

## CHAPTER 97-78

### Committee Substitute for Committee Substitute for Senate Bill No. 310

An act relating to criminal punishment and corrections; amending s. 825.103, F.S.; imposing a more severe penalty for the offense of exploiting an elderly person or disabled adult if the value of the property involved is less than a specified amount; amending s. 895.02, F.S.; redefining the term "racketeering activity" for purposes of the the Florida RICO Act to include the offense of abuse, neglect, or exploitation of an elderly person or disabled adult; reenacting ss. 16.56(1)(a), 27.34(1), 655.50(3)(g), 896.101(1)(g), and 905.34, F.S., relating to the Office of Statewide Prosecution, salaries and other costs of state attorneys, unlawful financial transactions, and state-wide grand juries, to incorporate the amendment to s. 895.02, F.S., in references thereto; amending s. 921.0012, F.S., relating to the sentencing guidelines; revising a penalty to conform to changes made by the act; amending s. 921.0014, F.S., relating to the sentencing guidelines scoresheets; providing requirements for the state attorney in preparing a defendant's scoresheet; deleting a requirement that the Department of Corrections develop revised scoresheets for submittal to the Sentencing Commission; amending s. 947.1405, F.S.; clarifying the inclusion of violent career criminals as eligible for conditional release supervision; clarifying that conditional release supervision applies to all sentences of an inmate if the inmate's overall sentences include one or more sentences that are eligible for conditional release; providing a legislative finding concerning offenders released from prison who meet conditional release criteria; requiring the Department of Corrections to provide intensive supervision; restricting caseloads of supervising officers; creating s. 948.12, F.S.; providing a legislative finding concerning offenders who are released from prison and who meet the enumerated criteria and have a term of probation to follow incarceration; requiring such offenders to be intensively supervised; restricting caseloads of supervising officers; amending s. 775.084, F.S.; clarifying that the gain-time that the Department of Corrections may award to a habitual felony offender, a habitual violent felony offender, or a violent career criminal is limited to monthly incentive gain-time; amending s. 921.0017, F.S.; clarifying that credit for time served means time spent in state prison or county jail on the same offense; amending s. 944.279, F.S.; providing that a prisoner who is found to have brought a frivolous or malicious action or brought false information before the court is subject to disciplinary procedures; defining the term "prisoner"; amending s. 944.35, F.S., relating to authorized use of force by a departmental employee against an inmate or supervised offender; removing requirement that a report on such use of force be kept in the file of an employee; providing for notation of a use-of-force incident and outcome in the file of an employee; amending s. 944.472, F.S., relating to drug-free corrections; providing legislative

findings and purposes with respect to reasonable suspicion of substance-abuse testing programs for inmates; amending s. 944.473, F.S.; providing for adoption of rules for such programs; amending s. 944.801, F.S., relating to education for state prisoners; entitling certain inmates who qualify for special educational services and programs under federal law to request hearings before the Division of Administrative Hearings; providing that administrative law judges are not required to travel to state and private correctional institutions and facilities to conduct such hearings; creating s. 944.803, F.S., relating to faith-based programs for inmates; providing legislative intent; requiring the department to conduct a study measuring the effectiveness of faith-based programs and report its findings to the Legislature; amending s. 948.01, F.S., relating to the court's authority to place a defendant on probation or community control; authorizing the court to revoke, modify, or continue supervision upon violation; providing certain sentencing authority upon violation; prohibiting the court from awarding credit for time served under certain circumstances; providing limitations on the court for subsequent supervision upon violation; amending s. 948.03, F.S., relating to terms and conditions of probation or community control; deleting attendance at an HIV/AIDS awareness program as a standard condition and requiring oral pronouncement at sentencing; authorizing attendance at an HIV/AIDS awareness program as a condition if such program is available as specified; amending s. 948.06, F.S.; prohibiting the award of credit for time served while on probation or community control for subsequent terms of supervision following a revocation of probation or community control; providing limitations on the court for imposing a subsequent term of supervision following revocation; amending s. 947.04, F.S.; authorizing the chairman of the Parole Commission to serve successive terms; providing an effective date.

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

Section 1. Section 825.103, Florida Statutes, 1996 Supplement, is amended to read:

825.103 Exploitation of an elderly person or disabled adult; penalties.—

(1) "Exploitation of an elderly person or disabled adult" means:

(a) Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

1. Stands in a position of trust and confidence with the elderly person or disabled adult; or

2. Has a business relationship with the elderly person or disabled adult;  
or

(b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

(2)(a) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$100,000 or more, the offender commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$20,000 or more, but less than \$100,000, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at \$100 or more, but less than \$20,000, the offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

~~(d) If the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at less than \$100, the offender commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 2. Paragraph (a) of subsection (1) of section 895.02, Florida Statutes, 1996 Supplement, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.
2. Section 403.727(3)(b), relating to environmental control.
3. Section 414.39, relating to public assistance fraud.
4. Section 409.920, relating to Medicaid provider fraud.
5. Section 440.105 or s. 440.106, relating to workers' compensation.
6. Part IV of chapter 501, relating to telemarketing.
7. Chapter 517, relating to sale of securities and investor protection.

8. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.
9. Chapter 550, relating to jai alai frontons.
10. Chapter 552, relating to the manufacture, distribution, and use of explosives.
11. Chapter 562, relating to beverage law enforcement.
12. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.
13. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.
14. Chapter 687, relating to interest and usurious practices.
15. Section 721.08, s. 721.09, or s. 721.13, relating to real estate time-share plans.
16. Chapter 782, relating to homicide.
17. Chapter 784, relating to assault and battery.
18. Chapter 787, relating to kidnapping.
19. Chapter 790, relating to weapons and firearms.
20. Section 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.
21. Chapter 806, relating to arson.
22. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.
23. Chapter 812, relating to theft, robbery, and related crimes.
24. Chapter 815, relating to computer-related crimes.
25. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.
26. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.
- ~~27.26.~~ Section 827.071, relating to commercial sexual exploitation of children.
- ~~28.27.~~ Chapter 831, relating to forgery and counterfeiting.
- ~~29.28.~~ Chapter 832, relating to issuance of worthless checks and drafts.

- ~~30.29.~~ Section 836.05, relating to extortion.
- ~~31.30.~~ Chapter 837, relating to perjury.
- ~~32.31.~~ Chapter 838, relating to bribery and misuse of public office.
- ~~33.32.~~ Chapter 843, relating to obstruction of justice.
- ~~34.33.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.
- ~~35.34.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.
- ~~36.35.~~ Chapter 874, relating to criminal street gangs.
- ~~37.36.~~ Chapter 893, relating to drug abuse prevention and control.
- ~~38.37.~~ Chapter 896, relating to offenses related to financial transactions.
- ~~39.38.~~ Sections 914.22 and 914.23, relating to tampering with a witness, victim, or informant, and retaliation against a witness, victim, or informant.
- ~~40.39.~~ Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 3. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, 1996 Supplement, in a reference thereto, paragraph (a) of subsection (1) of section 16.56, Florida Statutes, 1996 Supplement, is reenacted to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate “budget entity” as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, and home-invasion robbery;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

4. Any violation of the provisions of the Florida Anti-Fencing Act;
5. Any violation of the provisions of the Florida Antitrust Act of 1980, as amended;
6. Any crime involving, or resulting in, fraud or deceit upon any person; or
7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135,

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits.

Section 4. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, 1996 Supplement, in a reference thereto, subsection (1) of section 27.34, Florida Statutes, 1996 Supplement, is reenacted to read:

27.34 Salaries and other related costs of state attorneys' offices; limitations.—

(1) No county or municipality shall appropriate or contribute funds to the operation of the various state attorneys, except that a county or municipality may appropriate or contribute funds to pay the salary of one assistant state attorney whose sole function shall be to prosecute violations of special laws or ordinances of the county or municipality and may provide persons employed by the county or municipality to the state attorney to serve as special investigators pursuant to the provisions of s. 27.251. However, any county or municipality may contract with the state attorney of the judicial circuit in which such county or municipality is located for the prosecution of violations of county or municipal ordinances. In addition, a county or municipality may appropriate or contribute funds to pay the salary of one or more assistant state attorneys who are trained in the use of the civil and criminal provisions of the Florida RICO Act, chapter 895, and whose sole function is to investigate and prosecute civil and criminal RICO actions when one or more offenses identified in s. 895.02(1)(a) occur within the boundaries of the municipality or county.

Section 5. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, 1996 Supplement, in a reference thereto, paragraph (g) of subsection (3) of section 655.50, Florida Statutes, 1996 Supplement, is reenacted to read:

655.50 Florida Control of Money Laundering in Financial Institutions Act; reports of transactions involving currency or monetary instruments; when required; purpose; definitions; penalties.—

(3) As used in this section, the term:

(g) "Specified unlawful activity" means any "racketeering activity" as defined in s. 895.02.

Section 6. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, 1996 Supplement, in a reference thereto, paragraph (g) of subsection (1) of section 896.101, Florida Statutes, 1996 Supplement, is reenacted to read:

896.101 Offense of conduct of financial transaction involving proceeds of unlawful activity; penalties.—

(1) DEFINITIONS.—As used in this section, the term:

(g) "Specified unlawful activity" means any "racketeering activity" as defined in s. 895.02.

