

Committee Substitute for Senate Bill No. 1522

An act relating to sentencing; amending s. 2, ch. 97-194, Laws of Florida; clarifying that the Criminal Punishment Code does not apply to capital felonies; amending s. 921.002, F.S.; revising the principles embodied by the Criminal Punishment Code; requiring that the Department of Corrections report on sentencing trends and practices; requiring that the Criminal Justice Estimating Conference make certain estimates with respect to the prison population; requiring the Criminal Justice Estimating Conference to project the impact of proposed changes to the Criminal Punishment Code; authorizing the Department of Corrections to collect scoresheets and report on compliance; amending s. 921.0021, F.S.; clarifying application of the code; amending s. 921.0022, F.S.; providing for ranking certain offenses under the severity ranking chart of the code; specifying the ranking of additional offenses; amending s. 921.0023, F.S., relating to the ranking of unlisted offenses; deleting duplicative provisions; amending s. 921.0024, F.S.; revising the arrangement of the sentencing scoresheet; providing that domestic violence in the presence of a child be included as a multiplier on the offense score of the Criminal Punishment Code; providing for calculating the total sentence points and the lowest permissible sentence; clarifying the calculation of points for a prior capital felony; requiring the imposition of the code sentence when it exceeds the statutory maximum; authorizing a life sentence when the total sentence points equal or exceed a threshold amount; prohibiting discretionary early release for such offenders; requiring that the Department of Corrections consult with certain persons and entities and revise the scoresheet as necessary; requiring the department to distribute copies of scoresheets; creating s. 921.0025, F.S.; providing for the adoption and implementation of sentencing scoresheets; amending s. 921.0026, F.S.; prohibiting the court from imposing a sentence below the lowest permissible sentence unless there are mitigating circumstances; creating s. 921.00265, F.S.; requiring that the court delineate its reasons if the court decreases a defendant's sentence below the lowest permissible sentence; amending s. 775.082, F.S.; providing for the applicability of sentencing structures, based on the date of the offense; amending s. 775.084, F.S.; providing for community control without an adjudication of guilt to be considered a prior conviction under certain circumstances for purposes of sentencing; requiring that the court submit a report when the court finds it unnecessary to sentence a given defendant as a habitual felony offender, a habitual violent felony offender, or a violent career criminal; amending s. 782.051, F.S.; revising the elements of the offense of committing a felony that causes bodily injury to provide that if a person who perpetrates or attempts to perpetrate certain enumerated felony offenses and who commits, aids, or abets an intentional act that could, but does not, cause the death of another, the person commits a first-degree felony; providing for ranking such offense under the

Criminal Punishment Code based on the felony offense committed; amending s. 924.06, F.S.; providing for an appeal of a sentence that exceeds the maximum penalty under s. 775.082, F.S.; amending s. 924.07, F.S.; authorizing the state to appeal a sentence imposed below the lowest sentence permitted under the Criminal Punishment Code; amending s. 944.17, F.S.; revising requirements for the sheriff or chief correctional officer in preparing scoresheets for a prisoner who is transferred to the state correctional system; creating s. 944.70, F.S.; specifying the conditions under which persons convicted of crimes may be released from incarceration; amending s. 944.705, F.S., relating to the release orientation program; conforming cross-references to changes made by the act; amending s. 948.015, F.S.; revising requirements for the presentence investigation report for certain defendants; amending s. 948.034, F.S., relating to probation for certain persons convicted of drug-related offenses; conforming cross-references; conforming provisions to reflect the reorganization of the Department of Health and Rehabilitative Services; amending s. 948.51, F.S., relating to community corrections assistance; conforming a cross-reference; conforming a reference to sentencing scores to reflect changes in sentencing requirements; amending s. 958.04, F.S., relating to judicial disposition of youthful offenders; providing for a sentence imposed outside of the code to be appealed; providing an effective date.

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

Section 1. Section 2 of chapter 97-194, Laws of Florida, is amended to read:

Section 2. The Florida Criminal Punishment Code, consisting of sections 921.002-921.0026, Florida Statutes, is established effective October 1, 1998, and applies to any felony committed on or after that date, excluding any capital felony.

Section 2. Section 921.002, Florida Statutes, as created by section 3 of chapter 97-194, Laws of Florida, is amended to read:

921.002 The Criminal Punishment Code.—The Criminal Punishment Code shall apply to all felony offenses, except capital felonies, committed on or after October 1, 1998.

(1) The provision of criminal penalties and of limitations upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature. The Legislature, in the exercise of its authority and responsibility to establish sentencing criteria, to provide for the imposition of criminal penalties, and to make the best use of state prisons so that violent criminal offenders are appropriately incarcerated, has determined that it is in the best interest of the state to develop, implement, and revise a sentencing policy. The Criminal Punishment Code embodies the principles that:

(a) Sentencing is neutral with respect to race, gender, and social and economic status.

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

(c) The penalty imposed is commensurate with the severity of the primary offense and the circumstances surrounding the primary offense.

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

(e) The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4)(b)3. The provisions of chapter 947, relating to parole, shall not apply to persons sentenced under the Criminal Punishment Code.

(f) Departures below the lowest permissible sentence sentencing range established by ~~in~~ the code must be articulated in writing by the trial court judge and made only when circumstances or factors reasonably justify the ~~aggravation or~~ mitigation of the sentence. The level of proof necessary to establish facts that support a departure from the lowest permissible sentence sentencing range is a preponderance of the evidence.

(g) The trial court judge may impose a sentence up to and including the statutory maximum for any offense, including an offense that is before the court due to a violation of probation or community control.

(h) A sentence may be appealed on the basis that it departs from the Criminal Punishment Code only if the sentence is below the lowest permissible sentence or as enumerated in s. 924.06(1) sentencing range.

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

(2) When a 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 former sentencing guidelines or the code, each felony shall be sentenced under the guidelines or the code in effect at the time the particular felony was committed. This subsection does not apply to sentencing for any capital felony.

