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By the Committee on Corrections, Probation and Parole and Senators Johnson, Lehtinen and Jenne

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A bill to be entitled
An act relating to sentencing; amending s.
921.0015, F.S.; 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.; amending s. 921.001, F.S.;
authorizing the commission to develop revised
statewide guidelines; authorizing community
control or incarceration for certain felony
offenders; changing the standard of appellate
review; providing legislative findings and
intent as to career criminals; providing for
enhanced prosecution of and penalties for
career criminals; providing criteria and
standards; providing for investigative
cooperation among criminal justice agencies;
providing for the establishment of career
criminal prosecution units in state attorneys'
offices; providing guidelines for prosecution;
providing for career criminal apprehension
programs to be implemented by law enforcement
agencies; amending s. 775.084, F.S.; deleting
provisions relating to habitual misdemeanants
and providing for the sentencing of habitual
violent felony offenders; providing a
limitation on gain-time for habitual felons;
providing for extended terms of imprisonment;
providing definitions, procedures, and
standards; amending s. 775.021, F.S.; providing
legislative intent as to the rules of

1 construction for determining criminal
 2 penalties; providing for severability;
 3 providing an effective date.
 4

5 WHEREAS, section 921.001, Florida Statutes, authorized
 6 the development of a uniform sentencing policy in the circuit
 7 courts, and

8 WHEREAS, the Florida Supreme Court developed sentencing
 9 guidelines on September 8, 1983, for implementation on October
 10 1, 1983, following recommendations of the Sentencing
 11 Guidelines Commission created for that purpose, and

12 WHEREAS, section 921.001, Florida Statutes, required
 13 subsequent legislative adoption and implementation of any
 14 changes to the guidelines, and

15 WHEREAS, on April 21, 1988, the Florida Supreme Court
 16 proposed revisions to the guidelines recommended by the
 17 Sentencing Guidelines Commission on December 15, 1987, NOW,
 18 THEREFORE,

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Effective July 1, 1988, or upon becoming a
 23 law, whichever occurs later, section 921.0015, Florida
 24 Statutes, is amended to read:

25 921.0015 Adoption and implementation of revised
 26 sentencing guidelines.--Rule 3.701 and Rule 3.988~~(a)7-(b)7~~
 27 ~~(c)7-(d)7-(f)7-(g)7-(h)7-and-(i)~~, Florida Rules of Criminal
 28 Procedure, as revised by the Florida Supreme Court on April
 29 21, 1988 ~~December-197-1985~~, are hereby adopted and implemented
 30 in accordance with s. 921.001~~7-effective-October-17-1986~~.
 31

1 Section 2. Section 921.001, Florida Statutes, is
2 amended to read:

3 921.001 Sentencing Commission.--

4 (1) The provision of criminal penalties and of
5 limitations upon the application of such penalties is a matter
6 of predominantly substantive law and, as such, is a matter
7 properly addressed by the Legislature. The Legislature, in
8 the exercise of its authority to establish sentencing criteria
9 and to provide for the imposition of criminal penalties, has
10 determined that it is in the best interest of the state to
11 develop, implement, and revise a uniform sentencing policy in
12 cooperation with the Supreme Court. In furtherance of this
13 cooperative effort, there is created a Sentencing Commission
14 which shall be responsible for the initial development of a
15 statewide system of sentencing guidelines. ~~After-final~~
16 ~~development-of-a-sentencing-guidelines-system-by-the-Supreme~~
17 ~~Court~~ The commission shall evaluate these guidelines
18 periodically and recommend such changes on a continuing basis
19 as are necessary to ensure certainty of punishment as well as
20 fairness to offenders and to citizens of the state.

21 (2)(a) The commission shall be composed of 15 members,
22 consisting of: two members of the Senate to be appointed by
23 the President of the Senate; two members of the House of
24 Representatives to be appointed by the Speaker of the House of
25 Representatives; the Chief Justice of the Supreme Court or a
26 member of the Supreme Court designated by the Chief Justice;
27 three circuit court judges and one county court judge to be
28 appointed by the Chief Justice of the Supreme Court; and the
29 Attorney General or his designee. The following members shall
30 be appointed by the Governor: one state attorney recommended
31 by the Florida Prosecuting Attorneys Association; one public

1 defender recommended by the Public Defenders Association; one
2 private attorney recommended by the President of The Florida
3 Bar; and two persons of the Governor's choice. The Chief
4 Justice or the member of the Supreme Court designated by the
5 Chief Justice shall serve as chairman of the commission.

6 (b) The members of the commission appointed by the
7 Governor, the President of the Senate, and the Speaker of the
8 House of Representatives shall serve 2-year terms, ~~except that~~
9 ~~the initial appointees shall serve until January 17, 1984.~~ The
10 members appointed by the Chief Justice of the Supreme Court
11 shall serve at his pleasure.

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

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

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

25 ~~(3) Following the initial development of statewide~~
26 ~~sentencing guidelines by the court,~~ The commission shall meet
27 annually or at the call of the chairman to review sentencing
28 practices and recommend modifications to the guidelines. In
29 ~~establishing or~~ modifying the sentencing guidelines, the
30 commission shall take into consideration current sentencing
31 and release practices and correctional resources, including

1 the capacities of local and state correctional facilities, in
2 addition to other relevant factors. For this purpose, the
3 commission is authorized to collect and evaluate data on
4 sentencing practices in the state from each of the judicial
5 circuits.

6 ~~(4)(a) Upon recommendation of a plan by the~~
7 ~~commission, the Supreme Court shall develop by September 1,~~
8 ~~1983, statewide sentencing guidelines to provide trial court~~
9 ~~judges with factors to consider and utilize in determining the~~
10 ~~presumptively appropriate sentences in criminal cases. The~~
11 ~~statewide sentencing guidelines shall be implemented by~~
12 ~~October 1, 1983, unless the legislature affirmatively delays~~
13 ~~the implementation of such guidelines prior to October 1,~~
14 ~~1983. The guidelines shall be applied to all felonies, except~~
15 ~~capital felonies, committed on or after October 1, 1983, and~~
16 ~~to all felonies, except capital felonies and life felonies,~~
17 ~~committed prior to October 1, 1983, for which sentencing~~
18 ~~occurs after such date when the defendant affirmatively~~
19 ~~selects to be sentenced pursuant to the provisions of this~~
20 ~~act.~~

21 (b) The commission shall, no later than October 1 of
22 each year, make a recommendation to the members of the Supreme
23 Court, the President of the Senate, and the Speaker of the
24 House of Representatives on the need for changes in the
25 guidelines. Upon receipt of such recommendation, the Supreme
26 Court may revise the statewide sentencing guidelines to
27 conform them with all or part of the commission
28 recommendation. Such revision shall be submitted by the
29 Supreme Court to the President of the Senate and the Speaker
30 of the House of Representatives no later than February 1 of
31 each year following the receipt of the recommendations of the

1 commission. However, such revision shall become effective
2 only upon the subsequent adoption by the Legislature of
3 legislation implementing the guidelines as then revised. The
4 court may also revise the statewide sentencing guidelines if
5 it certifies that the revisions are necessary to conform the
6 guidelines to previously adopted statutory revisions.

7 (c) The commission shall develop revised statewide
8 sentencing guidelines by February 1, 1989, which:

9 1. Emphasize confinement for violent and serious
10 offenders and alternatives to confinement for nonviolent and
11 nonserious offenders;

12 2. Provide substantially enhanced terms of
13 imprisonment for habitual felony offenders and habitual
14 violent felony offenders as defined in s. 775.084;

15 3. Specify those factors which would justify departure
16 from the guidelines; and

17 4. Determine what types of offense may be
18 appropriately punished by incarceration in minimum or medium
19 security local or regional correctional facilities.