Section 7. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, 1996 Supplement, in a reference thereto, section 905.34, Florida Statutes, 1996 Supplement, is reenacted to read:

905.34 Powers and duties; law applicable.—The jurisdiction of a statewide grand jury impaneled under this chapter shall extend throughout the state. The subject matter jurisdiction of the statewide grand jury shall be limited to the offenses of:

(1) Bribery, burglary, carjacking, home-invasion robbery, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, and robbery;

(2) Crimes involving narcotic or other dangerous drugs;

(3) Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

(4) Any violation of the provisions of the Florida Anti-Fencing Act;

(5) Any violation of the provisions of the Florida Antitrust Act of 1980, as amended;

(6) Any crime involving, or resulting in, fraud or deceit upon any person;

or any attempt, solicitation, or conspiracy to commit any violation of the crimes specifically enumerated above, when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction or when any such offense is connected with an organized criminal

conspiracy affecting two or more judicial circuits. The statewide grand jury may return indictments and presentments irrespective of the county or judicial circuit where the offense is committed or triable. If an indictment is returned, it shall be certified and transferred for trial to the county where the offense was committed. The powers and duties of, and law applicable to, county grand juries shall apply to a statewide grand jury except when such powers, duties, and law are inconsistent with the provisions of ss. 905.31-905.40.

Section 8. Paragraph (f) of subsection (3) of section 921.0012, Florida Statutes, 1996 Supplement, is amended to read:

921.0012 Sentencing guidelines offense levels; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(f) LEVEL 6
316.027(1)(b)	2nd	Accident involving death, failure to stop; leaving scene.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report of deadly explosive or act of arson or violence to state property.



Florida Statute	Felony Degree	Description
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
812.014(2)(b)	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at <del>\$100 or more,</del> but less than \$20,000.
827.03(1)	3rd	Abuse of a child.
827.03(3)(c)	3rd	Neglect of a child.
827.071(2)&(3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do bodily injury.
843.12	3rd	Aids or assists person to escape.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.

Florida Statute	Felony Degree	Description
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

Section 9. Effective October 1, 1997, subsections (3) and (4) of section 921.0014, Florida Statutes, as amended by section 22 of chapter 96-388, Laws of Florida, are amended to read:

921.0014 Sentencing guidelines; worksheet computations; scoresheets.—

(3) A single guidelines scoresheet shall be prepared for each defendant, except that if the defendant is before the court for sentencing for more than one felony and the felonies were committed under more than one version or revision of the guidelines, separate scoresheets must be prepared pursuant to s. 921.001(4)(b). The scoresheet or scoresheets must cover all the defendant's offenses pending before the court for sentencing. Either the office of the state attorney or the Department of Corrections, or both where appropriate, shall prepare the scoresheet or scoresheets, which must be presented to the ~~state attorney~~ and the defense counsel for review for accuracy in all cases unless the judge directs otherwise. The defendant's scoresheet or scoresheets must be approved and signed by the sentencing judge.

~~(4) The Department of Corrections shall develop and submit the revised sentencing guidelines scoresheet to the Sentencing Commission by June 15 of each year, as necessary. Following the Supreme Court's approval of the revised procedures, the Department of Corrections shall produce the revised scoresheets by no later than December 31 of each year, as necessary. To facilitate the purposes of this subsection, all legislation that affects the sentencing guidelines scoresheet shall have an effective date of January 1.~~

Section 10. Section 947.1405, Florida Statutes, 1996 Supplement, is amended to read:

947.1405 Conditional release program.—

(1) This section and s. 947.141 may be cited as the "Conditional Release Program Act."

(2) Any inmate who:

(a) Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in category

1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), and who has served at least one prior felony commitment at a state or federal correctional institution;

(b) Is sentenced as a habitual or violent habitual offender or violent career criminal pursuant to s. 775.084; or

(c) Is found to be a sexual predator under s. 775.21 or former s. 775.23,

shall, upon reaching the tentative release date or provisional release date, whichever is earlier, as established by the Department of Corrections, be released under supervision subject to specified terms and conditions, including payment of the cost of supervision pursuant to s. 948.09. Such supervision shall be applicable to all sentences within the overall term of sentences if the inmate's overall term of sentences includes one or more conditional release eligible sentences as provided herein. Effective July 1, 1994, and applicable for offenses committed on or after that date, the commission may require, as a condition of conditional release, that the releasee make payment of the debt due and owing to a county or municipal detention facility under s. 951.032 for medical care, treatment, hospitalization, or transportation received by the releasee while in that detention facility. The commission, in determining whether to order such repayment and the amount of such repayment, shall consider the amount of the debt, whether there was any fault of the institution for the medical expenses incurred, the financial resources of the releasee, the present and potential future financial needs and earning ability of the releasee, and dependents, and other appropriate factors. If an inmate has received a term of probation or community control supervision to be served after release from incarceration, the period of probation or community control must be substituted for the conditional release supervision. A panel of no fewer than two commissioners shall establish the terms and conditions of any such release. If the offense was a controlled substance violation, the conditions shall include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of conditional release supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3). The commission shall also determine whether the terms and conditions of such release have been violated and whether such violation warrants revocation of the conditional release.