(3) A court may impose a departure below the lowest permissible sentence sentencing range based upon circumstances or factors that reasonably justify the mitigation of the sentence in accordance with s. 921.0026. The level of proof necessary to establish facts supporting the mitigation of a sentence is a preponderance of the evidence. When multiple reasons exist to support the mitigation, the mitigation shall be upheld when at least one circumstance or factor justifies the mitigation regardless of the presence of other circumstances or factors found not to justify mitigation. Any sentence

imposed below the lowest permissible sentence ~~sentencing range~~ must be explained in writing by the trial court judge.

(4)(a) The Department of Corrections shall report on trends in sentencing practices and sentencing score thresholds and provide an analysis on the sentencing factors considered by the courts and shall submit this information to the Legislature by October 1 of each year, beginning in 1999.

(b) The Criminal Justice Estimating Conference, with the assistance of the Department of Corrections, shall estimate the impact of any proposed change to the Criminal Punishment Code on future rates of incarceration and on the prison population. The Criminal Justice Estimating Conference shall base its projections on historical data concerning sentencing practices which have been accumulated by the Department of Corrections and other relevant data from other state agencies and records of the Department of Corrections which disclose the average time served for offenses covered by any proposed changes to the Criminal Punishment Code.

(c) In order to produce projects that are either required by law or requested by the Legislature to assist the Legislature in making modifications to the Criminal Punishment Code, the Department of Corrections is authorized to collect and evaluate Criminal Punishment Code scoresheets from each of the judicial circuits after sentencing. Beginning in 1999, by October 1 of each year, the Department of Corrections shall provide an annual report to the Legislature that shows the rate of compliance of each judicial circuit in providing scoresheets to the department.

Section 3. Section 921.0021, Florida Statutes, as created by section 4 of chapter 97-194, Laws of Florida, is amended to read:

921.0021 Definitions.—As used in this chapter, for any felony offense, except any capital felony, committed on or after October 1, 1998, the term:

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

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

(3) “Legal status” means an offender’s status if the offender:

(a) Escapes from incarceration;

(b) Flees to avoid prosecution;

(c) Fails to appear for a criminal proceeding;

(d) Violates any condition of a supersedeas bond;

(e) Is incarcerated;

(f) Is under any form of a pretrial intervention or diversion program; or

(g) Is under any form of court-imposed or postprison release community supervision.

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

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

(6) "Community sanction" includes:

- (a) Probation.
- (b) Community control.
- (c) Pretrial intervention or diversion.

(7)(a) "Victim injury" means the physical injury or death suffered by a person as a direct result of the primary offense, or any additional offense, for which an offender is convicted and which is pending before the court for sentencing at the time of the primary offense.

(b) Except as provided in paragraph (c) or paragraph (d),

1. If the conviction is for an offense involving sexual contact that includes sexual penetration, the sexual penetration must be scored in accordance with the sentence points provided under s. 921.0024 for sexual penetration, regardless of whether there is evidence of any physical injury.

2. If the conviction is for an offense involving sexual contact that does not include sexual penetration, the sexual contact must be scored in accordance

with the sentence points provided under s. 921.0024 for sexual contact, regardless of whether there is evidence of any physical injury.

If the victim of an offense involving sexual contact suffers any physical injury as a direct result of the primary offense or any additional offense committed by the offender resulting in conviction, such physical injury must be scored separately and in addition to the points scored for the sexual contact or the sexual penetration.

(c) The sentence points provided under s. 921.0024 for sexual contact or sexual penetration may not be assessed for a violation of s. 944.35(3)(b)2.

(d) If the conviction is for the offense described in s. 872.06, the sentence points provided under s. 921.0024 for sexual contact or sexual penetration may not be assessed.

Section 4. Section 921.0022, Florida Statutes, as created by section 5 of chapter 97-194, Laws of Florida, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(1) The offense severity ranking chart must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998.

(2) The offense severity ranking chart has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense. For purposes of determining which felony offenses are specifically listed in the offense severity ranking chart and which severity level has been assigned to each of these offenses, the numerical statutory references in the left column of the chart and the felony degree designations in the middle column of the chart are controlling; the language in the right column of the chart is provided solely for descriptive purposes. Reclassification of the degree of the felony through the application of s. 775.0845, s. 775.087, s. 775.0875, or s. 794.023, or any other law that provides an enhanced penalty for a felony offense, to any offense listed in the offense severity ranking chart in this section shall not cause the offense to become unlisted and is not subject to the provisions of s. 921.0023.

(3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(a) LEVEL 1
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.

Florida Statute	Felony Degree	Description
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
322.212(1)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver's license; <u>possession of simulated identification.</u>
322.212(4)	3rd	Supply or aid in supplying unauthorized driver's license <u>or identification card.</u>
322.212(5)(a)	3rd	False application for driver's license <u>or identification card.</u>
370.13(4)(a)	3rd	Molest any stone crab trap, line, or buoy which is property of licenseholder.
370.135(1)	3rd	Molest any blue crab trap, line, or buoy which is property of licenseholder.
372.663(1)	3rd	Poach any alligator or crocodilia.
414.39(2)	3rd	Unauthorized use, possession, forgery, or alteration of food stamps, Medicaid ID, value greater than \$200.
414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
443.071(1)	3rd	False statement or representation to obtain or increase unemployment compensation benefits.
458.327(1)(a)	3rd	Unlicensed practice of medicine.
466.026(1)(a)	3rd	Unlicensed practice of dentistry or dental hygiene.
509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
562.27(1)	3rd	Possess still or still apparatus.
713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(4)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).

Florida Statute	Felony Degree	Description
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
832.05 (2)(b)&(4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
838.015(3)	3rd	Bribery.
838.016(1)	3rd	Public servant receiving unlawful compensation.
838.15(2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a law enforcement officer.
847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
849.01	3rd	Keeping gambling house.
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
849.23	3rd	Gambling-related machines; "common offender" as to property rights.
849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.