20 (d) The commission shall estimate the impact of the
21 revised sentencing guidelines on future rates of incarceration
22 and levels of prison population. If the commission finds that
23 the revised sentencing guidelines would result in prison
24 population exceeding current or projected capacity, it shall:

25 1. Estimate the fiscal impact of the revised
26 sentencing guidelines, and

27 2. Prepare alternative guidelines which achieve the
28 above purposes, and would not result in projected prison
29 overcrowding if adopted.

30 (5) Sentences imposed by trial court judges must be in
31 all cases within any relevant minimum and maximum sentence

1 limitations provided by statute and must conform to all other
2 statutory provisions. The failure of a trial court to impose
3 a sentence within the sentencing guidelines shall be subject
4 to appellate review pursuant to chapter 924. However, any
5 person sentenced for a felony offense committed after October
6 1, 1988, whose presumptive sentence is any nonstate prison
7 sanction may be sentenced to community control or to a term of
8 incarceration not to exceed 30 months. Such sentence is not
9 subject to appeal. However, before imposing such sentence,
10 the court shall give due consideration to the criteria in s.
11 921.005(1). The extent of departure from a guideline sentence
12 shall not be subject to appellate review. A departure
13 sentence shall be based upon circumstances or factors which
14 reasonably justify the aggravation or mitigation of the
15 sentence. A departure sentence shall be deemed to be
16 reasonably justified unless the imposition of such departure
17 sentence is arbitrary and capricious. The imposition of a
18 departure sentence shall not be considered arbitrary and
19 capricious solely because a factor or circumstance upon which
20 it is based was utilized in the calculation of the guidelines
21 sentence. The level of proof necessary to establish facts
22 supporting a departure from a sentence under the guidelines is
23 a preponderance of the evidence. When multiple reasons exist
24 to support a departure from a guidelines sentence, the
25 departure shall be upheld when at least one circumstance or
26 factor justifies the departure regardless of the presence of
27 other circumstances or factors found not to justify departure.

28 (6) The sentencing guidelines shall provide that any
29 sentences imposed outside the range recommended by the
30 guidelines be explained in writing by the trial court judge.

31

1 (7) A court may impose a sentence outside the
2 guidelines when credible facts proven by a preponderance of
3 the evidence demonstrate that the victim suffered excessive
4 physical or emotional trauma at the hands of the defendant.
5 Such departure is not barred because victim injury has been
6 utilized in the calculation of the guidelines sentence.

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

16 (9) The Sentencing Commission and the office of the
17 State Courts Administrator shall conduct ongoing research on
18 the impact of sentencing guidelines adopted by the commission
19 on sentencing practices, the use of imprisonment and
20 alternatives to imprisonment, and plea bargaining. The
21 commission, with the aid of the office of the State Courts
22 Administrator, the department, and the Parole and Probation
23 Commission, shall estimate the impact of any proposed
24 sentencing guidelines on future rates of incarceration and
25 levels of prison population. Such estimates shall be based in
26 part on historical data of sentencing practices which have
27 been accumulated by the office of the State Courts
28 Administrator and on department records reflecting average
29 time served for offenses covered by the proposed guidelines.
30 Projections of impact shall be reviewed by the commission and
31 made available to other appropriate agencies of state

1 government, including the Legislature, by December 15 of each
2 year.

3 (10) A person convicted of crimes committed on or
4 after October 1, 1983, or any other person sentenced pursuant
5 to sentencing guidelines adopted under this section shall be
6 released from incarceration only:

7 (a) Upon expiration of his sentence;

8 (b) Upon expiration of his sentence as reduced by
9 accumulated gain-time; or

10 (c) As directed by an executive order granting
11 clemency.

12

13 The provisions of chapter 947 shall not be applied to such
14 person.

15 Section 3. Legislative findings and intent.--The
16 Legislature hereby finds that a substantial and
17 disproportionate number of serious crimes is committed in
18 Florida by a relatively small number of multiple and repeat
19 felony offenders, commonly known as career criminals. The
20 Legislature further finds that priority should be given to the
21 investigation, apprehension, and prosecution of career
22 criminals in the use of law enforcement resources and to the
23 incarceration of career criminals in the use of available
24 prison space. The Legislature intends to initiate and support
25 increased efforts by state and local law enforcement agencies
26 and state attorneys' offices to investigate, apprehend, and
27 prosecute career criminals and to incarcerate them for
28 extended terms

29 Section 4. Persons subject to career criminal
30 prosecution efforts; duties.--

31

1 (1)(a) A person shall be the subject of career
2 criminal prosecution efforts who is under arrest for the
3 commission, attempted commission, or conspiracy to commit any
4 felony in this state, provided that such person has previously
5 been convicted of two or more felonies as outlined in section
6 775.084(1), Florida Statutes.

7 (b) As used in sections 3-5 of this act, a previous
8 felony conviction is a conviction of a felony in this state or
9 a conviction of a crime in any other jurisdiction when:

10 1. A sentence to a term of imprisonment of 1 year or
11 more or a sentence of death could have been imposed therefor.

12 2. The offender was over the age of 18 years at the
13 time the offense was committed or was transferred for adult
14 criminal prosecution pursuant to section 39.09(2), Florida
15 Statutes, or any similar statute in another jurisdiction.

16 3. The defendant was imprisoned on at least one
17 occasion for conviction of a felony or other qualified offense
18 necessary for the operation of this section prior to
19 commission of the present felony.

20 4. The defendant has not received a pardon on the
21 ground of innocence for any felony or other qualified offense
22 that is necessary for the operation of this section.

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

26 (2) Whenever it shall become known to any
27 superintendent of a prison, or to any probation, parole, or
28 law enforcement officer, that any person charged with or
29 convicted of a felony has been convicted once previously
30 within the meaning of paragraph (1)(b), this fact shall
31

1 immediately be reported to the state attorney of the judicial
2 circuit in which the charge lies or the conviction occurred.

3 Section 5. Policies to be adopted for career criminal
4 cases.--

5 (1) Criminal justice agencies within this state shall
6 employ enhanced law enforcement management efforts and
7 resources for the investigation, apprehension, and prosecution
8 of career criminals. Each state attorney, sheriff, and the
9 police chief of each municipality with a population in excess
10 of 50,000 shall designate a career criminal program
11 coordinator with primary responsibility for coordinating the
12 efforts contemplated by sections 3-5 of this act. Enhanced
13 law enforcement efforts and resources shall include, but not
14 be limited to:

15 (a) Assignment of highly qualified investigators and
16 prosecutors to career criminal cases.

17 (b) Vertical prosecutorial representation, whereby the
18 prosecutor who makes the initial filing or appearance in a
19 career criminal case may perform all subsequent court
20 appearances on that particular case through its conclusion,
21 including the sentencing phase.

22 (c) Significant reduction of caseloads for
23 investigators and prosecutors assigned to career criminal
24 cases.

25 (d) Coordination with federal, state, and local
26 criminal justice agencies to facilitate the collection and
27 dissemination of criminal investigative and intelligence
28 information relating to those persons meeting the criteria of
29 a career criminal.

30
31

1 (2) Each state attorney's office shall establish a
2 career criminal prosecution unit and may adopt and implement
3 policies based on the following guidelines:

4 (a) All reasonable prosecutorial efforts shall be made
5 to resist the pretrial release of a charged defendant meeting
6 career criminal selection criteria.