(3) As part of the conditional release process, the commission shall determine:

(a) The amount of reparation or restitution.

(b) The consequences of the offense as reported by the aggrieved party.

(c) The aggrieved party's fear of the inmate or concerns about the release of the inmate.

(4) The commission shall provide to the aggrieved party information regarding the manner in which notice of any developments concerning the status of the inmate during the term of conditional release may be requested.

(5) Within 180 days prior to the tentative release date or provisional release date, whichever is earlier, a representative of the commission shall interview the inmate. The commission representative shall review the inmate's program participation, disciplinary record, psychological and medical records, and any other information pertinent to the impending release. A commission representative shall conduct a personal interview with the inmate for the purpose of determining the details of the inmate's release plan, including his planned residence and employment. The results of the interview must be forwarded to the commission in writing.

(6) Upon receipt of notice as required under s. 947.175, the commission shall conduct a review of the inmate's record for the purpose of establishing the terms and conditions of the conditional release. The commission may impose any special conditions it considers warranted from its review of the record. If the commission determines that the inmate is eligible for release under this section, the commission shall enter an order establishing the length of supervision and the conditions attendant thereto. However, an inmate who has been convicted of a violation of chapter 794 or found by the court to be a sexual predator is subject to the maximum level of supervision provided, with the mandatory conditions as required in subsection (7), and that supervision shall continue through the end of the releasee's original court-imposed sentence. The length of supervision must not exceed the maximum penalty imposed by the court.

(7) Any inmate who is convicted of a crime committed on or after October 1, 1995, or has been previously convicted of a crime committed on or after October 1, 1995, and who meets the criteria of s. 775.21 or former s. 775.23(2)(a) or (b) shall have, in addition to any other conditions imposed, the following special conditions imposed by the commission:

(a) A curfew, if appropriate, during hours set by the commission.

(b) If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate.

(c) Active participation in and successful completion of a sex offender treatment program, at the releasee's own expense, unless one is not available within a 50-mile radius of the releasee's residence.

(d) A prohibition on any contact with the victim, directly or indirectly, including through a third person, unless approved by the commission.

(e) If the victim was under the age of 18, a prohibition, until successful completion of a sex offender treatment program, on unsupervised contact with a child under the age of 18, unless authorized by the commission without another adult present who is responsible for the child's welfare, has been advised of the crime, and is approved by the commission.

(f) If the victim was under age 18, a prohibition on working for pay or as a volunteer at any school, day care center, park, playground, or other place where children regularly congregate, as prescribed by the commission.

(g) Unless otherwise indicated in the treatment plan provided by the sexual offender treatment program, a prohibition on viewing, owning, or possessing any obscene, pornographic, or sexually explicit material.

(h) A requirement that the releasee must submit two specimens of blood to the Florida Department of Law Enforcement to be registered with the DNA database.

(8) It is the finding of the Legislature that the population of offenders released from state prison into the community who meet the conditional release criteria poses the greatest threat to the public safety of the groups of offenders under community supervision. Therefore, the Department of Corrections is to provide intensive supervision by experienced correctional probation officers to conditional release offenders. Subject to specific appropriation by the Legislature, caseloads may be restricted to a maximum of 40 conditional release offenders per officer to provide for enhanced public safety and to effectively monitor conditions of electronic monitoring or curfews, if so ordered by the commission.

Section 11. Section 948.12, Florida Statutes, is created to read:

948.12 Intensive supervision for post prison release of violent offenders.—It is the finding of the Legislature that the population of violent offenders released from state prison into the community poses the greatest threat to the public safety of the groups of offenders under community supervision. Therefore, for the purpose of enhanced public safety, any offender released from state prison who:

(1) Was most recently incarcerated for an offense that is or was contained in category 1 (murder, manslaughter), category 2 (sexual offenses), category 3 (robbery), or category 4 (violent personal crimes) of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), and who has served at least one prior felony commitment at a state or federal correctional institution;

(2) Was sentenced as a habitual offender, violent habitual offender, or violent career criminal pursuant to s. 775.084; or

(3) Has been found to be a sexual predator pursuant to s. 775.21,

and who has a term of probation to follow the period of incarceration shall be provided intensive supervision by experienced correctional probation officers. Subject to specific appropriation by the Legislature, caseloads may be restricted to a maximum of 40 offenders per officer to provide for enhanced public safety as well as to effectively monitor conditions of electronic monitoring or curfews, if such was ordered by the court.