Florida Statute	Felony Degree	Description
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication. (b) LEVEL 2
403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07	3rd	Registration of securities and furnishing of prospectus required.
590.28(1)	3rd	Willful, malicious, or intentional burning.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60(5)	3rd	Dealing in credit cards of another.
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.

Florida Statute	Felony Degree	Description
831.01	3rd	Forgery.
831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
831.07	3rd	Forging bank bills or promissory note.
831.08	3rd	Possession of 10 or more forged notes.
831.09	3rd	Uttering forged bills; passes as bank bill or promissory note.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	Falsely impersonating an officer.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c), (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
		(c) LEVEL 3
39.061	3rd	Escapes from juvenile facility (secure detention or residential commitment facility).
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.

Florida Statute	Felony Degree	Description
796.05(1)	3rd	Live on earnings of a prostitute.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
817.233	3rd	Burning to defraud insurer.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.29	2nd	Possession of instruments for counterfeiting drivers' licenses <u>or identification cards</u> .
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c), (3), or (4) drugs within 200 feet of university, public housing facility, or public park.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.

Florida Statute	Felony Degree	Description
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
<u>944.401</u>	<u>3rd</u>	<u>Escapes from a juvenile facility (secure detention or residential commitment facility).</u>
944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
		(d) LEVEL 4
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer resulting in high-speed pursuit.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, intake officer, etc.
784.075	3rd	Battery on detention or commitment facility staff.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
787.03(1)	3rd	Interference with custody; wrongly takes child from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.

Florida Statute	Felony Degree	Description
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
874.05(1)	3rd	Encouraging or recruiting another to join a criminal street gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), or (2)(a) or (b) drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
918.12	3rd	Tampering with jurors.
		(e) LEVEL 5
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
316.1935(3)	3rd	Aggravated fleeing or eluding.

Florida Statute	Felony Degree	Description
322.34(3)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163	2nd	False report of deadly explosive.
790.165(2)	3rd	Manufacture, sell, possess, or deliver hoax bomb.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms or electronic weapons or devices.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
874.05(2)	2nd	Encouraging or recruiting another to join a criminal street gang; second or subsequent offense.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs).

Florida Statute	Felony Degree	Description
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs) within 1,000 feet of a <u>child care facility</u> or school.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs) within 200 feet of university, public housing facility, or public park.
<u>893.13(1)(e)</u>	<u>2nd</u>	<u>Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c), (3), or (4) within 1,000 feet of property used for religious services or a specified business site.</u>
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c), (3), or (4) drugs). (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.
<u>775.21(9)</u>	<u>3rd</u>	<u>Sexual predators; failure to register; failure to renew driver's license or identification card.</u>
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
<u>784.041</u>	<u>3rd</u>	<u>Felony battery.</u>
784.048(3)	3rd	Aggravated stalking; credible threat.
<u>784.048(5)</u>	<u>3rd</u>	<u>Aggravated stalking of person under 16.</u>
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.

Florida Statute	Felony Degree	Description
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.
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 \$100 or more , 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.

Florida Statute	Felony Degree	Description
843.12	3rd	Aids or assists person to escape.
<u>847.0135(3)</u>	<u>3rd</u>	<u>Solicitation of a child, via a computer service, to commit an unlawful sex act.</u>
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
<u>943.0435(6)</u>	<u>3rd</u>	<u>Sex offenders; failure to comply with reporting requirements.</u>
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.
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.
		(g) LEVEL 7
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
409.920(2)	3rd	Medicaid provider fraud.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
<u>782.051(3)</u>	<u>2nd</u>	<u>Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.</u>
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	3rd	Killing of human being by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	3rd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).

Florida Statute	Felony Degree	Description
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04	2nd	Handle, fondle, or assault child under 16 years in lewd, lascivious, or indecent manner.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
812.014(2)(a)	1st	Property stolen, valued at \$100,000 or more; property stolen while causing other property damage; 1st degree grand theft.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

Florida Statute	Felony Degree	Description
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(4)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
<u>837.05(2)</u>	<u>3rd</u>	<u>Giving false information about alleged capital felony to a law enforcement officer.</u>
872.06	2nd	Abuse of a dead human body.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other <u>drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs</u>) within 1,000 feet of a <u>child care facility or school</u> .
<u>893.13(1)(e)</u>	<u>1st</u>	<u>Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b), within 1,000 feet of property used for religious services or a specified business site.</u>
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), or (2)(b) drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 50 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
<u>893.135(1)(g)1.a.</u>	<u>1st</u>	<u>Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.</u>

Florida Statute	Felony Degree	Description
		(h) LEVEL 8
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
777.03(2)(a)	1st	Accessory after the fact, capital felony.
782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawfully discharging bomb.
<u>782.051(2)</u>	<u>1st</u>	<u>Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).</u>
782.071(2)	2nd	Committing vehicular homicide and failing to render aid or give information.
782.072(2)	2nd	Committing vessel homicide and failing to render aid or give information.
790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
810.02(2)(a)	1st,PBL	Burglary with assault or battery.
810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
812.13(2)(b)	1st	Robbery with a weapon.
812.135(2)	1st	Home-invasion robbery.
825.102(2)	2nd	Aggravated abuse of an elderly person or disabled adult.
825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
827.03(2)	2nd	Aggravated child abuse.
<u>837.02(2)</u>	<u>2nd</u>	<u>Perjury in official proceedings relating to prosecution of a capital felony.</u>

Florida Statute	Felony Degree	Description
<u>837.021(2)</u>	<u>2nd</u>	<u>Making contradictory statements in official proceedings relating to prosecution of a capital felony.</u>
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
860.16	1st	Aircraft piracy.
893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
<u>893.135(1)(g)1.b.</u>	<u>1st</u>	<u>Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.</u>
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.

(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
<u>782.051(1)</u>	<u>1st</u>	<u>Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).</u>
782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
782.07(3)	1st	Aggravated manslaughter of a child.
787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits child abuse, sexual battery, lewd, or lascivious act, etc.
790.161	1st	Attempted capital destructive device offense.
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.