7 (b) A plea of guilty or a trial conviction shall be
8 sought on each offense charged in the accusatory pleadings
9 against an individual meeting career criminal selection
10 criteria.

11 (c) All reasonable prosecutorial efforts shall be made
12 to reduce the time between arrest and disposition of charges
13 against an individual meeting career criminal selection
14 criteria.

15 (d) All reasonable prosecutorial efforts shall be made
16 to persuade the court to impose the most severe sanction
17 authorized upon a person convicted after prosecution as a
18 career criminal.

19 (3) This section does not prohibit the reduction of
20 the offense charged or the dismissal of counts in the interest
21 of justice when a written declaration by the prosecuting
22 attorney stating the specific factual and legal basis for such
23 reduction or dismissal is presented to the court, and the
24 court, in writing, acknowledges acceptance of such
25 declaration.

26 (4) This section does not prohibit a plea agreement in
27 the interest of justice when there are codefendants and the
28 prosecuting attorney determines that the information or
29 testimony of the defendant making the agreement is necessary
30 for the conviction of one or more of the other codefendants.
31 The court may condition its acceptance of such plea agreement

1 on the provision of such information or testimony by such
2 defendant. Before the court may accept the plea agreement,
3 the prosecuting attorney shall present a written declaration
4 to the court specifying the legal and factual reasons for the
5 agreement.

6 (5) Law enforcement agencies within this state shall
7 employ enhanced law enforcement management efforts and
8 resources in the investigation, apprehension, and prosecution
9 of career criminals. Enhanced law enforcement efforts and
10 resources shall include, but not be limited to.

11 (a) Crime analysis, consisting of the timely
12 collection and study of local crime data to accomplish the
13 following:

- 14 1. Identify evolving or existing crime patterns
15 involving career criminals.
- 16 2. Provide investigative leads.
- 17 3. Isolate and identify geographical areas or
18 population groups experiencing severe crime problems in order
19 to improve crime prevention efforts.
- 20 4. Provide supporting data for improved allocation of
21 overall law enforcement agency resources.

22 (b) Improved management of investigative operations
23 involving use of information resulting from crime analysis,
24 which may include participation in multi-jurisdictional
25 investigative and mutual-aid units and measures to increase
26 continuity of investigative efforts from the initial response
27 through the arrest and prosecution of the offender.

28 (6) Each career criminal apprehension program shall
29 concentrate on the identification and arrest of career
30 criminals and the support of subsequent prosecution of such
31 career criminals. The determination of which suspected felony

1 offenders shall be the subject of career criminal apprehension
 2 efforts shall be made in accordance with written target
 3 selection criteria selected by the individual law enforcement
 4 agency and state attorney, consistent with the provisions of
 5 sections 4 and 5 of this act.

6 (7) Each career criminal apprehension program, as one
 7 of its functions, shall maintain coordination with the
 8 prosecutor assigned to each case resulting from its efforts.
 9 This coordination shall include, but not be limited to, case
 10 preparation, processing, and adjudication.

11 Section 6. Section 775.084, Florida Statutes, is
 12 amended to read.

13 775.084 Habitual felony offenders and habitual violent
 14 felony offenders misdemeanants; extended terms; definitions;
 15 procedure; penalties.--

16 (1) As used in this act;

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

20 1. The defendant has:

21 a. previously been convicted of two or more felonies a
 22 felony in this state;

23 ~~b. twice previously been convicted of a misdemeanor of~~
 24 ~~the first degree in this state or of another qualified offense~~
 25 ~~for which the defendant was convicted after the defendant's~~
 26 ~~18th birthday;~~

27 2. The felony for which the defendant is to be
 28 sentenced was committed within 5 years of the date of the
 29 conviction of the last prior felony, ~~misdemeanor~~, or other
 30 qualified offense of which he was convicted, or within 5 years
 31 of the defendant's release, on parole or otherwise, from a

1 | prison sentence or other commitment imposed as a result of a
 2 | prior conviction for a felony or other qualified offense,
 3 | whichever is later;

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

7 | 4. A conviction of a felony, ~~misdeemeanor~~, or other
 8 | qualified offense necessary to the operation of this section
 9 | has not been set aside in any post-conviction proceeding.

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

14 | 1. The defendant has ~~at-least-twice~~ previously been
 15 | convicted of a felony or an attempt or conspiracy to commit a
 16 | felony and one or more of such convictions was for:

17 | a. Arson,

18 | b. Sexual battery,

19 | c. Robbery,

20 | d. Kidnapping,

21 | e. Aggravated child abuse,

22 | f. Aggravated assault,

23 | g. Murder,

24 | h. Manslaughter,

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

27 | j. Armed burglary the-same-crime-committed-at
 28 | different-times-after-the-defendant's-18th-birthday;

29 | 2. The felony misdemeanor for which the defendant is
 30 | to be sentenced was committed within 5 2 years of the date of
 31 | the conviction ~~commission~~ of the last prior enumerated felony

1 crime or within 5 2 years of the defendant's release, on
 2 parole or otherwise, from a prison sentence or other
 3 commitment imposed as a result of a prior conviction for an
 4 enumerated felony a-crime, whichever is later;

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

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

11 (c) "Qualified offense" means any offense in violation
 12 of a law of another state or of the United States that was
 13 punishable under the law of such state or the United States at
 14 the time of its commission by the defendant by death or
 15 imprisonment exceeding 1 year ~~or that was equivalent in~~
 16 ~~penalty to a misdemeanor of the first degree.~~

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

22 (3) In a separate proceeding, the court shall
 23 ~~determine if it is necessary for the protection of the public~~
 24 ~~to sentence the defendant to an extended term as provided in~~
 25 ~~subsection (4) and~~ if the defendant is an habitual felony
 26 offender or an habitual violent felony offender ~~misdemeanant~~.
 27 The procedure shall be as follows:

28 (a) The court shall obtain and consider a presentence
 29 investigation prior to the imposition of a sentence as an
 30 habitual felony offender or an habitual violent felony
 31 offender ~~misdemeanant~~.

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

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

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

13 (e) For the purpose of identification of an habitual
 14 felony offender or an habitual violent felony offender
 15 ~~misdeemeanant~~, the court shall fingerprint the defendant
 16 pursuant to s. 921.241.

17 (4)(a) The court, in conformity with the procedure
 18 established in subsection (3) ~~and-upon-a-finding-that-the~~
 19 ~~imposition-of-sentence-under-this-section-is-necessary-for-the~~
 20 ~~protection-of-the-public-from-further-criminal-activity-by-the~~
 21 ~~defendant~~, shall sentence the habitual felony offender as
 22 follows:

- 23 1. In the case of a felony of the first degree, for
 24 life.
- 25 2. In the case of a felony of the second degree, for a
 26 term of years not exceeding 30.
- 27 3. In the case of a felony of the third degree, for a
 28 term of years not exceeding 10.

29 (b) The court, in conformity with the procedure
 30 established in subsection (3) ~~and-upon-a-finding-that-the~~
 31 ~~imposition-of-sentence-under-this-section-is-necessary-for-the~~

1 ~~protection-of-the-public-from-further-criminal-activity-by-the~~
2 ~~defendant, may sentence the habitual violent felony offender~~
3 ~~misdeemeanant as follows:~~

4 1. In the case of a felony misdemeanor of the first
5 degree, for life, and such offender shall not be eligible for
6 release for 15 years a-term-of-years-not-exceeding-3.

