 HOUSE- COMM. REPRT: COMM. SUB, PLACED ON CALENDAR BY CRIMINAL JUSTICE -HJ 0435
5/10/71 HOUSE- LAID ON TABLE UNDER RULE, COMMITTEE SUBSTITUTE SUBSTITUTED; COMMITTEE SUBSTITUTE PASSED; YEAS 093 NAYS 000 -HJ 0463
5/11/71 SENATE- RECEIVED, REFERRED TO JUDICIARY-CRIMINAL -SJ 0320
6/01/71 SENATE- COMM. REPRT: FAVORABLE, PLACED ON CALENDAR BY JUDICIARY-CRIMINAL -SJ 0624
6/04/71 SENATE- PASSED AS AMENDED; YEAS 039 NAYS 000
6/04/71 HOUSE- CONCURRED; PASSED AS AMENDED; YEAS 092 NAYS 001
6/14/71 HOUSE- SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR 06/14/71
6/15/71 APPROVED BY GOVERNOR 06/15/71

936 GENERAL BILL, BY APPROPRIATIONS (COMPANION SB 0687)
AUTHORIZES DEPT. OF HEALTH AND REHABILITATIVE SERVICES, DIV. OF CORRECTIONS, TO PURCHASE SURPLUS REAL PROPERTY IN POLK COUNTY FOR OPERATION OF AVON PARK CORRECTIONAL INSTITUTION.
4/12/71 HOUSE- INTRODUCED, PLACED ON CALENDAR -HJ 0137
4/19/71 HOUSE- PASSED; YEAS 099 NAYS 000 -HJ 0207
4/22/71 SENATE- RECEIVED, REFERRED TO HEALTH, WELFARE AND INSTITUTIONS, WAYS AND MEANS -SJ 0150
4/29/71 SENATE- WITHDRAWN FROM HEALTH, WELFARE AND INSTITUTIONS, WAYS AND MEANS; PLACED ON CALENDAR; SUBSTITUTED FOR SB 687; PASSED; YEAS CONTINUED ON NEXT PAGE
MEMORANDUM

TO: James C. Quarles

FROM: Vernon W. (Danny) Clark

SUBJECT: Various suggestions submitted with reference to revision of Chapter 775.

The suggestion to combine the first two subsections of proposed Alternate #2 of section 775.080 is of doubtful advisability at this time. Presently, the violation of a county ordinance is a misdemeanor and the violation of a municipal ordinance is not a crime. As long as this is the situation it seems best to keep them separate in the proposal.

I purposely did not use the terms "felony" and "misdemeanor" in the proposed subsections. I see very little merit in using terms that require an additional search on the part of many people when a few more words will make the search unnecessary.

The inquiry as to the desirability of the use of "no contest" for "nolo contendere" must be answered in the negative. The more simplified the terminology, the more it appeals to me, but this term is too well established in case law, court rules and statutes of this state to attempt to change it at this point. The Supreme Court of Florida has spent a substantial amount of time with this term; it does not amount to mere ostentation. It would cause only confusion to use a substitute.

In the material distributed to the Commission in January, 1971, concerning Chapter 775, Florida Statutes, proposed section 775.080 is presented in alternate form. Alternate #1 begins on page 10; Alternate #2 is on page 17.

I recommend Alternate #1, and in connection with this Alternate, I would like very much to see favorable action taken on proposed section 775.0801. These two sections supplement one another, but one is not indispensable to the enactment of the other.

Alternate #1 is devised to take care of the bothersome double jeopardy situation when the same act violates a municipal ordinance and a state law and yet does not eliminate the independent status of municipal ordinance coverage of acts
also condemned by state law. Proposed section 775.0801 accomplishes the same purposes when the same act violates a county ordinance and a state law.

I do not recommend Alternate #2. I am sure if it is presented to the Legislature that it will be soundly defeated if that body understands what it means to law enforcement on the municipal level. I have presented it here only because I understand that it was requested that I do so.

A desire for a mandatory indeterminate sentence law has been expressed. This is exactly what proposed section 775.083 furnishes. On subsequent pages I present the case against this proposal and recommend that the indeterminate sentence aspects be eliminated from it.

This apparent reversal of my position requires an explanation; some of the reasons immediately follow, the others will be placed in the "Comment" following the revised version of proposal 775.083.

When this proposal was offered approximately ten months ago, the plan of the Florida Law Revision Commission was to eventually present to the Legislature of Florida an entire, proposed criminal code. There were to be no piece-meal proposals in this area for legislative consideration. Accordingly, this proposal was prepared with the knowledge that its presentation to the Legislature must be accompanied by important amendments of both the present parole and indeterminate sentence laws of Florida. The appropriate time for the preparation of such amendments had not arrived, however.

When the Commission decided not to await the completion of the contemplated code before introducing legislative bills in the criminal area, it became necessary to attempt to foresee what parts of the writer's reports could be used as a basis for legislative enactment without causing confusion in existing law.