Florida Statute	Felony Degree	Description
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
859.01	1st	Poisoning food, drink, medicine, or water with intent to kill or injure another person.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
		(j) LEVEL 10
782.04(2)	1st,PBL	Unlawful killing of human; act is homicide, unpremeditated.
787.01(1)(a)3.	1st,PBL	Kidnapping; inflict bodily harm upon or terrorize victim.
787.01(3)(a)	Life	Kidnapping; child under age 13, perpetrator also commits child abuse, sexual battery, lewd, or lascivious act, etc.
794.011(3)	Life	Sexual battery; victim 12 years or older, offender uses or threatens to use deadly weapon or physical force to cause serious injury.
876.32	1st	Treason against the state.

Section 5. Section 921.0023, Florida Statutes, as created by section 6 of chapter 97-194, Laws of Florida, is amended to read:

921.0023 Criminal Punishment Code; ranking unlisted felony offenses.—A felony offense committed on or after October 1, 1998, that is not

listed in s. 921.0022 is ranked with respect to offense severity level by the Legislature, commensurate with the harm or potential harm that is caused by the offense to the community. Until the Legislature specifically assigns an offense to a severity level in the offense severity ranking chart, the severity level is within the following parameters:

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

~~For purposes of determining whether a felony offense has been specifically listed in the offense ranking chart provided in s. 921.0022(3), and the severity level that has been assigned to an offense listed in the chart, the numerical statutory reference in the left column of the chart, and the felony degree designation in the middle column of the chart, are controlling; the language in the right column of the chart is provided solely for descriptive purposes.~~

Section 6. Section 921.0024, Florida Statutes, as created by section 7 of chapter 97-194, Laws of Florida, is amended to read:

921.0024 Criminal Punishment Code; worksheet computations; score-sheets.—

(1)(a) The Criminal Punishment Code worksheet is used to compute the subtotal and total sentence points as follows:

FLORIDA CRIMINAL PUNISHMENT CODE
WORKSHEET

OFFENSE SCORE

Level	Primary Offense Sentence Points	=	Total
10	116	=	....
9	92	=	....
8	74	=	....
7	56	=	....
6	36	=	....
5	28	=	....
4	22	=	....
3	16	=	....
2	10	=	....
1	4	=	....
			<u>Total</u>

Level	Additional Offenses		Counts	=	Total
	Sentence Points	Points			
10	58	x	....	=	....
9	46	x	....	=	....
8	37	x	....	=	....
7	28	x	....	=	....
6	18	x	....	=	....
5	5.4	x	....	=	....
4	3.6	x	....	=	....
3	2.4	x	....	=	....
2	1.2	x	....	=	....
1	0.7	x	....	=	....
M	0.2	x	....	=	....
Total					

Level	Victim Injury		Number	=	Total
	Sentence Points	Points			
2nd degree murder-death	240	x	....	=	....
Death	120	x	....	=	....
Severe	40	x	....	=	....
<u>Moderate</u>	<u>18</u>	<u>x</u>	<u>....</u>	<u>=</u>	<u>....</u>
<u>Slight</u>	<u>4</u>	<u>x</u>	<u>....</u>	<u>=</u>	<u>....</u>
Sexual penetration	80	x	....	=	....
Moderate	18	x	....	=	....
Sexual contact	40	x	....	=	....
Slight	4	x	....	=	....
Total					

Primary Offense + Additional Offenses + Victim Injury =
TOTAL OFFENSE SCORE

PRIOR RECORD SCORE

Level	Prior Record		Number	=	Total
	Sentence Points	Points			
10	29	x	....	=	....
9	23	x	....	=	....
8	19	x	....	=	....
7	14	x	....	=	....
6	9	x	....	=	....
5	3.6	x	....	=	....
4	2.4	x	....	=	....
3	1.6	x	....	=	....
2	0.8	x	....	=	....
1	0.5	x	....	=	....

Level	Sentence Points	Prior Record Number	Total
M	0.2	x =
			<u>Total</u>

TOTAL OFFENSE SCORE

TOTAL PRIOR RECORD SCORE

LEGAL STATUS

COMMUNITY SANCTION VIOLATION

PRIOR SERIOUS FELONY

PRIOR CAPITAL FELONY

FIREARM OR SEMIAUTOMATIC WEAPON

SUBTOTAL.....

PRISON RELEASEE REOFFENDER (no)(yes)

VIOLENT CAREER CRIMINAL (no)(yes)

HABITUAL VIOLENT HABITUAL OFFENDER (no)(yes)

HABITUAL OFFENDER (no)(yes)

DRUG TRAFFICKER (no)(yes) (x multiplier)

LAW ENF. PROTECT. (no)(yes) (x multiplier)

MOTOR VEHICLE THEFT (no)(yes) (x multiplier)

CRIMINAL STREET GANG MEMBER (no)(yes) (x multiplier)

DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD
(no)(yes) (x multiplier)

TOTAL SENTENCE POINTS.....

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender's legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation, and each successive community sanction violation; however, if the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for such violation, and for

each successive community sanction violation involving a new felony conviction. Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary offense or any additional offense ranked in level 8, level 9, or level 10, and one or more prior serious felonies, a single assessment of 30 points shall be added. For purposes of this section, a prior serious felony is an offense in the offender's prior record that is ranked in level 8, level 9, or level 10 under s. 921.0022 or s. 921.0023 and for which the offender is serving a sentence of confinement, supervision, or other sanction or for which the offender's date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offense was committed.

Prior capital felony points: If the offender has one or more prior capital felonies in the offender's criminal record, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony in the offender's criminal record is a previous capital felony offense for which the offender has entered a plea of nolo contendere or guilty to or has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his possession: a firearm as defined in s. 790.001(6), an additional 18 sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his possession a semiautomatic firearm as defined in s. 775.087(3) or a machine gun as defined in s. 790.001(9), an additional 25 sentence points are assessed.

Sentencing multipliers:

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

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(3), (4), (5), (6), (7), or (8), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s.