7 2. In the case of a felony misdemeanor of the second
8 degree, for a term of years imprisonment not exceeding 30, and
9 such offenders shall not be eligible for release for 10 years
10 ~~in-excess-of-1-year~~.

11 3. In the case of a felony of the third degree, for a
12 term of years not exceeding 10, and such offender shall not be
13 eligible for release for 5 years.

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

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

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

1 Section 7. Effective July 1, 1988, or upon becoming a
2 law, whichever occurs later, subsection (4) of section
3 775.021, Florida Statutes, is amended to read:

4 775.021 Rules of construction.--

5 (1) The provisions of this code and offenses defined
6 by other statutes shall be strictly construed; when the
7 language is susceptible of differing constructions, it shall
8 be construed most favorably to the accused.

9 (2) The provisions of this chapter are applicable to
10 offenses defined by other statutes, unless the code otherwise
11 provides.

12 (3) This section does not affect the power of a court
13 to punish for contempt or to employ any sanction authorized by
14 law for the enforcement of an order or a civil judgment or
15 decree.

16 (4) (a) Whoever, in the course of one criminal
17 transaction or episode, commits an act or acts which
18 constitute one or more separate criminal offenses, upon
19 conviction and adjudication of guilt, shall be sentenced
20 separately for each criminal offense; and the sentencing judge
21 may order the sentences to be served concurrently or
22 consecutively. For the purposes of this subsection, offenses
23 are separate if each offense requires proof of an element that
24 the other does not, without regard to the accusatory pleading
25 or the proof adduced at trial.

26 (b) The intent of the Legislature is to convict and
27 sentence for each criminal offense committed in the course of
28 one criminal episode or transaction and not to allow the
29 principle of lenity as set forth in subsection (1) to
30 determine legislative intent. Exceptions to this rule of
31 construction are:

- 1 1. Offenses which require identical elements of proof.
- 2 2. Offenses which are degrees of the same offense as
- 3 provided by statute.
- 4 3. Offenses which are lesser offenses the statutory
- 5 elements of which are subsumed by the greater offense.

6 Section 8. If any provision of this act or the
7 application thereof to any person or circumstance is held
8 invalid, the invalidity shall not affect other provisions or
9 applications of the act which can be given effect without the
10 invalid provision or application, and to this end the
11 provisions of this act are declared severable.

12 Section 9. Except as otherwise expressly provided in
13 this act, this act shall take effect October 1, 1988.

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19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
20 COMMITTEE SUBSTITUTE FOR
21 Senate Bill 307

22 Rather than abolish sentencing guidelines, the Committee
23 Substitute adopts the Supreme Court's recommended changes to
24 the guidelines, changes the standard of appellate review,
25 allows the court to sentence any felon to community control
26 or to a term of incarceration not to exceed 30 months and
27 mandates that the commission develop revised sentencing
28 guidelines with certain specifications. The Committee
29 Substitute also provides for enhanced prosecution and
30 penalties for career felons and provides legislative intent
31 as to the rules of construction for determining criminal
penalties.

By Senator Johnson

This publication was produced at an average cost of 1.5 cents per page for the information of members of the Legislature and the public.

1 A bill to be entitled

2 An act relating to sentencing; repealing ss.

3 921.001, 921.0015, F.S.; abolishing the

4 Sentencing Commission and repealing the

5 authorization to adopt sentencing guidelines;

6 repealing Rules 3.701 and 3.988, Florida Rules

7 of Criminal Procedure, relating to sentencing

8 guidelines; amending s. 924.06, F.S.; removing

9 the right of a defendant to appeal a sentence

10 imposed outside the range recommended by

11 sentencing guidelines; amending s. 924.07,

12 F.S.; removing the right of the state to appeal

13 a sentence imposed outside the range

14 recommended by sentencing guidelines; amending

15 s. 947.16, F.S.; requiring a convicted felon to

16 serve a specified portion of his sentence

17 before he may be placed on parole; repealing

18 provisions relating to retention of

19 jurisdiction by a trial court for the first

20 third of a felon's sentence; providing an

21 effective date.

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

25 Section 1. Sections 921.001 and 921.0015, Florida
26 Statutes, are hereby repealed.

27 Section 2. Rules 3.701 and 3.988, Florida Rules of
28 Criminal Procedure, are hereby repealed.

29 Section 3. Subsection (1) of section 924.06, Florida
30 Statutes, is amended to read:

31 924.06 Appeal by defendant.--

1 (1) A defendant may appeal from:
2 (a) A final judgment of conviction when probation has
3 not been granted under chapter 948, except as provided in
4 subsection (3),
5 (b) An order granting probation under chapter 948,
6 (c) An order revoking probation under chapter 948; or
7 (d) A sentence, on the ground that it is illegal, ~~or~~
8 ~~fe)--A-sentence-imposed-outside-the-range-recommended~~
9 ~~by-the-guidelines-authorized-by-sr-921-001-~~
10 Section 4. Subsection (1) of section 924.07, Florida
11 Statutes, is amended to read:
12 924.07 Appeal by state.--
13 (1) The state may appeal from:
14 (a) An order dismissing an indictment or information
15 or any count thereof.
16 (b) An order granting a new trial.
17 (c) An order arresting judgment.
18 (d) A ruling on a question of law when the defendant
19 is convicted and appeals from the judgment. Once the state's
20 cross-appeal is instituted, the appellate court shall review
21 and rule upon the question raised by the state regardless of
22 the disposition of the defendant's appeal.
23 (e) The sentence, on the ground that it is illegal
24 (f) A judgment discharging a prisoner on habeas
25 corpus.
26 (g) An order adjudicating a defendant insane under the
27 Florida Rules of Criminal Procedure.
28 (h) All other pretrial orders, except that it may not
29 take more than one appeal under this subsection in any case.
30 ~~ft)--A-sentence-imposed-outside-the-range-recommended~~
31 ~~by-the-guidelines-authorized-by-sr-921-001-~~

1 ~~(1)~~⁽⁷⁾ A ruling granting a motion for judgment of
2 acquittal after a jury verdict.

3 Section 5. Section 947.16, Florida Statutes, is
4 amended to read:

5 947.16 Eligibility for parole; initial parole
6 interviews; powers and duties of commission.--

7 (1) Every person who has been convicted of a felony or
8 who has been convicted of one or more misdemeanors and whose
9 sentence or cumulative sentences total 12 months or more, who
10 is confined in execution of the judgment of the court, and
11 whose record during confinement or while under supervision is
12 good, shall, unless otherwise provided by law, be eligible for
13 interview for parole consideration of his cumulative sentence
14 structure as follows:

15 (a) An inmate who has been sentenced for an
16 indeterminate term or a term of 3 years or less shall have an
17 initial interview conducted by a hearing examiner within 8
18 months after the initial date of confinement in execution of
19 the judgment.

20 (b) An inmate who has been sentenced for a minimum
21 term in excess of 3 years but of less than 6 years shall have
22 an initial interview conducted by a hearing examiner within 14
23 months after the initial date of confinement in execution of
24 the judgment.

25 (c) An inmate who has been sentenced for a minimum
26 term of 6 or more years but other than for a life term shall
27 have an initial interview conducted by a hearing examiner
28 within 24 months after the initial date of confinement in
29 execution of the judgment.

30 (d) An inmate who has been sentenced for a term of
31 life shall have an initial interview conducted by a hearing

1 examiner within 5 years after the initial date of confinement
2 in execution of the judgment.