Unfortunately, sections 775.083 (and 775.085, which will be treated in a semi-independent fashion) were overlooked in the initial determination of those parts of the report that necessitated additional work prior to being proper bases for bills intended for introduction into the Legislature. Finally, however, the writer discovered the oversight and proceeded to determine the relative merits of a mandatory sentence law in the light of present and possibly future conditions, legislative and otherwise, in this state. This study led to the conclusion that such a law now or in the near future would be a serious mistake. The detailed reasons for this conclusion appear in the "Comment."
The high minimum sentences that have been suggested with reference to proposed section 775.083 probably would be subjected to tremendous opposition. They are far out of line with those suggested by the American Bar Association. Personally, I am opposed to legislative pre-judgments to the extent of substantial mandatory minimum sentences.

The suggestion that on page 29, line 16 (re proposed section 775.085) "18th" birthday be substituted for "17th" birthday is not clear to me. It is said that consistency here is desirable on the theory that "if you are old enough to vote, you are old enough to be a recidivist" - and reference is made to federal legislation permitting 18-year-olds to vote in federal elections. I think the objective would be accomplished by substituting in line 9 of page 29 "eighteen" for "twenty-one." I assume that the wish is that a person 18 years of age should be held to be a recidivist if he qualifies otherwise.

I hold no particular brief for the age of twenty-one in this situation. I believe that Justice Thoral suggested that there should be no age limit at all in this respect. Twenty-one is the age recommended by the American Bar Association and some effort toward uniformity might be desirable in this phase of the law.

The observation that 18-year-olds can vote in federal elections may not be as impressive to many as the observation that in the last general election a "policy" was recognized insofar as voter expression is concerned in this state to the effect that the privileges of suffrage and responsibilities of adulthood should be denied such persons. If "consistency" is the desired object, it seems that the Florida statute should be consistent with the policy of the state of Florida, if it is different from the legislative policy of the federal government, and it is clear that it is different at least in this respect.

The suggestion that on page 30, line 5, the period should be deleted and "whichever is the later" added is a good one, in my opinion. It removes an element of possible controversy from the present language. This change has been included in the revised version of the section.

Suggested alterations of the possible penalties in proposed section 775.085 are extremely harsh insofar as the mandatory minima are concerned. My objection is not based on this observation, however. This section, like proposed section 775.083, contains provisions for mandatory indeterminate sentences. My objections that have been stated to such sentences and the pertinent detailed objections to be presented subsequently apply to this section as well as to proposed section 775.083.
Section 775.083 (proposed) Penalties for felonies and misdemeanors.

(1) A person who has been convicted of the designated felony may be punished as follows:

(a) Capital felony - by a sentence of death, provided a recommendation of such sentence is made to the trial court by a majority of the jurors and this recommendation is accepted by the court in the exercise of its discretion. If the court does not accept the recommendation of a sentence of death, or if the majority of jurors makes no such recommendation, the sentence shall be for a term of imprisonment in the state penitentiary the minimum of which shall be fixed by the court at not less than one year nor more than ten years; and the maximum of which shall be for life imprisonment; or for a term of years not exceeding twenty-five, or by a fine not exceeding $10,000, or by both such fine and such period of imprisonment.

(b) Felony of the first degree other than a capital felony - by a sentence for a term of imprisonment in the state penitentiary the minimum of which shall be fixed by the court at not less than one year nor more
then-seven-years; and the maximum of which shall be not more than not exceeding fifteen years, or by a fine not exceeding $10,000, or by both such fine and such period of imprisonment.

(c) Felony of the second degree - by a sentence for a term of imprisonment in the state penitentiary the minimum of which shall be fixed by the court at not less than one year nor more than three years, and the maximum of which shall be seven years, or by a fine not exceeding $10,000, or by both such fine and such period of imprisonment.

(d) Felony of the third degree - by a sentence for a term of imprisonment in the state penitentiary the minimum of which shall be fixed by the court at not less than one year nor more than two years, and the maximum of which shall be not exceeding three years, or by a fine not exceeding $5,000, or by both such fine and such period of imprisonment.

(2) A person who has been convicted of the designated degree of misdemeanor may be sentenced as follows:

(a) Misdemeanor of the first degree - by a sentence for a definite term of imprisonment in the county jail not exceeding one year or by a fine not exceeding $1,000, or by both such fine and such period of imprisonment.
(b) Misdemeanor of the second degree - by a sentence for a **definite** term of imprisonment in the county jail not exceeding thirty days or by a fine not exceeding $500, or by both such fine and such period or imprisonment.

(3) The provisions of subsections (1) and (2) concerning the amounts of fines that may be imposed are subject to the qualification that the court may, in its discretion, impose a fine in any higher amount not exceeding an amount equal to double the pecuniary gain derived from the offense by the offender.

(4) Nothing in this section shall be construed to alter the operation of any statute of this state authorizing a trial court, in its discretion, to impose a sentence of imprisonment for an indeterminate period within minimum and maximum limits as provided by law.
COMMENT RE PROPOSED SECTION 775.083

The purpose of this comment is to support my position that section 775.083, as originally proposed, should be altered to the extent indicated on the preceding revised version of the section.

As originally drawn, there is contemplated in subsection 1 of the proposal an indeterminate sentence in all felony cases except capital-felony situations in which the sentence of death is imposed. The stage for this indeterminate sentence is established in the section by provisions authorizing the trial court to set the minimum term of imprisonment within a specified range and also the maximum term, provided the maximum does not exceed the limitation set in the proposed statute.