775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(9) or (10), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

Criminal street gang member: If the offender is convicted of the primary offense and is found to have been a member of a criminal street gang at the time of the commission of the primary offense pursuant to s. 874.04, the subtotal sentence points are multiplied by 1.5.

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who is a family household member as defined in s. 741.28(2) with the victim or perpetrator, the subtotal sentence points are multiplied, at the discretion of the court, by 1.5.

(2) The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure in prison months that may be imposed by the court, absent a valid reason to depart, shall be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. If the lowest permissible sentence is any in prison months is less than or equal to 12, a nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate may be imposed. When the total sentence points exceeds 44 points, the lowest permissible sentence in prison months shall be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. The total sentence points shall be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing shall be the lowest permissible sentence up to and including the statutory maximum, as defined in s. 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the code exceeds the statutory maximum sentence as provided in s. 775.082, the sentence required by the code must be imposed. If the total sentence points are greater than or equal to 363, the court may sentence the offender to life imprisonment. An offender sentenced to life imprisonment under this section is not eligible for any form of discretionary early release, except executive clemency or conditional medical release under s. 947.149.

(3) A single scoresheet shall be prepared for each defendant to determine the permissible range for the sentence that the court may impose, 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 or the code, separate scoresheets must be prepared. 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 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, in consultation with the Office of the State Courts Administrator, state attorneys, and public defenders, must develop and submit the revised Criminal Punishment Code scoresheet to the Supreme Court for approval by June 15 of each year, as necessary. Upon the Supreme Court's approval of the revised scoresheet, the Department of Corrections shall produce and provide sufficient copies of the revised scoresheets by September 30 of each year, as necessary. Scoresheets must include item entries for the scoresheet preparer's use in indicating whether any prison sentence imposed includes a mandatory minimum sentence or the sentence imposed was a downward departure from the lowest permissible sentence under the Criminal Punishment Code.

~~(5)(4) The Department of Corrections clerks of the circuit courts for the individual counties shall distribute sufficient copies of the Criminal Punishment Code scoresheets to those persons charged with the responsibility for preparing scoresheets, either the office of the state attorney or the Department of Corrections, or both where appropriate.~~

~~(6)(5) The clerk of the circuit court shall transmit a complete, accurate, and legible copy of the Criminal Punishment Code scoresheet used in each guidelines sentencing proceeding to the Department of Corrections. Scoresheets must be transmitted no less frequently than monthly, by the first of each month, and may be sent collectively.~~

(7)(6) A sentencing scoresheet must be prepared for every defendant who is sentenced for a felony offense. A copy of the individual offender's Criminal Punishment Code scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation and submission of felony sentencing scoresheets, must be attached to the copy of the uniform judgment and sentence form provided to the Department of Corrections.

Section 7. Section 921.0025, Florida Statutes, is created to read:

921.0025 Adoption and implementation of revised sentencing scoresheets.—Rules 3.701, 3.702, 3.703, and 3.988, Florida Rules of Criminal Procedure, as revised by the Supreme Court, and any other rule pertaining to the preparation and submission of felony sentencing scoresheets, are adopted and implemented in accordance with chapter 921 for application to the Criminal Punishment Code.

Section 8. Section 921.0026, Florida Statutes, as created by section 8 of chapter 97-194, Laws of Florida, is amended to read:

921.0026 Mitigating circumstances.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(1) A downward departure from the lowest permissible sentence, as calculated according to the total sentence points pursuant to s. 921.0024, is prohibited ~~discouraged~~ unless there are circumstances or factors that reasonably justify the downward departure. Mitigating factors to be considered include, but are not limited to, those listed in subsection (2). The imposition of a sentence below the lowest permissible sentence sentencing range is subject to appellate review under chapter 924, but the extent of downward departure is not subject to appellate review.

(2) Mitigating circumstances under which a departure from the lowest permissible sentence sentencing range is reasonably justified include, but are not limited to:

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

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

(c) The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.

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

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

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

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

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

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

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

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

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

(3) The defendant's substance abuse or addiction, including intoxication at the time of the offense, is not a mitigating factor under subsection (2) and

does not, under any circumstances, justify a downward departure from the permissible sentencing range.

Section 9. Section 921.00265, Florida Statutes, is created to read:

921.00265 Recommended sentences; departure sentences; mandatory minimum sentences.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(1) The lowest permissible sentence provided by calculations from the total sentence points pursuant to s. 921.0024(2) is assumed to be the lowest appropriate sentence for the offender being sentenced. A departure sentence is prohibited unless there are mitigating circumstances or factors present as provided in s. 921.0026 which reasonably justify a departure.

(2) A sentence that decreases an offender's sentence below the lowest permissible sentence is a departure sentence and must be accompanied by a written statement by the sentencing court delineating the reasons for the departure, filed within 7 days after the date of sentencing. A written transcription of reasons stated orally at sentencing for departure from the lowest permissible sentence is permissible if it is filed by the court within 7 days after the date of sentencing.

(3) Any offender who is sentenced to a departure sentence or any offender who is subject to a minimum mandatory sentence must have the departure sentence and any minimum mandatory sentence so noted on the sentencing scoresheet.

Section 10. Section 775.082, Florida Statutes, is amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1) A person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(2) In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment as provided in subsection (1).

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a)1. For a life felony committed prior to October 1, 1983, by a term of imprisonment for life or for a term of years not less than 30.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. For a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

(b) For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

(c) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.

(d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

(a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year;

(b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

(5) Any person who has been convicted of a noncriminal violation may not be sentenced to a term of imprisonment nor to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in chapter 316 or by ordinance of any city or county.

(6) Nothing in this section shall be construed to alter the operation of any statute of this state authorizing a trial court, in its discretion, to impose a sentence of imprisonment for an indeterminate period within minimum and maximum limits as provided by law, except as provided in subsection (1).

(7) This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

(8)(a) The sentencing guidelines that were effective October 1, 1983, and any revisions thereto, apply to all felonies, except capital felonies, committed on or after October 1, 1983, and before January 1, 1994, and to all felonies, except capital felonies and life felonies, committed before October 1, 1983, when the defendant affirmatively selects to be sentenced pursuant to such provisions.