Section 12. Paragraph (j) of subsection (4) of section 775.084, Florida Statutes, 1996 Supplement, is amended to read:

775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; definitions; procedure; enhanced penalties.—

(4)

(j)1. A defendant sentenced under this section as a habitual felony offender, a habitual violent felony offender, or a violent career criminal is eligible for gain-time granted by the Department of Corrections as provided in s. 944.275(4)(b) ~~s. 944.275(4)~~.

2. For an offense committed on or after October 1, 1995, a defendant sentenced under this section as a violent career criminal is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release granted pursuant to s. 947.149.

Section 13. Section 921.0017, Florida Statutes, is amended to read:

921.0017 Credit upon recommitment of offender serving split sentence.—Effective for offenses committed on or after January 1, 1994, if an offender's probation or community control is revoked and the offender is serving a split sentence pursuant to s. 948.01, upon recommitment to the Department of Corrections, the court shall order credit for time served in state prison or county jail only, without considering any type of gain-time earned before release to supervision, or any type of sentence reduction granted to avoid prison overcrowding, including, but not limited to, any sentence reduction resulting from administrative gain-time, provisional credits, or control release. The court shall determine the amount of jail-time credit to be awarded for time served between the date of arrest as a violator and the date of recommitment, and shall direct the Department of Corrections to compute and apply credit for all other time served previously on the prior sentence for the offense for which the offender is being recommitted. This section does not affect or limit the department's authority to forfeit gain-time under ss. 944.28(1) and 948.06(6).

Section 14. Section 944.279, Florida Statutes, 1996 Supplement, is amended to read:

944.279 Disciplinary procedures applicable to prisoner ~~Loss of gain-time for filing frivolous or malicious actions or bringing false information before court.~~—

(1) At any time, and upon its own motion or on motion of a party, a court may conduct an inquiry into whether any action or appeal brought by a prisoner was brought in good faith. A prisoner who is found by a court to have brought a frivolous or malicious suit, action, claim, proceeding, or appeal in any court of this state or in any federal court, which is filed after June 30, 1996, or who knowingly or with reckless disregard for the truth brought false information or evidence before the court, is subject to disciplinary procedures pursuant to the rules of the Department of Corrections ~~forfeiture of gain-time and the right to earn gain-time~~. The court shall issue a written finding and direct that a certified copy be forwarded to the appropriate institution or facility for disciplinary procedures pursuant to the rules of the department ~~action~~ as provided in s. 944.09 ~~944.28(2)~~.

(2) This section does not apply to a criminal proceeding or a collateral criminal proceeding.

(3) For purposes of this section, “prisoner” means a person who is convicted of a crime and is incarcerated for that crime or who is being held in custody pending extradition or sentencing.

Section 15. Subsection (2) of section 944.35, Florida Statutes, 1996 Supplement, is amended to read:

944.35 Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.—

(2) Each employee of the department who either applies physical force or was responsible for making the decision to apply physical force upon an inmate or an offender supervised by the department in the community pursuant to this subsection shall prepare, date, and sign an independent report within 5 working days of the incident. The report shall be delivered to the superintendent or the regional administrator, who shall have an investigation made and shall approve or disapprove the force used. The employee’s report, together with the superintendent’s or regional administrator’s written approval or disapproval of the force used and the reasons therefor, shall be forwarded within 5 working days of the date of the completion of the investigation to the regional director. The regional director shall, in writing, concur in the superintendent’s or regional administrator’s evaluation or disapprove it. Copies of the employee’s report, the superintendent’s or regional administrator’s evaluation, and the regional director’s review shall be kept in the files of ~~both the inmate or the offender supervised by the department in the community, and the employee.~~ A notation of each incident involving use of force and the outcome based on the superintendent’s or regional director’s evaluation and the regional administrator’s review shall be kept in the employee’s file.

Section 16. Paragraph (c) of subsection (1) and subsection (2) of section 944.472, Florida Statutes, are amended to read:

944.472 Drug-free corrections; legislative findings and purposes.—

(1) FINDINGS.—The Legislature finds that:

(c) Certain substance abuse testing standards are necessary to ensure uniform and economical application of policy throughout the state’s institutions and to protect both inmates and employers participating in random and reasonable suspicion substance abuse testing programs.