The range of time set by the trial court in his sentence - i.e., from minimum to maximum - would have important significance in two respects: (1) The defendant-prisoner could not be placed on parole by the parole authority of the state until he had served at least the minimum period set by the court in the sentence; (2) the authority that is empowered under state law (frequently the parole authority in various states) to determine the date a prisoner who is serving an indeterminate sentence should be released, whether on parole or unconditionally, could not require him to remain in prison beyond the maximum term set by the trial court.

It is important to note that under section 775.083, in its original form, the trial court could not impose a sentence of a definite term of years. The sentence, if in conformity with the proposal, would have to be of an indeterminate nature. Thus, the indeterminate sentence of Florida would be mandatory from the standpoint of its use by trial courts.

The acceptance of this proposal also would necessitate a new statutory provision for an agency with the authority to determine the specific time that a prisoner serving an indeterminate sentence should be released from prison, either unconditionally or as a prelude to unconditional release.

The enactment of the original proposal and this necessary supplementary statute would bring about the following changes in Florida law:

(1) The trial court would no longer have the authority to set a definite sentence in a felony case, except in the
previously mentioned situations concerning capital felonies. Presently, sentencing for a definite term of years is a common practice.

(2) If a trial court imposed a sentence of imprisonment for a felony, the term of imprisonment would, of necessity, be of an indeterminate type. At present, Florida has an indeterminate sentence law limited to non-capital felonies, but its use lies entirely within the discretion of the trial court. (Sections 921.17-921.23 F.S.) Thus, with reference to such felonies, a trial court has the choice of imposing an indeterminate sentence or a sentence of a definite term of imprisonment.

(3) The trial court, in setting the minimum term of years in the sentence, would thereby prevent the Florida Parole and Probation Commission from granting a parole to the prisoner prior to the expiration of the minimum term set by the court. Under present Florida law, the trial court has no such authority. A prisoner becomes eligible for consideration for parole in non-capital cases after serving 1/3 of any sentence, or the total of cumulative sentences, within the range of 12 to 18 months; if the sentence or sentences involved total 18 months or more, including a life sentence, eligibility for parole is recognized after 6 months is served. (Sec. 947.16 (1) F.S.)

(4) Another effect of allowing the trial court to set the minimum term of imprisonment would be its direct influence upon the decision of the agency that is vested with authority to release the prisoner who is serving an indeterminate sentence. This agency would be foreclosed from releasing the prisoner from further responsibility for serving the sentence until he had served the minimum term set by the court, regardless of the rehabilitation of the prisoner. Presently, under Florida's indeterminate sentence law, the minimum is set by statute at six months and the trial court is required to specify this minimum in his sentence. It, therefore, is clear that the Florida Parole and Probation Commission, the agency authorized to relieve a prisoner of the obligation for serving the remainder of his sentence, is not governed by the trial court in this respect.

The provision of the proposal authorizing the trial court to set the maximum term of imprisonment, provided it does not exceed the maximum specified in the statute does not differ with present Florida law. (Sec. 921.18 F.S.) Consequently, no difficulties are involved concerning the maximum sentence.
The recognition of these changes in Florida law that would result from the enactment of the originally-proposed section 775.083 is my basis for reasons for being of the opinion that the enactment of the proposal, without amendments eliminating the indeterminate sentence aspects, would be a serious mistake. The reasons are as follows:

(1) The elimination of a trial court's authority to impose a definite sentence in non-capital felony cases would constitute a drastic departure from legislative tradition in Florida. While tradition, legislative or otherwise, is not necessarily sacred, it may constitute treacherous ground upon which to tread. There is no doubt that this long-recognized authority played a significant part in the sentiment that existed in this state when the present indeterminate sentence was enacted in 1957, a sentiment that virtually dictated the use of the law as being within the discretion of the trial court rather than making its use mandatory.

A mandatory indeterminate sentence law, while meritorious in many respects, suffers from its inherently restrictive characteristic. The trial judge may be given a great deal of power with reference to the range of the sentence to be served but he is denied the authority to impose a definite sentence that would be subject to the parole law even though he knows that such a sentence would be the best way of dealing with a certain situation. The American Bar Association, in its Standards of Criminal Justice, apparently places great significance on the desirability of granting to the trial court a wide range of discretion. The ABA does not include a mandatory indeterminate sentence law in its recommendations. The proposal was patterned after a recommendation of the American Law Institute.

I am of the opinion that the present parole law of Florida supplemented by the present discretionary indeterminate sentence law will better serve the ends of justice in the sentencing area than a mandatory indeterminate sentence law, particularly the highly-restrictive type that is contemplated by the originally-proposed section 775.083.

(2) The parts of the proposal providing that the trial court may specify the minimum term of imprisonment is inconsistent with the present parole law of Florida. The proposal indicates that the minimum must be at least one year, with authority vested in the court to set the minimum at a longer
period of time within the range specified in the proposal. The longest a felon is required to serve prior to becoming eligible for consideration for parole under present Florida law is six months. (Sec. 947.16(1) F.S.) To allow a trial judge to set the minimum term of imprisonment that must be served before a parole could be granted would disrupt the present parole situation in this state. It also might be conducive to more prison riots, something Florida can do without! The present parole structure basically is a good one insofar as the statutory structure is concerned. Yes, it can be improved, but with more financial support and less political interference its advantages over most of the parole systems in this country would become more evident.