(b) The 1994 sentencing guidelines, that were effective January 1, 1994, and any revisions thereto, apply to all felonies, except capital felonies, committed on or after January 1, 1994, and before October 1, 1995.

(c) The 1995 sentencing guidelines that were effective October 1, 1995, and any revisions thereto, apply to all felonies, except capital felonies, committed on or after October 1, 1995, and before October 1, 1998.

(d) The Criminal Punishment Code applies to all felonies, except capital felonies, committed on or after October 1, 1998. Any revision to the Criminal Punishment Code applies to sentencing for all felonies, except capital felonies, committed on or after the effective date of the revision.

(e) Felonies, except capital felonies, with continuing dates of enterprise shall be sentenced under the sentencing guidelines or the Criminal Punishment Code in effect on the beginning date of the criminal activity.

~~(9)~~(8)(a)1. "Prison releasee reoffender" means any defendant who commits, or attempts to commit:

- a. Treason;
- b. Murder;
- c. Manslaughter;
- d. Sexual battery;
- e. Carjacking;
- f. Home-invasion robbery;
- g. Robbery;
- h. Arson;
- i. Kidnapping;
- j. Aggravated assault;
- k. Aggravated battery;
- l. Aggravated stalking;
- m. Aircraft piracy;
- n. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- o. Any felony that involves the use or threat of physical force or violence against an individual;
- p. Armed burglary;
- q. Burglary of an occupied structure or dwelling; or
- r. Any felony violation of s. 790.07, s. 800.04, s. 827.03, or s. 827.071;

within 3 years of being released from a state correctional facility operated by the Department of Corrections or a private vendor.

2. If the state attorney determines that a defendant is a prison releasee reoffender as defined in subparagraph 1., the state attorney may seek to

have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:

- a. For a felony punishable by life, by a term of imprisonment for life;
- b. For a felony of the first degree, by a term of imprisonment of 30 years;
- c. For a felony of the second degree, by a term of imprisonment of 15 years; and
- d. For a felony of the third degree, by a term of imprisonment of 5 years.

(b) A person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence.

(c) Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084 or any other provision of law.

(d)1. It is the intent of the Legislature that offenders previously released from prison who meet the criteria in paragraph (a) be punished to the fullest extent of the law and as provided in this subsection, unless any of the following circumstances exist:

- a. The prosecuting attorney does not have sufficient evidence to prove the highest charge available;
- b. The testimony of a material witness cannot be obtained;
- c. The victim does not want the offender to receive the mandatory prison sentence and provides a written statement to that effect; or
- d. Other extenuating circumstances exist which preclude the just prosecution of the offender.

2. For every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney. On a quarterly basis, each state attorney shall submit copies of deviation memoranda regarding offenses committed on or after the effective date of this subsection, to the president of the Florida Prosecuting Attorneys Association, Inc. The association must maintain such information, and make such information available to the public upon request, for at least a 10-year period.

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

Section 11. Subsection (2) and paragraphs (a) and (b) of subsection (3) of section 775.084, Florida Statutes, as amended by section 12 of chapter 97-194, Laws of Florida, are amended to read:

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

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

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

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

2. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.

3. Except as provided in subparagraph 1., all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

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

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

6. For an offense committed on or after October 1, 1995, if the state attorney pursues a habitual felony offender sanction or a habitual violent felony offender sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a habitual felony offender or a habitual violent felony offender, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public. If the court finds that it is not necessary for the protection of the public to sentence the defendant as a habitual felony offender or a habitual violent felony offender, the court shall provide written reasons; a written transcript of orally stated reasons is permissible, if filed by the court within 7 days after the date of sentencing. Each month, the court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons or transcripts in each case in which the court determines not to sentence a defendant as a habitual felony offender or a habitual violent felony offender as provided in this subparagraph.

(b) In a separate proceeding, the court shall determine whether the defendant is a violent career criminal with respect to a primary offense committed on or after October 1, 1995. The procedure shall be as follows:

1. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.

2. All evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

3. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable only as provided in paragraph (c).

4. For the purpose of identification, the court shall fingerprint the defendant pursuant to s. 921.241.

5. For an offense committed on or after October 1, 1995, if the state attorney pursues a violent career criminal sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a violent career criminal, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public. If the court finds that it is not necessary for the protection of the public to sentence the defendant as a violent career criminal, the court shall provide written reasons; a written transcript of orally stated reasons is permissible, if filed by the court within 7 days after the date of sentencing. Each month, the court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons or transcripts in each case in which the court determines not to sentence a defendant as a violent career criminal as provided in this subparagraph.

Section 12. Section 782.051, Florida Statutes, as amended by section 18 of chapter 97-194, Laws of Florida, is amended to read:

782.051 Attempted felony murder causing bodily injury.—

(1) Any person who perpetrates or attempts to perpetrate any felony enumerated in s. 782.04(3) and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of ~~causes bodily injury to~~ another commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life, or as provided in s. 775.082, s. 775.083, or s. 775.084, which is an offense ranked in level 9 of the Criminal Punishment Code. Victim injury points shall be scored under this subsection.

(2) Any person who perpetrates or attempts to perpetrate any felony other than a felony enumerated in s. 782.04(3) and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of ~~causes bodily injury to~~ another commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, which is an offense ranked in level 8 of the Criminal

Punishment Code. Victim injury points shall be scored under this subsection.

(3) When a person is injured during the perpetration of or the attempt to perpetrate any felony enumerated in s. 782.04(3) by a person other than the person engaged in the perpetration of or the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, which is an offense ranked in level 7 of the Criminal Punishment Code. Victim injury points shall be scored under this subsection.