(2) PURPOSES.—The purposes of the Drug-Free Corrections Act of 1992 are to:

(a) Promote the goal of a drug-free correctional system through fair, economical, and reasonable methods of random and reasonable suspicion substance abuse testing of inmates for the protection of inmates, employees, employers, and the public.

(b) Establish an aggressive, routine random substance abuse testing program and a reasonable suspicion substance abuse testing program to identify substance-abusing inmates, determine appropriate treatment, and provide a strong deterrent to future substance abuse.

Section 17. Subsections (1) and (3) of section 944.473, Florida Statutes, are amended to read:

944.473 Inmate substance abuse testing program.—

(1) **RULES AND PROCEDURES.**—The department shall establish programs ~~a program~~ for random and reasonable suspicion drug and alcohol testing by urinalysis or other noninvasive procedure for inmates to effectively identify those inmates abusing drugs, alcohol, or both. The department shall also adopt rules relating to fair, economical, and accurate operations and procedures of a random inmate substance abuse testing program and a reasonable suspicion substance abuse testing program by urinalysis or other noninvasive procedure which enumerate penalties for positive test results, including but not limited to the forfeiture of both basic and incentive gain-time, and which do not limit the number of times an inmate may be tested in any one fiscal or calendar year.

(3) **REPORTING REQUIREMENT.**—The department shall, as part of its annual report, report the number of random and reasonable suspicion substance abuse tests administered in the fiscal year, the number of positive results obtained, the number of negative results obtained, the number of inmates requesting and participating in substance abuse treatment programs as the result of a positive random or reasonable suspicion substance abuse test, and the number of repeat substance abuse offenders.

Section 18. Subsection (4) is added to section 944.801, Florida Statutes, 1996 Supplement, to read:

944.801 Education for state prisoners.—

(4) Notwithstanding s. 120.81(3), all inmates under 22 years of age who qualify for special educational services and programs pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. ss. 1400 et seq., and who request a due process hearing as provided by that act shall be entitled to such hearing before the Division of Administrative Hearings. Administrative law judges shall not be required to travel to state or private correctional institutions and facilities in order to conduct these hearings.

Section 19. Section 944.803, Florida Statutes, is created to read:

944.803 Faith-based programs for inmates.—

(1) The Legislature finds and declares that faith-based programs offered in state and private correctional institutions and facilities have the potential to facilitate inmate institutional adjustment, help inmates assume personal responsibility, and reduce recidivism.

(2) It is the intent of the Legislature that the Department of Corrections and the private vendors operating private correctional facilities shall continuously:

(a) measure recidivism rates for inmates who have participated in religious programs;



(b) increase the number of volunteers who minister to inmates from various faith-based institutions in the community;

(c) develop community linkages with churches, synagogues, mosques, and other faith-based institutions to assist inmates in their release back into the community; and

(d) fund through the use of the inmate welfare trust fund pursuant to s. 945.215 an adequate number of chaplains and support staff to operate chaplaincy programs in state correctional institutions.

Section 20. The Department of Corrections shall conduct an in-depth study to measure the effectiveness of faith-based programs in both public and private correctional institutions and facilities, and shall make recommendations to the Legislature on modifications or improvements to existing programs. The study shall include an examination of innovative faith-based programs existing in other states. The findings and recommendations from the study shall be reported to the Legislature by January 1, 1998.

Section 21. Subsection (11) of section 948.01, Florida Statutes, 1996 Supplement, is amended to read:

948.01 When court may place defendant on probation or into community control.—

(11) The court may also impose a split sentence whereby the defendant is sentenced to a term of probation which may be followed by a period of incarceration or, with respect to a felony, into community control, as follows:

(a) If the offender meets the terms and conditions of probation or community control, any term of incarceration may be modified by court order to eliminate the term of incarceration.

(b) If the offender does not meet the terms and conditions of probation or community control, the court may revoke, modify, or continue the probation or community control as provided in s. 948.06. If the probation or community control is revoked, the court may impose any sentence that it could have imposed at the time the offender was placed on probation or community control. The court may not provide credit for time served for any portion of a probation or community control term toward a subsequent term of probation or community control. However, the court may not impose a subsequent term of probation or community control which, when combined with any amount of time served on preceding terms of probation or community control for offenses pending before the court for sentencing, would exceed the maximum penalty allowable as provided in s. 775.082 shall impose a term of incarceration equal to the remaining portion of the order of probation or community control. Such term of incarceration shall be served under applicable law or county ordinance governing service of sentences in state or county jurisdiction. This paragraph does not prohibit any other sanction provided by law.