An important practical consideration concerning this phase of the proposal is that the granting of paroles would become more difficult since the minimum time under the proposal that would have to be served would be one year, instead of the present six months, and a court could raise this minimum appreciably, if it so desired. The present financial picture of the state of Florida and the political pressure to grant paroles as a substitute for the more expensive alternative of construction of additional prisons would result in the defeat of the proposal, if the Legislature understood its potential. Personally, I don't feel that the proposal is worthy of serious legislative consideration as it was originally written but should be considered as indispensable legislation in its amended form.

(3) The discretionary use of the present indeterminate sentence law should be retained, with its present specification of 6 months as the minimum term of service before the Florida Parole and Probation Commission is authorized to release the prisoner as having served his sentence. The American Bar Association recommends that the state should furnish to the sentencing court as many alternatives as possible in the sentencing procedure, for obvious reasons. An indeterminate sentence law has desirable qualities and should be available to a court if it deems it wise to use it. Its use should not be mandatory; such a requirement is too strongly characterized by legislative pre-judgment with respect to situation with which the legislative body cannot be qualified to make a decision at the time of the enactment of the law.
COMMENT RE PROPOSED SECTION 775.085

Proposed section 775.085, like proposed section 775.083, was drawn originally upon the assumption that it would be a part of an entire proposed criminal code, and presented for legislative consideration as a part of a unit. For reasons explained with reference to proposed section 775.083, it is desirable to remove the indeterminate sentence provisions from the proposal. No other changes are recommended except that in 3(b) both life imprisonment and the maximum term of 25 years imprisonment are included as possible penalties.

In addition to all that has been said concerning the indeterminate sentence provisions of both proposed sections 775.083 and 775.085 - and the necessity for eliminating them - it should be pointed out that the American Law Institute, in recommending the mandatory indeterminate sentence, also recommends that everyone released from prison under the indeterminate sentence law should be released on parole. Such a provision is absolutely impractical in Florida from a financial standpoint.
Section 775.085 (proposed section) Recidivism - Felonies: Increased Punishment.

(1) The court may sentence a person who has been convicted of a felony within this State to punishments provided in this section if it finds the following:

(a) The imposition of sentence under this section is necessary for the protection of the public from further criminal activity by the defendant.

(b) The defendant is over twenty-one years of age at the time sentence is to be imposed under this section.

(c) The defendant has previously been convicted of two felonies in this State or two other qualified offenses, as defined in this subsection, or one felony and one such qualified offense, all of which were committed after the defendant's seventeenth birthday. For the purpose of this subsection, the term "other qualified offenses" includes any crime in violation of a law of another state, government or country that was punishable under the laws of such state, government or country at the time of its commission by the defendant by confinement exceeding one year or death.

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

(e) The defendant has not received a pardon
on the ground of innocence for any felony or other
qualified offense that is necessary for the operation
of this section.

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

(2) Under this section a person whose guilt of the commission of a felony under Florida law has been legally established and has been granted probation without an adjudication of guilt and who, during such probationary period, has committed the felony for which he is to be sentenced, shall have the felony for which the probation was granted treated in the same manner as a conviction thereof in the event that the probation is not revoked and an adjudication of guilt is not made prior to the imposition of such sentence.

(3) The court, in conformity with the criteria specified in subsection (1) may sentence the convicted felon to the state penitentiary as follows:
(1) in the case of a felony of the first degree, for a term the minimum of which shall be fixed by the court at not less than five years not more than ten years; and the maximum of which shall be life imprisonment (alternative not more than 25 years) life imprisonment or for a term of years not exceeding twenty-five.

(b) in the case of a felony of the second degree, for a term the minimum of which shall be fixed by the court at not less than one year nor more than five years; and the maximum of which shall be fixed by the court at not less than ten nor more than not exceeding twenty years;

(c) in the case of a felony of the third degree, for a term the minimum of which shall be fixed by the court at not less than one year nor more than three years; and the maximum of which shall be fixed by the court at not less than five nor more than not exceeding ten years.

(4) If the court decides that imposition of sentence under this section is not necessary for the protection of the public, sentence shall be imposed without regard to this section.

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

Comment

With the enactment of this section, the following sections should be repealed: 775.09 (Punishment for second conviction of felony) and 775.10 (Punishment for fourth conviction of felony).
COMMENT RE REPORT ON SPEEDY TRIAL

A few thoughts that have occurred to me concerning the report we received that Chapter 915, Florida Statutes, entitled "Dismissal of Prosecution" has been, or will be, repealed by the Legislature of Florida for the purpose of having the speedy trial area of the law dealt with by rules of the Supreme Court of Florida, are the following:

(1) The report that I submitted to the Florida Law Revision Commission concerning speedy trials included many of the recommendations of the American Bar Association in its Standards of Criminal Justice. An independent committee headed by Mr. Albert Datz of Jacksonville has as its primary objective the incorporation of many of the same proposals of the American Bar Association into recommendations to be presented to the Supreme Court of Florida for inclusion in the rules of that court.

(2) It is my understanding that Circuit Judge Ben Overton of Pinellas County has prepared a report on behalf of this committee. I have examined what was handed to me as a copy of Judge Overton's report, and have found that a substantial part of the material contained in the report I submitted to the Commission also is in the report that apparently was prepared by Judge Overton.