Section 13. Subsection (1) of section 924.06, Florida Statutes, as amended by section 27 of chapter 97-194, Laws of Florida, is amended to read:

924.06 Appeal by defendant.—

(1) A defendant may appeal from:

(a) A final judgment of conviction when probation has not been granted under chapter 948, except as provided in subsection (3);

(b) An order granting probation under chapter 948;

(c) An order revoking probation under chapter 948; ~~or~~

(d) A sentence, on the ground that it is illegal; ~~or~~

(e) A sentence imposed under s. 921.0024 of the Criminal Punishment Code which exceeds the statutory maximum penalty provided in s. 775.082 for an offense at conviction, or the consecutive statutory maximums for offenses at conviction, unless otherwise provided by law.

Section 14. Paragraph (i) of subsection (1) of section 924.07, Florida Statutes, as amended by section 28 of chapter 97-194, Laws of Florida, is amended to read:

924.07 Appeal by state.—

(1) The state may appeal from:

(i) A sentence imposed below the lowest permissible sentence established range permitted by the Criminal Punishment Code under chapter 921.

Section 15. Paragraph (e) of subsection (5) of section 944.17, Florida Statutes, as amended by section 29 of chapter 97-194, Laws of Florida, is amended to read:

944.17 Commitments and classification; transfers.—

(5) The department shall also refuse to accept a person into the state correctional system unless the following documents are presented in a completed form by the sheriff or chief correctional officer, or a designated representative, to the officer in charge of the reception process:

(e) A copy of the Criminal Punishment Code scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation of felony sentencing scoresheets.

In addition, the sheriff or other officer having such person in charge shall also deliver with the foregoing documents any available presentence investigation reports as described in s. 921.231 and any attached documents. After a prisoner is admitted into the state correctional system, the department may request such additional records relating to the prisoner as it considers necessary from the clerk of the court, the Department of Health and Rehabilitative Services, or any other state or county agency for the purpose of determining the prisoner's proper custody classification, gain-time eligibility, or eligibility for early release programs. An agency that receives such a request from the department must provide the information requested.

Section 16. Section 944.70, Florida Statutes, is created to read:

944.70 Conditions for release from incarceration.—

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

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

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

1. Upon expiration of the person's sentence;
2. Upon expiration of the person's sentence as reduced by accumulated meritorious or incentive gain-time;
3. As directed by an executive order granting clemency;
4. Upon placement in a conditional release program pursuant to s. 947.1405 or a conditional medical release program pursuant to s. 947.149; or
5. Upon the granting of control release, including emergency control release, pursuant to s. 947.146.

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

Section 17. Subsection (6) of section 944.705, Florida Statutes, is amended to read:

944.705 Release orientation program.—

(6)(a) The department shall notify every inmate, in no less than 18-point type in the inmate's release documents, that the inmate may be sentenced pursuant to s. 775.082(9) ~~s. 775.082(8)~~ if the inmate commits any felony offense described in s. 775.082(9) ~~s. 775.082(8)~~ within 3 years after the inmate's release. This notice must be prefaced by the word "WARNING" in boldfaced type.

(b) Nothing in this section precludes the sentencing of a person pursuant to s. 775.082(9) ~~s. 775.082(8)~~, nor shall evidence that the department failed to provide this notice prohibit a person from being sentenced pursuant to s. 775.082(9) ~~s. 775.082(8)~~. The state shall not be required to demonstrate that a person received any notice from the department in order for the court to impose a sentence pursuant to s. 775.082(9) ~~s. 775.082(8)~~.

Section 18. Section 948.015, Florida Statutes, as amended by section 33 of chapter 97-194, Laws of Florida, is amended to read:

948.015 Presentence investigation reports.—The circuit court, when the defendant in a criminal case has been found guilty or has entered a plea of nolo contendere or guilty and has a lowest permissible sentence recommended sentence under the Criminal Punishment Code of any nonstate prison sanction, may refer the case to the department for investigation or recommendation. Upon such referral, the department shall make the following report in writing at a time specified by the court prior to sentencing. The full report shall include:

(1) A complete description of the situation surrounding the criminal activity with which the offender has been charged, including a synopsis of the trial transcript, if one has been made; nature of the plea agreement, including the number of counts waived, the pleas agreed upon, the sentence agreed upon, and any additional terms of agreement; and, at the offender's discretion, his or her version and explanation of the criminal activity.

(2) The offender's sentencing status, including whether the offender is a first offender, a habitual or violent offender, a youthful offender, or is currently on probation.

(3) The offender's prior record of arrests and convictions.

(4) The offender's educational background.

(5) The offender's employment background, including any military record, present employment status, and occupational capabilities.

(6) The offender's financial status, including total monthly income and estimated total debts.

(7) The social history of the offender, including his or her family relationships, marital status, interests, and activities.

(8) The residence history of the offender.

(9) The offender's medical history and, as appropriate, a psychological or psychiatric evaluation.

(10) Information about the environments to which the offender might return or to which the offender could be sent should a sentence of nonincarceration or community supervision be imposed by the court, and consideration of the offender's plan concerning employment supervision and treatment.

(11) Information about any resources available to assist the offender, such as:

(a) Treatment centers.

(b) Residential facilities.

(c) Vocational training programs.

(d) Special education programs.

(e) Services that may preclude or supplement commitment to the department.

(12) The views of the person preparing the report as to the offender's motivations and ambitions and an assessment of the offender's explanations for his or her criminal activity.

(13) An explanation of the offender's criminal record, if any, including his or her version and explanation of any previous offenses.

(14) A statement regarding the extent of any victim's loss or injury.

(15) A recommendation as to disposition by the court. The department shall make a written determination as to the reasons for its recommendation, and shall include an evaluation of the following factors:

(a) The appropriateness or inappropriateness of community facilities, programs, or services for treatment or supervision for the offender.

(b) The ability or inability of the department to provide an adequate level of supervision for the offender in the community and a statement of what constitutes an adequate level of supervision.

(c) The existence of other treatment modalities which the offender could use but which do not exist at present in the community.