Section 22. Subsection (1) of section 948.03, Florida Statutes, 1996 Supplement, is amended to read:

## 948.03 Terms and conditions of probation or community control.—

(1) The court shall determine the terms and conditions of probation or community control. Conditions specified in paragraphs (a) through and including (m) ~~(n)~~ do not require oral pronouncement at the time of sentencing and may be considered standard conditions of probation. Conditions specified in paragraphs (a) through and including (m) ~~(n)~~ and (2)(a) do not require oral pronouncement at sentencing and may be considered standard conditions of community control. These conditions may include among them the following, that the probationer or offender in community control shall:

- (a) Report to the probation and parole supervisors as directed.
- (b) Permit such supervisors to visit him at his home or elsewhere.
- (c) Work faithfully at suitable employment insofar as may be possible.
- (d) Remain within a specified place.

(e) Make reparation or restitution to the aggrieved party for the damage or loss caused by his offense in an amount to be determined by the court. The court shall make such reparation or restitution a condition of probation, unless it determines that clear and compelling reasons exist to the contrary. If the court does not order restitution, or orders restitution of only a portion of the damages, as provided in s. 775.089, it shall state on the record in detail the reasons therefor.

(f) Effective July 1, 1994, and applicable for offenses committed on or after that date, make payment of the debt due and owing to a county or municipal detention facility under s. 951.032 for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility. The court, in determining whether to order such repayment and the amount of such repayment, shall consider the amount of the debt, whether there was any fault of the institution for the medical expenses incurred, the financial resources of the felony probationer, the present and potential future financial needs and earning ability of the probationer, and dependents, and other appropriate factors.

(g) Support his legal dependents to the best of his ability.

(h) Make payment of the debt due and owing to the state under s. 960.17, subject to modification based on change of circumstances.

(i) Pay any attorney's fees and costs assessed under s. 27.56, subject to modification based on change of circumstances.

(j) Not associate with persons engaged in criminal activities.

(k)1. Submit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he is receiving treatment to determine the presence or use of alcohol or controlled substances.

2. If the offense was a controlled substance violation and the period of probation immediately follows a period of incarceration in the state correction system, the conditions shall include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3).

(l) Be prohibited from possessing, carrying, or owning any firearm unless authorized by the court and consented to by the probation officer.

(m) Be prohibited from using intoxicants to excess or possessing any drugs or narcotics unless prescribed by a physician. The probationer or community controllee shall not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.

(n) Attend an HIV/AIDS awareness program consisting of a class of not less than 2 hours or more than 4 hours in length, the cost for which shall be paid by the offender, if such a program is available in the county of the offender's residence.

(o) Pay not more than \$1 per month during the term of probation or community control to a nonprofit organization established for the sole purpose of supplementing the rehabilitative efforts of the Department of Corrections.

Section 23. Section 948.06, Florida Statutes, is amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(1) Whenever within the period of probation or community control there are reasonable grounds to believe that a probationer or offender in community control has violated his probation or community control in a material respect, any parole or probation supervisor may arrest or request any county or municipal law enforcement officer to arrest such probationer or offender without warrant wherever found and forthwith return him to the court granting such probation or community control. Any committing magistrate may issue a warrant, upon the facts being made known to him by affidavit of one having knowledge of such facts, for the arrest of the probationer or offender, returnable forthwith before the court granting such probation or community control. Any parole or probation supervisor, any officer authorized to serve criminal process, or any peace officer of this state is authorized to serve and execute such warrant. The court, upon the probationer or offender being brought before it, shall advise him of such charge of violation and, if such charge is admitted to be true, may forthwith revoke, modify, or continue the probation or community control or place the probationer into a community control program. If probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he has previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer on probation or the offender into community control. If such violation of probation or community control is not admitted

by the probationer or offender, the court may commit him or release him with or without bail to await further hearing, or it may dismiss the charge of probation or community control violation. If such charge is not at that time admitted by the probationer or offender and if it is not dismissed, the court, as soon as may be practicable, shall give the probationer or offender an opportunity to be fully heard on his behalf in person or by counsel. After such hearing, the court may revoke, modify, or continue the probation or community control or place the probationer into community control. If such probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he has previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer or offender on probation or into community control.

(2) When the court imposes a subsequent term of supervision following a revocation of probation or community control, it shall not provide credit for time served while on probation or community control toward any subsequent term of probation or community control. However, the court may not impose a subsequent term of probation or community control which, when combined with any amount of time served on preceding terms of probation or community control for offenses before the court for sentencing, would exceed the maximum penalty allowable as provided by s. 775.082. No part of the time that the defendant is on probation or in community control shall be considered as any part of the time that he or she shall be sentenced to serve.