(3) On the other hand a great deal of material that is in my report falls outside the scope of the authority of the Supreme Court of Florida to include in court rules and is not included in the report that I have examined.

(4) I hereby request that the Florida Law Revision Commission extend its efforts to compare the report that I submitted to it with the report of the independent committee as soon as it is convenient to do so for the primary purpose of determining which parts of the material in my report deal with substantive law and should be placed in bills for legislative consideration. In my opinion a number of statutes are necessary in this area to supplement court rules that may be adopted in order for Florida law on this subject to be complete.

(5) It should be recalled that my report on Speedy Trial was issued in conjunction with my report on Statutes of Limitation. The report of the independent committee is not concerned with the latter field of law. This part of the report is worthy of consideration in the preparation of bills for the regular session of the 1971 Florida Legislature.
TO: James C. Quarles  
Executive Director  
Florida Law Revision Commission

FROM: Vernon W. (Danny) Clark

Attached are the following:


(3) A copy of the original version of proposed section 775.083 with appropriate deletions and interlineations indicating recommended amendments of the proposal. Included also is a new subsection (4) that is recommended for addition to the proposed section.

(4) A detailed "Comment" explaining the necessity for the amendments of the original version of proposed section 775.083.

(5) Two pages containing the major portion of proposed section 775.085 showing additions, deletions and interlineations indicating recommended amendments of this proposal.

(6) A brief "Comment" stating why the amendments of proposed section 775.083 are necessary.

(7) Statement concerning the use of the report, Speedy Trial.

Vernon W. (Danny) Clark  
February 19, 1971
TO: James C. Quarles  
Executive Director  
Florida Law Revision Commission  

FROM: Vernon W. (Danny) Clark  

Jim,  

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(7) Statement concerning the use of the report, Speedy Trial.  

Vernon W. (Danny) Clark  
February 19, 1971
Re Henry Trawick's letter of January 29, 1971

(1) Most of Henry's suggestions concerning terminology will improve the report, in my opinion.

(2) The suggestion concerning the combination of the first two subsections of proposed Alternate #2 of section 775.080 is of doubtful advisability at this time. Presently, the violation of a county ordinance is a misdemeanor and the violation of a municipal ordinance is not a crime. As long as this is the situation it seems best to keep them separate in the proposal.

I purposely did not use the terms "felony" and "misdemeanor" in the proposed subsections. I see very little merit in using terms that require an additional search on the part of many people when a few more words will make the search unnecessary.

(3) The inquiry as to the desirability of the use of "no contest" for "nolo contendere" must be answered in the negative. The more simplified the terminology, the more it appeals to me, but this term is too well established in case law, court rules and statutes of this state to attempt to change it at this point. The Supreme Court of Florida has spent a substantial amount of time with this term; it does not amount to mere ostentation. It would cause only confusion to use a substitute.

Note

Henry's suggestion discussed in (2) above reminds me to make the following comment:

In the pages that were last distributed to the Commission concerning Chapter 775, Florida Statutes, proposed section 775.080 is presented in alternate form. Alternate #1 begins on page 10; Alternate #2 is on page 17.

I recommend Alternate #1, and in connection with this Alternate, I would like very much to see favorable action taken on proposed section 775.0801. These two sections supplement one another, but one is not indispensable to the enactment of the other.

Alternate #1 is devised to take care of the bothersome double jeopardy situation when the same act violates a municipal ordinance and a state law and yet does not eliminate the independent status of municipal ordinance coverage of acts also condemned by state law. Proposed section 775.0801 accomplishes the same purposes when the same act violates a county ordinance and a state law.

I do not recommend Alternate #2. I am sure if it is presented to the Legislature that it will be soundly defeated if that body understands what it means to law enforcement on the municipal level. I have presented it here only because I understand that it was requested that I do so.
Re Wade Hopping’s letter of January 27, 1971

(1) Wade desires a mandatory indeterminate sentence law. This is exactly what proposed section 775.083 furnishes. On subsequent pages I present the case against this proposal and recommend that the indeterminate sentence aspects be eliminated from it.

This apparent reversal of my position requires an explanation; some of the reasons immediately follow, the others will be placed in the “Comment” following the revised version of proposal 775.083.

When this proposal was offered approximately ten months ago, the plan of the Florida Law Revision Commission was to eventually present to the Legislature of Florida an entire, proposed criminal code. There were to be no piece-meal proposals in this area for legislative consideration. Accordingly, this proposal was prepared with the knowledge that its presentation to the Legislature must be accompanied by important amendments of both the present parole and indeterminate sentence laws of Florida. The appropriate time for the preparation of such amendments had not arrived, however.

When the Commission decided not to await the completion of the contemplated code before introducing legislative bills in the criminal area, it became necessary to attempt to foresee what parts of the writer’s reports could be used as a basis for legislative enactment without causing confusion in existing law.

Unfortunately, sections 775.083 (and 775.085, which will be treated in a semi-independent fashion) were overlooked in the initial determination of those parts of the report that necessitated additional work prior to being proper bases for bills intended for introduction into the Legislature. Finally, however, the writer discovered the oversight and proceeded to determine the relative merits of a mandatory sentence law in the light of present and possibly future conditions, legislative and otherwise, in this state. This study led to the conclusion that such a law now or in the near future would be a serious mistake. The detailed reasons for this conclusion appear in the “Comment”.