3 (e) An inmate who has been convicted and sentenced
4 under ss. 958.011-958.15, or any other inmate who has been
5 determined by the department to be a youthful offender, shall
6 be interviewed by a parole examiner within 8 months after the
7 initial date of confinement in execution of the judgment.

8 (2) The following special types of cases shall have
9 their initial parole interview as follows:

10 (a) An initial interview may be postponed for a period
11 not to exceed 90 days. Such postponement shall be for good
12 cause, which shall include, but need not be limited to, the
13 need for the department to obtain a presentence or
14 postsentence investigation report or a probation or parole or
15 mandatory conditional release violation report. The reason
16 for postponement shall be noted in writing and included in the
17 official record. No postponement for good cause shall result
18 in an initial interview being conducted later than 90 days
19 after the inmate's initially scheduled initial interview.

20 (b) An initial interview may be deferred for any
21 inmate who is out to court. Such deferral shall not result in
22 an initial interview being conducted later than 90 days after
23 the department provides written notice to the commission that
24 the inmate has been returned from court.

25 (c) An initial interview may be deferred for any
26 inmate confined in any appropriate treatment facility within
27 the state, public or private, by virtue of transfer from the
28 department under any applicable law. Such deferral shall not
29 result in an initial interview being conducted later than 90
30 days after the department provides written notice to the
31

1 commission that the inmate has been returned to the
2 department.

3 (d) An inmate designated a mentally disordered sex
4 offender shall have an initial interview conducted within 90
5 days of receiving written notification by the department to
6 the commission of the need for such interview and that the
7 inmate's file contains all investigative reports deemed
8 necessary by the commission to conduct such interview.

9 (e) Any inmate who has been adjudicated mentally
10 incompetent pursuant to s. 744.331 shall have an initial
11 interview conducted within 90 days of the date the commission
12 is provided with written notice that mental competency has
13 been restored by the court.

14 (f) An initial interview may be held at the discretion
15 of the commission after the entry of a commission order to
16 revoke parole or mandatory conditional release.

17 (g) For purposes of determining eligibility for parole
18 interview and release, the mandatory minimum portion of a
19 concurrent sentence will begin on the date the sentence begins
20 to run as provided in s. 921.161. The mandatory minimum
21 portions of consecutive sentences shall be served at the
22 beginning of the maximum sentence as established by the
23 Department of Corrections. Each mandatory minimum portion of
24 consecutive sentences shall be served consecutively; provided,
25 that in no case shall a sentence begin to run before the date
26 of imposition. The commission shall conduct an initial
27 interview for an inmate serving a mandatory minimum sentence
28 according to the following schedule:

29 1. An inmate serving a mandatory term of 7 years or
30 less shall have an initial interview no sooner than 6 months
31

1 prior to the expiration of the mandatory minimum portion of
2 the sentence.

3 2. An inmate serving a mandatory term in excess of 7
4 years but of less than 15 years shall have an initial
5 interview no sooner than 12 months prior to the expiration of
6 the mandatory minimum portion of the sentence.

7 3. An inmate serving a mandatory term of 15 years or
8 more shall have an initial interview no sooner than 18 months
9 prior to the expiration of the mandatory minimum portion of
10 the sentence.

11 (h) If an inmate is serving a sentence imposed by a
12 county or circuit court of this state concurrently with a
13 sentence imposed by a court of another state or of the United
14 States, and if the department has designated the correctional
15 institution of the other jurisdiction as the place for
16 reception and confinement of such person, the inmate so
17 released to another jurisdiction shall be eligible for
18 consideration for parole, except that the commission shall
19 determine the presumptive parole release date and the
20 effective parole release date by requesting such person's
21 record file from the receiving jurisdiction. Upon receiving
22 such records, the commission panel assigned by the chairman
23 shall determine such release dates based on the relevant
24 information in that file. The commission may concur with the
25 parole release decision of the jurisdiction granting parole
26 and accepting supervision. The provisions of s. 947.174 do
27 not apply to an inmate serving a concurrent sentence in
28 another jurisdiction pursuant to s. 921.16(2).

29 (3) Notwithstanding the provisions of ss. 775.021 and
30 921.16, if an inmate has received a consecutive sentence or
31 sentences imposed by a court or courts of this state, he shall

1 be eligible for consideration for parole, unless otherwise
2 expressly prohibited by law.

3 (4) A person who has become eligible for an initial
4 parole interview and who may, according to the objective
5 parole guidelines of the commission, be granted parole shall
6 be placed on parole in accordance with the provisions of this
7 law; except that a person sentenced for the commission of any
8 felony may not be placed on parole until he has served one-
9 third of the sentence actually imposed by the trial court
10 judge. ~~in any case of a person convicted of murder, robbery,~~
11 ~~burglary of a dwelling or burglary of a structure or~~
12 ~~conveyance in which a human being is present, aggravated~~
13 ~~assault, aggravated battery, kidnapping, sexual battery or~~
14 ~~attempted sexual battery, incest or attempted incest, an~~
15 ~~unnatural and lascivious act or an attempted unnatural and~~
16 ~~lascivious act, lewd and lascivious behavior, assault or~~
17 ~~aggravated assault when a sexual act is completed or~~
18 ~~attempted, battery or aggravated battery when a sexual act is~~
19 ~~completed or attempted, arson, or any felony involving the use~~
20 ~~of a firearm or other deadly weapon or the use of intentional~~
21 ~~violence, at the time of sentencing the judge may enter an~~
22 ~~order retaining jurisdiction over the offender for review of a~~
23 ~~commission release order.~~ ~~This jurisdiction of the trial~~
24 ~~court judge is limited to the first one-third of the maximum~~
25 ~~sentence imposed.~~ ~~When any person is convicted of two or more~~
26 ~~felonies and concurrent sentences are imposed, then the~~
27 ~~jurisdiction of the trial court judge as provided herein~~
28 ~~applies to the first one-third of the maximum sentence imposed~~
29 ~~for the highest felony of which the person was convicted.~~
30 When any person is convicted of two or more felonies and
31 consecutive sentences are imposed, then eligibility for parole

1 the jurisdiction of the trial court judge as provided herein
 2 applies to one-third of the total consecutive sentences
 3 imposed.

4 (a) ~~In retaining jurisdiction for the purposes of this~~
 5 ~~act, the trial court judge shall state the justification with~~
 6 ~~individual particularity, and such justification shall be made~~
 7 ~~a part of the court record. A copy of such justification~~
 8 ~~shall be delivered to the department together with the~~
 9 ~~commitment issued by the court pursuant to s. 944.16.~~

10 (b) Gain-time as provided for by law shall accrue,
 11 except that an offender ~~over whom the trial court has retained~~
 12 ~~jurisdiction as provided herein~~ shall not be released during
 13 the first one-third of his sentence by reason of gain-time.