(3) Notwithstanding any other provision of this section, a probationer or an offender in community control who is arrested for violating his probation or community control in a material respect may be taken before the court in the county or circuit in which he was arrested. That court shall advise him of such charge of a violation and, if such charge is admitted, shall cause him to be brought before the court which granted the probation or community control. If such violation is not admitted by the probationer or offender, the court may commit him or release him with or without bail to await further hearing. The court, as soon as is practicable, shall give the probationer or offender an opportunity to be fully heard on his behalf in person or by counsel. After such hearing, the court shall make findings of fact and forward the findings to the court which granted the probation or community control and to the probationer or offender or his attorney. The findings of fact by the hearing court are binding on the court which granted the probation or community control. Upon the probationer or offender being brought before it, the court which granted the probation or community control may revoke, modify, or continue the probation or community control or may place the probationer into community control as provided in this section.

(4) In any hearing in which the failure of a probationer or offender in community control to pay restitution or the cost of supervision as provided in s. 948.09, as directed, is established by the state, if the probationer or offender asserts his inability to pay restitution or the cost of supervision, it is incumbent upon him to prove by clear and convincing evidence that he does not have the present resources available to pay restitution or the cost

of supervision despite sufficient bona fide efforts legally to acquire the resources to do so. If the probationer or offender cannot pay restitution or the cost of supervision despite sufficient bona fide efforts, the court shall consider alternate measures of punishment other than imprisonment. Only if alternate measures are not adequate to meet the state's interests in punishment and deterrence may the court imprison a probationer or offender in community control who has demonstrated sufficient bona fide efforts to pay restitution or the cost of supervision.

(5) Any parolee in a community control program who has allegedly violated the terms and conditions of such placement is subject to the provisions of ss. 947.22 and 947.23.

(6) Any provision of law to the contrary notwithstanding, whenever probation, community control, or control release, including the probationary, community control portion of a split sentence, is violated and the probation or community control is revoked, the offender, by reason of his misconduct, may be deemed to have forfeited all gain-time or commutation of time for good conduct, as provided by law, earned up to the date of his release on probation, community control, or control release. This subsection does not deprive the prisoner of his right to gain-time or commutation of time for good conduct, as provided by law, from the date on which he is returned to prison. However, if a prisoner is sentenced to incarceration following termination from a drug punishment program imposed as a condition of probation, the sentence may include incarceration without the possibility of gain-time or early release for the period of time remaining in his treatment program placement term.

Section 24. Section 947.04, Florida Statutes, 1996 Supplement, is amended to read:

947.04 Organization of commission; officers; offices.—

(1) Before July 1 of each even-numbered year, the Governor and Cabinet shall select a chairman who shall serve for a period of 2 years and until a successor is selected and qualified. The Governor and Cabinet shall, at the same time that a chairman is selected, select a vice chairman to serve during the same 2-year period as the chairman, in the absence of the chairman. The chairman may ~~not~~ succeed himself or herself. The chairman, as chief administrative officer of the commission, has the authority and responsibility to plan, direct, coordinate, and execute the powers, duties, and responsibilities assigned to the commission, except those of granting and revoking parole as provided for in this chapter. Subject to approval by the Governor and the Cabinet, the chairman may assign consenting retired commissioners or former commissioners to temporary duty when there is a workload need. Any such commissioner shall be paid \$100 for each day or portion of a day spent on the work of the commission and shall be reimbursed for travel expenses as provided in s. 112.061. The chairman is authorized to provide or disseminate information relative to parole by means of documents, seminars, programs, or otherwise as he determines necessary. The chairman shall establish, execute, and be held accountable for all administrative policy decisions. However, decisions to grant or revoke parole shall be made in accordance

with the provisions of ss. 947.172, 947.174, and 947.23. The commissioners shall be directly accountable to the chairman in the execution of their duties as commissioners, and the chairman has authority to recommend to the Governor suspension of a commissioner who fails to perform the duties provided for by statute.

(2) Notwithstanding the provisions of s. 20.05(1)(g), the chairman shall appoint administrators with responsibility for the management of commission activities in the following functional areas:

- (a) Administration.
- (b) Operations.
- (c) Clemency.

(3) The commissioners shall select from their number a secretary who shall serve for a period of 1 year or until a successor is elected and qualified.

(4) The commission may establish and maintain offices in centrally and conveniently located places in Florida. Headquarters shall be located in Tallahassee. The business of the commission shall be transacted anywhere in the state as provided in s. 947.06. The commission shall keep its official records and papers at the headquarters, which it shall furnish and equip.

(5) Acts and decisions of the chairman may be modified as provided in s. 947.06.

Section 25. Except as otherwise provided herein, this act shall take effect upon becoming a law.

Approved by the Governor May 23, 1997.

Filed in Office Secretary of State May 23, 1997.