(2) The minima sentences suggested by Wade with reference to proposed section 775.083 probably would be subjected to tremendous opposition. They are far out of line with those suggested by the American Bar Association. Personally, I am opposed to legislative pre-judgments to the extent of substantial mandatory minimum sentences.

(3) The suggestion that on page 29, line 16 (re proposed section 775.085) “18th” birthday be substituted for “17th” birthday is not clear to me in that Wade states consistency here is desirable on the theory that “if you are old enough to vote, you are old enough to be a recidivist” - and refers to federal legislation permitting 18-year-olds to vote in federal elections. I think that Wade’s objective
would be accomplished by substituting in line 9 of page 29 "eighteen" for "twenty-one", rather than the change he suggests. I assume that what he desires is that a person 18 years of age should be held to be a recidivist if he qualifies otherwise.

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Wade's observation that 18-year-olds can vote in federal elections may not be as impressive to many as the observation that in the last general election a "policy" was recognized insofar as voter expression is concerned in this state to the effect that the privileges of suffrage and responsibilities of adulthood should be denied such persons. If "consistency" is the desired object, it seems that the Florida statute should be consistent with the policy of the state of Florida, if it is different from the legislative policy of the federal government, and it is clear that it is different at least in this respect.

(4) The suggestion that on page 30, line 5, the period should be deleted and "whichever is the later" added is a good one, in my opinion. It removes an element of possible controversy from the present language. This change has been included in the revised version of the section.

(5) Wade's suggested alterations of the possible penalties in proposed section 775.085 are extremely harsh insofar as the mandatory minima are concerned. My objection is not based on this observation, however. This section, like proposed section 775.083, contains provisions for mandatory indeterminate sentences. My objections that have been stated to such sentences and the pertinent detailed objections to be presented subsequently apply to this section as well as to proposed section 775.083.
TITLE XLIV
CRIMES
CHAPTER 775
DEFINITIONS; GENERAL PENALTIES; REGISTRATION OF CRIMINALS

775.01 Common law of England.—The common law of England in relation to crimes, except so far as the same relates to the modes and degrees of punishment, shall be of full force in this state where there is no existing provision by statute on the subject.

775.02 Punishment of common law offenses.—When there exists no such provision by statute, the court shall proceed to punish such offense by fine or imprisonment, but the fine shall not exceed five hundred dollars, nor the imprisonment twelve months.

775.03 Benefit of clergy.—The doctrine of benefit of clergy shall have no operation in this state.

775.04 What penal acts or omissions not public offenses.—Acts or omissions to which a pecuniary penalty is attached, recoverable by action by a person for his own use or for the use, in whole or in part, of the state or of a county or a public body, or of a corporation, are not public offenses within the meaning of these statutes.

775.05 "Crimes" include misdemeanors.—The word "crimes" shall include all misdemeanors.

775.06 Punishments.—Whenever punishment by imprisonment is prescribed, and the said imprisonment is not expressly directed to be in the state prison, it shall be taken and held to be imprisonment in the county jail, and whenever the punishment is prescribed to be fine or imprisonment (whether in the state prison or county jail), in the alternative, the court may, in its discretion, proceed to punish by both fine and such imprisonment.

775.07 Punishment for misdemeanors where not otherwise provided.—The punishment for commission of crimes other than felonies in this state, when not otherwise provided by statute, or when the penalty provided by such statute is ineffectual because of constitutional provisions, or because the same is otherwise illegal or void, shall be a fine not exceeding two hundred dollars or imprisonment not exceeding ninety days; and where punishment by fine alone is provided the court may, in its discretion, sentence the defendant to serve not exceeding sixty days in default of the payment of the said fine.

775.08 Felonies and misdemeanors defined.—Any crime punishable by death, or imprisonment in the state prison, is a felony, and no other crime shall be so considered. Every other offense is a misdemeanor.

775.09 Punishment for second conviction of felony.—A person who, after having been convicted within this state of a felony or an attempt to commit a felony, or under the laws of any other state, government or country, of a crime which, if committed within this state would be a felony, commits any felony within this state is punishable upon conviction of such second offense as follows: If the subsequent felony is such that upon a first conviction the offender would be punishable by im-
prisonment for any term less than his natural life then such person must be sentenced to imprisonment for a term no less than the longest term nor more than twice the longest term prescribed upon a first conviction. If the subsequent felony is such that upon a first conviction the offender would be punishable by imprisonment for life or for a term of years, in the alternative, then such person must be sentenced to imprisonment for life or for any number of years not less than twenty years.

History.—s.i. ch. 12022, 1927; CGL 7106; §1, ch. 53-794.

775.10 Punishment for fourth conviction of felony.—A person who, after having been three times convicted within this state of felonies or attempts to commit felonies, or under the law of any other state, government or country of crimes which, if committed within this state, would be felonious, commits a felony within this state shall be sentenced upon conviction of a subsequent offense to imprisonment in the state prison for the term of his natural life. A person to be punishable under this and the preceding section need not have been indicted and convicted as a previous offender in order to receive the increased punishment therein provided, but may be proceeded against as provided in the following section.

History.—s. 12, ch. 12022, 1927; CGL 7107.