14 (c) ~~In such a case of retained jurisdiction, the~~
 15 ~~commission, within 30 days after the entry of its release~~
 16 ~~order, shall send notice of its release order to the original~~
 17 ~~sentencing judge and to the appropriate state attorney. The~~
 18 ~~release order shall be made contingent upon entry of an order~~
 19 ~~by the appropriate circuit judge relinquishing jurisdiction as~~
 20 ~~provided for in paragraph 5(d) and (f). If the original~~
 21 ~~sentencing judge is no longer in service, such notice shall be~~
 22 ~~sent to the chief judge of the circuit in which the offender~~
 23 ~~was sentenced. The chief judge may designate any circuit~~
 24 ~~judge within the circuit to act in the place of the original~~
 25 ~~sentencing judge. Such notice shall stay the time~~
 26 ~~requirements of s. 947.1745.~~

27 (d) ~~Within 10 days after receipt of the notice~~
 28 ~~provided for in paragraph (c), the original sentencing judge~~
 29 ~~or his replacement shall notify the commission as to whether~~
 30 ~~or not the court further desires to retain jurisdiction. If~~
 31 ~~the original sentencing judge or his replacement does not so~~

1 ~~notify the commission within the 10-day period or notifies the~~
 2 ~~commission that the court does not desire to retain~~
 3 ~~jurisdiction; then the commission may dispose of the matter as~~
 4 ~~it sees fit;~~

5 ~~(e) -- Upon receipt of notice of intent to retain~~
 6 ~~jurisdiction from the original sentencing judge or his~~
 7 ~~replacement, the commission shall, within 10 days, forward to~~
 8 ~~the court its release order, the findings of fact, the parole~~
 9 ~~hearing examiner's report and recommendation, and all~~
 10 ~~supporting information upon which its release order was based;~~

11 ~~(f) -- Within 30 days of receipt of the items listed in~~
 12 ~~paragraph (e), the original sentencing judge or his~~
 13 ~~replacement shall review the order, findings, and evidence,~~
 14 ~~and, if the judge finds that the order of the commission is~~
 15 ~~not based on competent substantial evidence or that the parole~~
 16 ~~is not in the best interest of the community or the inmate,~~
 17 ~~the court may vacate the release order. -- The judge or his~~
 18 ~~replacement shall notify the commission of the decision of the~~
 19 ~~court, and, if the release order is vacated, such notification~~
 20 ~~shall contain the evidence relied on and the reasons for~~
 21 ~~denial. -- A copy of such notice shall be sent to the inmate;~~

22 ~~(g) -- The decision of the original sentencing judge or,~~
 23 ~~in his absence, the chief judge of the circuit to vacate any~~
 24 ~~parole release order as provided in this act is not~~
 25 ~~appealable. -- Each inmate whose parole release order has been~~
 26 ~~vacated by the court shall be reinterviewed within 2 years~~
 27 ~~after the date of receipt of the vacated release order and~~
 28 ~~every 2 years thereafter, or earlier by order of the court~~
 29 ~~retaining jurisdiction;~~

30 ~~(h) -- An inmate whose parole release order has been~~
 31 ~~vacated by the court may not be given a presumptive parole~~

1 ~~release date during the period of retention of jurisdiction by~~
 2 ~~the court. During such period, a new effective parole release~~
 3 ~~date may be authorized at the discretion of the commission~~
 4 ~~without further interview unless an interview is requested by~~
 5 ~~no fewer than two commissioners. Any such new effective~~
 6 ~~parole release date shall be reviewed in accordance with the~~
 7 ~~provisions of paragraphs (c), (d), (e), (f) and (g):~~

8 (5) Within 90 days after any interview for parole, the
 9 inmate shall be advised of the presumptive parole release
 10 date. Subsequent to the establishment of the presumptive
 11 parole release date, the commission may, at its discretion,
 12 review the official record or conduct additional interviews
 13 with the inmate. However, the presumptive parole release date
 14 may not be changed except for reasons of institutional conduct
 15 or the acquisition of new information not available at the
 16 time of the initial interview.

17 (6) This section as amended by ch. 82-171, Laws of
 18 Florida, shall apply only to those persons convicted on or
 19 after the effective date of ch. 82-171; and this section as in
 20 effect before being amended by ch. 82-171 shall apply to any
 21 person convicted before the effective date of ch. 82-171.

22 Section 6. This act shall take effect October 1, 1988.

23 *****

24 SENATE SUMMARY

25 Abolishes the Sentencing Commission and the use of
 26 sentencing guidelines. Repeals Florida Rules of Criminal
 27 Procedure relating to sentencing guidelines. Repeals
 28 provisions which allow appeals by the defendant or the
 29 state of a sentence which is imposed outside the range
 30 recommended by the sentencing guidelines. Repeals
 31 provisions which authorize a trial court to retain
 jurisdiction over certain offenders for the first third
 of the maximum sentence and requires persons sentenced
 for the commission of felonies to serve one-third of
 their sentences before being eligible to be placed on
 parole.

By Senator Johnson

A bill to be entitled

An act relating to rules of construction for imposition of criminal penalties; amending s. 775.021, F.S.; prescribing legislative intent with respect to multiple offenses committed in the course of a criminal transaction or episode; providing an effective date.

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

Section 1. Section 775.021, Florida Statutes, is amended to read:

775.021 Rules of construction.--

(1) The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.

(2) The provisions of this chapter are applicable to offenses defined by other statutes, unless the code otherwise provides.

(3) This section does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

(4) Whoever, in the course of one criminal transaction or episode, commits an act or acts which constitute one or more separate criminal offenses, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense; and the sentencing judge may order the sentences to be served concurrently or consecutively. For the purposes of this subsection, offenses are separate if each

This publication was produced at an average cost of 1.5 cents per page for the information of members of the legislature and the public.

Florida House of Representatives - 1988

By the Committee on Criminal Justice and Representative
Canady

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A bill to be entitled

An act relating to criminal penalties; amending
s. 775.021, F.S.; providing legislative intent
as to rules of construction for determining
criminal penalties; providing an effective
date.

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

Section 1. Subsection (4) of section 775.021, Florida
Statutes, is amended to read:

775.021 Rules of construction.--

(1) The provisions of this code and offenses defined
by other statutes shall be strictly construed; when the
language is susceptible of differing constructions, it shall
be construed most favorably to the accused.

(2) The provisions of this chapter are applicable to
offenses defined by other statutes, unless the code otherwise
provides.

(3) This section does not affect the power of a court
to punish for contempt or to employ any sanction authorized by
law for the enforcement of an order or a civil judgment or
decree.

(4)(a) Whoever, in the course of one criminal
transaction or episode, commits an act or acts which
constitute one or more separate criminal offenses, upon
conviction and adjudication of guilt, shall be sentenced
separately for each criminal offense; and the sentencing judge
may order the sentences to be served concurrently or
consecutively. For the purposes of this subsection, offenses
are separate if each offense requires proof of an element that

1 the other does not, without regard to the accusatory pleading
2 or the proof adduced at trial.

3 (b) The intent of the Legislature is to convict and
4 sentence for each offense which results from an episode or
5 transaction and not to allow the principle of lenity as set
6 forth in subsection (1) to determine legislative intent.

7 Exceptions to this rule of construction are:

8 1. Offenses which require identical elements of proof.

9 2. Offenses which are degrees of the same offense as
10 provided by statute.

11 3. Offenses which are lesser offenses whose statutory
12 definitions are subsumed by the greater offense.

13 Section 2. This act shall take effect July 1, 1988, or
14 upon becoming a law, whichever occurs later.

15

16 *****

17 HOUSE SUMMARY

18 Provides legislative intent as to rules of construction
19 for determining criminal penalties. See bill for
20 details.

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This publication was produced at an average cost of 1.12 cents
per single page in compliance with the Rules and for
the information of members of the Legislature and the public.

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STORAGE NAME: PCB CJ 88-17f
Date: May 12, 1988

HOUSE OF REPRESENTATIVES
COMMITTEE ON CRIMINAL JUSTICE
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: PCB CJ 88-17
RELATING TO: Rules of construction
SPONSOR(S): _____
EFFECTIVE DATE: Upon becoming a law
COMPANION BILL(S): _____
OTHER COMMITTEES OF REFERENCE: (1) _____
(2) _____

I. SUMMARY:

A. PRESENT SITUATION:

Currently, s. 775.021, F.S., provides rules of construction for the criminal statutes. These rules are used to help determine how statutes should be construed when the legislative intent is not clear. Section 775.021(4), F.S., incorporates the Blockburger test that offenses are separate if each offense requires an element of proof that the other does not. Blockburger v. United States, 284 U.S. 299(1932). Convictions for separate offenses may be sentenced separately.