775.11 Procedure in prosecutions for second and subsequent offenses.—

(1) If at any time after sentence or conviction it shall appear that a person convicted of a felony has previously been convicted of crimes as set forth either in §775.09 or §775.10 the prosecuting attorney of the county in which such conviction was had, shall file an information accusing said person of such previous convictions, whereupon the court in which such conviction was had shall cause said person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegations contained in such information and of his right to be tried as to the truth thereof, according to law, and shall require such offender to say whether he is the same person as charged in such information or not.

(2) If he says he is not the same person or refuses to answer or remains silent, his plea, or the fact of his silence, shall be entered of record and a jury shall be empaneled to inquire whether the offender is the same person mentioned in the several records as set forth in such information. If the jury finds that he is not the same person, the knowledge or confessions in open court after being duly cautioned as to his rights that he is the same person the court shall sentence him to the punishment prescribed in §775.09 or §775.10 as the case may be, and shall vacate the previous sentence, deducting from the new sentence all time actually served on the sentence so vacated. (3) Whenever it shall become known to any warden or prison, probation, parole or police officer or other peace officer, that any person charged with or convicted of a felony has been previously convicted within the meaning of §775.09 or §775.10 he shall forthwith report the facts to the prosecuting attorney of the county.

History.—s. 33, ch. 12022, 1927; CGL 7108.

775.12 Limitation of repeal as to criminal cases.—No offense committed, and no penalty and forfeiture incurred, prior to the taking effect of these statutes, shall be affected thereby, and no prosecution had or commenced, shall be abated thereby, except that when any punishment, forfeiture or penalty shall have been mitigated by the provisions of these statutes, such provisions shall apply to and control any judgment or sentence to be pronounced, and all prosecutions shall be conducted according to the provisions of law in force at the time of such further prosecution and trial applicable to the case.

History.—s.s. 2353; CS 3177; RS 5007; CGL 7109.

775.13 Registration of convicted felons, exemptions; penalties.—

(1) Any person who has been convicted of a felony in any court of this state shall within forty-eight hours after entering any county in this state, register with the sheriff of said county and shall be fingerprinted, photographed and list the crime for which convicted, place of conviction, sentence imposed, if any, name, aliases, if any, address, and occupation.

(2) Any person who has been convicted of a crime in any federal court or in any court of a state other than Florida, or of any foreign state or country, which crime if committed in Florida would be a felony, shall forthwith within forty-eight hours after entering any county in this state register with the sheriff of said county, in the same manner as provided for in subsection (1) of this section.

(3) Any person who is presently within any county of the state as of the effective date of this section, shall likewise be required to register with the sheriff of such county within thirty days after the effective date of this section, if such person would be required to register under the terms of subsections (1) or (2), hereof, if he or she were entering such county.

(4) In lieu of registering with the sheriffs of the several counties of the state as required by this section, such registration may be made with the department of law enforcement, and shall be subject to the same terms and conditions as required for registration with the several sheriffs of the state. Any person so registering with the department of law en-
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forcement shall not be required to make further registration in any county in the state.

(5) The provisions of this law shall not apply to any person who:
(a) Has had his civil rights restored; or
(b) Has received a full pardon for the offense for which convicted, or
(c) Whose conviction of a felony was more than ten years prior to the time provided for registration under the provisions of this law, and who has been lawfully released from incarceration under a felony conviction and sentence for more than five years prior to such time for registration unless such person is a fugitive from justice on a felony charge, or
(d) Is a parolee or probationer under the supervision of the Florida Parole and Probation Commission, or is a probationer under the supervision of any county probation officer of the state, or who has been lawfully discharged from such parole or probation.
(e) Is a parolee or probationer under the supervision of the United States parole commission which parole commission knows of and consents to the presence of such person in Florida, or is a probationer under the supervision of any federal probation officer in the state, or who has been lawfully discharged from such parole or probation.

(6) Failure of any such convicted felon to comply with this section upon conviction shall be punished by imprisonment of not more than 6 months in county jail and fine of not more than $500, or both.

(7) All laws and parts of laws in conflict herewith are hereby repealed, provided that nothing in this section shall be construed to affect any law of this state relating to registration of criminals where the penalties are in excess of those imposed by this section.

History.—s. 1, ch. 119-11; s. 20, ch. 219-3; ss. 6, 7, ch. 231-3; ss. 8, 10, ch. 251-13; ss. 12, 13, ch. 261-9.

775.14 Limitation on withheld sentences.—Any person receiving a withheld sentence upon conviction for a criminal offense, and such withheld sentence has not been altered for a period of five years, shall not thereafter be sentenced for the conviction of the same crime for which sentence was originally withheld.

History.—s. 1, ch. 297-384.

Section 4. All laws and parts of laws in conflict herewith are repealed.

Section 5. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the re­mainder of this chapter or the application of such provision to other persons or circumstances shall not be affected thereby.

Section 6. This act shall take effect January 1, 1972 throughout the state and in all municipalities of the state.

Approved by the Governor June 15, 1971.

Filed in Office Secretary of State June 16, 1971.