Section 775.021(1), F.S., codifies the common law rule of levity which provides that when language is susceptible of different meanings, it is to be construed in a light most favorable to the accused.

B. EFFECT OF PROPOSED CHANGES:

PCB 17 amends s. 775.021(4), F.S., to provide that the intent of the Legislature is, when an act or acts constitute one or more separate criminal offenses, to convict and sentence for each separated offense and not use the principle of lenity to determine legislative intent.

C. SECTION-BY-SECTION ANALYSIS:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

none

19 1871
HB. 1686

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

4. Appropriations Consequences:

Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

none

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

none

2. Direct Private Sector Benefits:

none

3. Effects on Competition, Private Enterprise, and Employment Markets:

none

D. FISCAL COMMENTS:

Currently, some offenders are only sentenced for one offense of which they have been convicted when a court determines, under the current rules of construction, that it was not the intent of the Legislature to punish the person twice for the same act. Some of those offenders would be sentenced for the other offenses under this proposed committee bill resulting in longer sentences.

III. LONG RANGE CONSEQUENCES:

IV. COMMENTS:

In 1987, the Florida Supreme Court in Carawan v. State, ruled that the rule of lenity and the Blockburger test could be utilized together to reach a result indicative of legislative intent and that was not contrary to common sense. In Carawan the court ruled that a person could not be convicted of both attempted manslaughter and aggravated battery on the basis of one shotgun shot. Because there was no clear evidence that the legislature intended to punish a person twice for that single act, the court utilized the rule of lenity to resolve any doubts in favor of the accused.

V. AMENDMENTS:

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Brian Berkowitz, Staff Attorney

Staff Director:

Bill Ryan

APPROPRIATIONS:

Prepared by:

Staff Director:

STORAGE NAME: HB 1686f
Date: May 12, 1988

12/18 71

HOUSE OF REPRESENTATIVES
COMMITTEE ON CRIMINAL JUSTICE
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 1686 (PCB CJ 88-17)

RELATING TO: Rules of construction

SPONSOR(S): _____

EFFECTIVE DATE: Upon becoming a law

COMPANION BILL(S): _____

OTHER COMMITTEES OF REFERENCE: (1) _____

(2) _____

I. SUMMARY:

A. PRESENT SITUATION:

Currently, s. 775.021, F.S., provides rules of construction for the criminal statutes. These rules are used to help determine how statutes should be construed when the legislative intent is not clear. Section 775.021(4), F.S., incorporates the Blockburger test that offenses are separate if each offense requires an element of proof that the other does not. Blockburger v. United States, 284 U.S. 299(1932). Convictions for separate offenses may be sentenced separately.

Section 775.021(1), F.S., codifies the common law rule of levity which provides that when language is susceptible of different meanings, it is to be construed in a light most favorable to the accused.

B. EFFECT OF PROPOSED CHANGES:

PCB 17 amends s. 775.021(4), F.S., to provide that the intent of the Legislature is, when an act or acts constitute one or more separate criminal offenses, to convict and sentence for each separated offense and not use the principle of lenity to determine legislative intent.

C. SECTION-BY-SECTION ANALYSIS:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

none

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

4. Appropriations Consequences:

Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

none

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

none

2. Direct Private Sector Benefits:

none

3. Effects on Competition, Private Enterprise, and Employment Markets:

none

D. FISCAL COMMENTS:

Currently, some offenders are only sentenced for one offense of which they have been convicted when a court determines, under the current rules of construction, that it was not the intent of the Legislature to punish the person twice for the same act. Some of those offenders would be sentenced for the other offenses under this proposed committee bill resulting in longer sentences.

III. LONG RANGE CONSEQUENCES:

IV. COMMENTS:

In 1987, the Florida Supreme Court in Carawan v. State, ruled that the rule of lenity and the Blockburger test could be utilized together to reach a result indicative of legislative intent and that was not contrary to common sense. In Carawan the court ruled that a person could not be convicted of both attempted manslaughter and aggravated battery on the basis of one shotgun shot. Because there was no clear evidence that the legislature intended to punish a person twice for that single act, the court utilized the rule of lenity to resolve any doubts in favor of the accused.

V. AMENDMENTS:

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Staff Director:

Brian Berkowitz, Staff Attorney

Bill Ryan

APPROPRIATIONS:

Prepared by:

Staff Director:

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Dugger D.P.</u>	<u>Liepshutz</u>	1. <u>JCR</u>	<u>Favorable</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Rules of Construction for
Imposition of Criminal
Penalties

BILL NO. AND SPONSOR:

SB 1082 by
Senator Johnson

I. SUMMARY:

A. Present Situation:

In 1976, the Florida Legislature expressed itself on the subject of cumulative punishments for the violation of different statutes during a single criminal episode by creating 775.021(4), F.S., which provided that a person who violated two or more criminal statutes during one criminal episode would be sentenced separately for each offense, excluding lesser included offenses. Ch. 76-66, Laws of Florida. The test for determining if one offense is a lesser included offense of another is found in Blockburger v. United States, 284 U.S. 299, 304 (1932), where the Court stated: "Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not."

In 1983, the Legislature amended s. 775.021(4), F.S., to include a codification of the Blockburger test. The "lesser included offenses" language was deleted from the statute and replaced with language that "offenses are separate if each offense requires proof of a fact that the other does not, without regard to the accusatory pleading or the proof adduced at trial." Ch. 83-156, Laws of Florida.

The Florida Supreme Court recently held that a defendant could not be convicted and sentenced separately for attempted manslaughter and aggravated battery arising from a single act of a shotgun blast. Carawan v. State, 515 So.2d 161 (Fla. 1987). The Court found that the Legislature's intent is controlling as to whether a defendant can be convicted and sentenced separately for multiple crimes based on a single act. Although the court recognized that the codification of Blockburger in s. 775.021(4), F.S., creates a presumption of actual legislative intent, it went on to state that this presumption must be considered in context with other factors evidencing a contrary legislative intent. Id. at 167. If evidence of contrary legislative intent exists (i.e., where two crimes address the same evil), then the rule of lenity must be applied. Id. at 168. (This rule of statutory construction, codified as s. 775.021(1), provides that when language in the criminal code is ambiguous, it is to be construed most favorably toward the defendant.) Thus, the court reasoned that when there is a "reasonable basis for concluding that the Legislature did not intend multiple punishments, this rule of lenity. . . requires that the court find that multiple punishments are impermissible." Id. at 168.

In his dissent, Justice Shaw pointed out that legislative intent is determined by the actual words of the statute, because the Legislature is presumed to understand the meaning

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of those words and how to use them to express its intent. Id. at 171. Justice Shaw further stated that there is no language in s. 775.021(4) or in the statutes proscribing manslaughter or aggravated battery which indicate that the Legislature meant anything other than what the plain words in s. 775.021(4) say: ". . . offenses with unique elements are separate offenses and shall be separately punished. . . . In summary, there is no basis for resort to the various rules of statutory construction. In the guise of 'reasonableness,' the majority has simply substituted its judgment for that of the Legislature in an area where the authority of the Legislature is plenary. . . ." Id. at 172.

B. Effect of Proposed Changes:

SB 1082 would make clear that it is the Legislature's intent to convict and sentence a defendant for every act which constitutes a separate criminal offense committed during a criminal episode. The bill would further clarify that the codification of Blockburger in s. 775.021(4) (offenses with unique elements are separate offenses) controls, not the rule of lenity, in determining the Legislature's intent to punish cumulatively.

The bill would also specify that separate convictions and sentences under this section would not apply to offenses which would require identical elements of proof, offenses which were degrees of the same offense, or offenses which were lesser included offenses of a greater offense. This provision would basically restate the instances when offenses under Blockburger are not separate, and would clarify that in those instances, the Legislature does not intend to impose separate sentences.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Davis</u>	<u>Liepschutz</u>	1. <u>JCR</u>	<u>Favorable</u>
2. _____	<u>Smith</u>	2. <u>AP</u>	<u>Withdrawn</u>
3. <u>Cannon</u>	<u>Wilson</u>	3. <u>COR</u>	<u>CS</u>
4. <u>Martin</u>	<u>Smith</u>	4. <u>AP</u>	<u>Fav/CS</u>

SUBJECT:

Sentencing

BILL NO. AND SPONSOR:

CS/CS/SB 307 by Committees on Appropriations, Corrections, Probation and Parole and Senator Johnson and Others

I. SUMMARY:

A. Present Situation:

In 1983 the Legislature authorized the implementation of statewide sentencing guidelines for non-capital felony cases. The guidelines have been applied to all non-capital felonies committed on or after October 1, 1983. They have also been applied to all felonies, except capital and life felonies, committed before October 1, 1983, but sentenced after that date, when the defendant chose to be sentenced by them. Under the sentencing guidelines, parole eligibility was abolished and sentences are reduced only by forms of gain time or executive clemency. The sentencing guidelines rules and definitions are located in Rule 3.701, Florida Rules of Criminal Procedure. The forms for calculating the sentences are found at Rule 3.988, Florida Rules of Criminal Procedure. The rights to appeal sentences imposed outside the guidelines ranges are set forth in sections 924.06(1)(e) and 924.07(9), F.S.

Currently, s. 775.084, F.S., authorizes the court to impose enhanced sentences on habitual felony offenders which extend beyond the usual statutory maximum penalties. The court must find that the offender meets the statutory criteria, i.e. a prior felony conviction within 5 years of the date of the offense for which he is being sentenced, and that he poses a threat to society. The maximum penalties which may be imposed pursuant to this section are: third degree felonies, 10 years; second degree felonies, 30 years; and first degree felonies, life.

Section 775.021, F.S., provides rules of construction for criminal statutes. These rules are used to help determine how statutes should be construed when the legislative intent is not clear. Section 775.021 (4), F.S., incorporates the Blockburger test that offenses are separate if each offense requires an element of proof that is not contained in the other offense. Blockburger v. United States, 284 U. S. 299 (1932). Convictions for separate offenses may be sentenced separately. The rule of lenity is codified in s. 775.021 (1), F.S., which specifies when language is susceptible of different meanings it is construed in the light most favorable to the accused.

B. Effect of Proposed Changes:

This legislation adopts the recommendation of the Supreme Court in its opinion issued February 11, 1988. The Court's recommendation would broaden judicial discretion by authorizing a sentence departure of one cell above or below the recommended cell. This does not require a written reason and it is not subject to review. The Court recommendation would affect all

of the sentencing cells except for the first cell which is any non-state prison sanction.

Contrary to the Supreme Court recommendation, this legislation, however, amends s. 921.001(5), F.S., to provide that any person who scores in the first cell, any non-state prison sanction, may be subject to a term of imprisonment not to exceed 22 months. This sentence would not be appealable.

The commission is mandated to develop revised sentencing guidelines by February 1, 1989 which emphasize violent and serious offenders and their fiscal ramifications to prison overcrowding.

A new section is created which provides legislative direction for the law enforcement agencies around the state to concentrate their investigative, prosecutorial, and incarcerative resources, on arresting, convicting and imprisoning career criminals. The section provides factors to consider in designating career criminal targets and requires state attorneys, sheriffs and police chiefs in communities with populations greater than 50,000 to create career criminal units within their agencies.

The bill also amends s. 775.084, F.S., deleting the reference to habitual misdemeanants, redefining habitual felony offenders and creating a category of habitual violent felony offenders. An habitual felony offender would have to have two prior felony convictions and would need to be found by a court to be a danger to society to be sentenced as an habitual felony offender. An habitual violent offender would have a prior felony conviction which was an enumerated violent felony such as murder, aggravated battery, or kidnapping. Both habitual felony offenders and habitual violent felony offenders would be subject to the enhanced penalties currently in place, however, in the case of an habitual violent offender, there would be mandatory minimum sentences of 5 years for a third degree felony, 10 years for a second degree felony and 15 years for a first degree felony.

Inmates sentenced as an habitual offender pursuant to this amended statute shall not be eligible for statutory/basic gain-time. Since habitual felons are already excluded from receiving administrative gain-time, the habitual felon will only be eligible for incentive gain-time.

The bill amends s. 775.021(4), F.S., to provide that the intent of the Legislature is when an act or acts constitute one or more separate criminal offenses committed during a criminal episode, to convict and sentence for each separate offense and not use the principle of lenity to determine legislative intent.

Effective Date: July 1, 1988 or upon becoming a law, whichever is later for the permitted range sentencing and October 1, 1988 for all other provisions.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

Total minimum funds required to implement this bill are projected for fiscal years 1988-89, 1989-90, and 1990-91 as \$84,204,000, \$101,052,000, and \$113,257,000 respectively. Components of these costs are enumerated below.

According to the Division of Economic and Demographic Research, the non-recurring fixed capital outlay prison construction for combining cell 1 and cell 2 sentencing ranges for fiscal years 88-89, 89-90, 90-91, and 91-92, are \$30,420,000, \$3,081,000, and \$1,248,000, \$117,000, respectively. The recurring prison operating costs for fiscal years 88-89, 89-90, 90-91, and 91-92 are \$10,061,000, \$11,080,000, \$11,493,000 and \$11,532,000, respectively.

It is estimated by the Division of Economic and Demographic Research that the non-recurring prison construction costs of permitting one cell sentencing discretion without appeal for FY 89-90, FY 90-91 and FY 91-92 will be \$9,789,000, \$5,070,000 and 2,496,000 respectively. The recurring costs for these same years are \$3,238,000, \$4,915,000, \$5,740,000, respectively. There will be no fiscal impact for FY 88-89.

The estimated non-recurring prison construction costs for the habitual felony penalty enhancements and the withholding of basic gain-time for fiscal years 1988-89, 89-90, and 90-91, are \$30,225,000, \$43,485,000, and \$45,201,000, respectively, and the recurring costs for the same years are \$7,498,000, \$24,379,000, and \$39,330,000, respectively.

The requirements for special prosecution units and enhanced law enforcement efforts for career criminals will have an impact on state attorneys, public defenders, and the Florida Department of Law Enforcement. The requirements of the bill are not of sufficient detail to determine the exact level of resources that will be necessary. However, based on the career criminal pilot project proposals developed by the Governor in his recommended budget for FY 1988-89, \$300,000 and seven positions would be required in each of the 20 judicial circuits for the state attorney and public defender, for a total annual cost of \$6,000,000. Additional resources may be required for judicial workload depending on the circuit; and some level of increased funding would be required for FDLE to carry out the intent of this section. Additional local law enforcement resources may also be required.

The total 3 year impact of this bill is projected to be \$298,513,000.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
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