AN ACT relating to reclassification of criminal penalties; amend­ing section 775.08, Florida Statutes, to provide definitions of felonies and misdemeanors; adding section 775.081, Florida Statutes, to provide classifications of felonies and misdemean­ors; adding section 775.082, Florida Statues, to provide penal­ties by imprisonment for felonies and misdemeanors; adding section 775.083, Florida Statutes, to provide penalties by fine for felonies and misdemeanors; adding section 775.084, Florida Statutes, to provide penalties for second and subsequent off enders; amending existing penalty provisions to coincide with classifications of crimes established herein; repealing sec­tions 775.05, 775.06, 775.07, 775.09, 775.10 and 104.40, Florida Statutes; providing an effective date.

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

Section 1. Section 775.08, Florida Statutes, is amended to read:
Section 939. Subsection (4) of section 828.031, Florida Statutes, is amended to read:

828.031 Adoption of children; placement; selling; advertising, etc.—

(4) Whoever violates any portion of this section shall be deemed guilty of a felony of the third degree, punishable as provided in §§775.082, 775.083, or 775.084. and upon conviction shall be punished by imprisonment in the state prison for not less than 1 year and not more than 5 years or by fine of not less than $1,000 or not exceeding $5,000, or both.

Section 940. Subsections (1) and (2) of section 828.04, Florida Statutes, are amended to read:

828.04 Torturing or unlawfully punishing children.—

(1) Whoever unlawfully or willfully tortures, cages, or mutilates, or whoever cruelly, wantonly, or with malice, torments or punishes, any child under the age of sixteen years or whoever, in committing a battery upon any child under the age of sixteen years, intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement to such child is guilty of a felony of the second degree, punishable as provided in §§775.082, 775.083, or 775.084. and upon conviction shall be punished by imprisonment not exceeding 20 years in the state penitentiary or by fine not exceeding $10,000 or both.

(2) Whoever willfully or wantonly deprives of necessary food, clothing, or shelter any child under the age of sixteen years, whoever willfully or wantonly deprives of necessary sustenance, raiment, treatment, or attention his child or ward, or whoever willfully or wantonly, unnecessarily or excessively chastises his child or ward, is guilty of a misdemeanor felony of the first degree, punishable as provided in §§775.082, 775.083, or 775.084. and upon conviction shall be punished by imprisonment in the state penitentiary not exceeding 2 years or by fine not exceeding $2,000 or both.

Section 941. Subsection (6) of section 828.041, Florida Statutes, is amended to read:

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828.041 Abuse of children.—

(6) PENALTY.—Anyone knowingly and willfully violating the provisions of this act shall be guilty of a misdemeanor of the second degree, punishable as provided in §§775.082 or 775.083.

Section 942. Section 828.042, Florida Statutes, is amended to read:

828.042 Negligent treatment of children.—Whoever negligently deprives of necessary food, clothing or shelter any person under the age of sixteen years, and whoever negligently and without malice deprives of necessary sustenance or raiment, or negligently and without malice deprives of necessary treatment and attention his child or ward, is guilty of a misdemeanor of the second degree, punishable as provided in §§775.082 or 775.083. and upon conviction thereof shall be punished by imprisonment not exceeding 6 months, or by fine not exceeding $500 or both.

Section 943. Section 828.06, Florida Statutes, is amended to read:

828.06 Owner of insufficiently fenced premises, killing, etc., animals of another thereon.—Whoever, not having a sufficient fence or other enclosure to prevent the intrusion of animals upon his premises, shall in attempting to expel therefrom any horse, cow, hog or other animal of another person found intruding thereon, kill, maim, wound or disfigure any such animal, shall be guilty of a misdemeanor of the second degree, punishable as provided in §§775.082 or 775.083. punished by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars.

Section 944. Section 828.07, Florida Statutes, is amended to read:

828.07 Maliciously killing animal of another.—Whoever willfully and maliciously kills, maims or disfigures any horse, cattle or other beast of another person, or willfully and maliciously administers poison to any such beasts, or exposes any poisonous substance with intent that the same shall be taken and swallowed by them, shall be guilty of a felony of the third degree, punishable as provided in §§775.082, 775.083, or
Section 1181. Section 951.19, Florida Statutes, is amended to read:

951.19 Interference with county prisoners.—Whoever shall interfere with county prisoners while at work, at their meals, at rest, or while going to and from their quarters or with the guards in charge of them, either by assaulting them or by inciting them or attempting to incite the prisoners to disobedience or revolt, or escape, shall be guilty of a misdemeanor of the second degree, punishable as provided in §775.083. and shall, upon conviction, be fined not to exceed one hundred dollars.

Section 1182. Subsection (2) of section 951.22, Florida Statutes, is amended to read:

951.22 County jails; contraband articles.—

(2) Whoever violates subsection (1) shall be deemed guilty of a felony of the third degree, punishable as provided in §§775.082, 775.083, or 775.084. and upon conviction shall be punished by imprisonment for a term not exceeding 3 years, or by a fine not exceeding $1,000 or by both such fine and imprisonment.

Section 1183. This act shall take effect January 1, 1972.

Approved by the Governor June 15, 1971.

Filed in Office Secretary of State June 16, 1971.

[*Ed. Note.—During preparation of CS for HB 935, the material appearing on pages 348 and 349, respectively, of the enrolled act and affecting Sections 589-591 was inadvertently transposed. In order to provide continuity of text, the affected pages of the enrolled act, indicated by original page numbers inserted in text, should be read in the following order: 347, 349, 348, 350.]