Section 19. Subsections (1), (2), (3), and (5) of section 948.034, Florida Statutes, as amended by section 34 of chapter 97-194, Laws of Florida, are amended to read:

948.034 Terms and conditions of probation; community residential drug punishment centers.—

(1) On or after October 1, 1993, any person who violates s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a) may, in the discretion of the trial court, be

required to successfully complete a term of probation in lieu of serving a term of imprisonment as required or authorized by s. 775.084, former s. 921.001, or s. 921.002, as follows:

(a) If the person has not previously been convicted of violating s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), adjudication may be withheld and the offender may be placed on probation for not less than 18 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 90 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$500 nor more than \$10,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a substance abuse education program of at least 40 hours or a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to ~~chapter 396~~ or chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 100 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(b) If the person has been previously convicted of one felony violation of s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 24 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 180 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$1,000 nor more than \$10,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a substance abuse education program of at least 40 hours or a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to ~~chapter 396 or chapter 397~~ or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 200 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(c) If the person has been previously convicted of two felony violations of s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or (5)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 36 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 360 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$1,500 nor more than \$10,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a substance abuse education program of at least 40 hours or a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to ~~chapter 396 or chapter 397~~ or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 300 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(d) An offender who violates probation imposed pursuant to this section shall be sentenced in accordance with s. 921.002.

(2) On or after October 1, 1993, any person who violates s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a) may, in the discretion of the trial court, be required to successfully complete a term of probation in lieu of serving a term of imprisonment as required or authorized by s. 775.084, former s. 921.001, or s. 921.002, as follows:

(a) If the person has not previously been convicted of violating s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), adjudication may be withheld and the offender shall be placed on probation for not less than 12 months, as a condition of which the court may require the offender to comply with one or more of the following terms and conditions:

1. Pay a fine of not less than \$250 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a substance abuse education program of at least 40 hours or a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to ~~chapter 396~~ or chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 50 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(b) If the person has been previously convicted of one felony violation of s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 18 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 90 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$500 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a substance abuse intervention program of a least 80 hours provided by a treatment resource

licensed pursuant to ~~chapter 396~~ or chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 100 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(c) If the person has been previously convicted of two felony violations of s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 24 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 120 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$1,000 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to ~~chapter 396~~ or chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 150 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(d) If the person has been previously convicted of three felony violations of s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), adjudication may not be withheld

and the offender may be placed on probation for not less than 30 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 200 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$1,500 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to ~~chapter 396 or~~ chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 200 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(e) If the person has been previously convicted of four felony violations of s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a), adjudication may not be withheld and the offender may be placed on probation for not less than 36 months, as a condition of which the court shall require the offender to reside at a community residential drug punishment center for 360 days. The offender must comply with all rules and regulations of the center and must pay a fee for the costs of room and board and residential supervision. Placement of an offender into a community residential drug punishment center is subject to budgetary considerations and availability of bed space. If the court requires the offender to reside at a community residential drug punishment center, the court shall also require the offender to comply with one or more of the other following terms and conditions:

1. Pay a fine of not less than \$2,000 nor more than \$5,000 pursuant to s. 775.083(1)(c).

2. Enter, regularly attend, and successfully complete a prescribed substance abuse treatment program provided by a treatment resource licensed pursuant to ~~chapter 396 or~~ chapter 397 or by a hospital licensed pursuant to chapter 395, as specified by the court. In addition, the court may refer the offender to a licensed agency for substance abuse evaluation and, if appropriate, substance abuse treatment subject to the ability of the offender to

pay for such evaluation and treatment. If such referral is made, the offender must comply and must pay for the reasonable cost of the evaluation and treatment.

3. Perform at least 250 hours of public service.

4. Submit to routine and random drug testing which may be conducted during the probationary period, with the reasonable costs thereof borne by the offender.

5. Participate, at his or her own expense, in an appropriate self-help group, such as Narcotics Anonymous, Alcoholics Anonymous, or Cocaine Anonymous, if available.

(f) An offender who violates probation imposed pursuant to this section shall be sentenced in accordance with s. 921.002.

(3) Whenever the authorized provider for substance abuse treatment pursuant to this section is the same provider ~~that~~ which conducts the substance abuse evaluations, that provider must submit a quarterly statistical report ~~that~~ which shall be reviewed by the Department of Children and Family Health and Rehabilitative Services to ensure that excessive referrals to treatment have not been made. A programmatic and statistical report must be submitted annually to the Department of Children and Family Health and Rehabilitative Services by each provider authorized to provide services under this section.

(5) The Department of Corrections, in consultation with the Department of Children and Family Health and Rehabilitative Services, shall adopt rules as necessary to implement the provisions of this section relating to program standards and performance objectives of community residential drug punishment centers.

Section 20. Subsection (2) of section 948.51, Florida Statutes, as amended by section 35 of chapter 97-194, Laws of Florida, is amended to read:

948.51 Community corrections assistance to counties or county consortiums.—

(2) ELIGIBILITY OF COUNTIES AND COUNTY CONSORTIUMS.—A county, or a consortium of two or more counties, may contract with the Department of Corrections for community corrections funds as provided in this section. In order to enter into a community corrections partnership contract, a county or county consortium must have a public safety coordinating council established under s. 951.26 and must designate a county officer or agency to be responsible for administering community corrections funds received from the state. The public safety coordinating council shall prepare, develop, and implement a comprehensive public safety plan for the county, or the geographic area represented by the county consortium, and shall submit an annual report to the Department of Corrections concerning the status of the program. In preparing the comprehensive public safety plan, the public safety coordinating council shall cooperate with the district juvenile justice board and the county juvenile justice council, established under

s. 985.413 s. ~~39.025~~, in order to include programs and services for juveniles in the plan. To be eligible for community corrections funds under the contract, the initial public safety plan must be approved by the governing board of the county, or the governing board of each county within the consortium, and the Secretary of Corrections based on the requirements of this section. If one or more other counties develop a unified public safety plan, the public safety coordinating council shall submit a single application to the department for funding. Continued contract funding shall be pursuant to subsection (5) subsection (6). The plan for a county or county consortium must cover at least a 5-year period and must include:

(a) A description of programs offered for the job placement and treatment of offenders in the community.

(b) A specification of community-based intermediate sentencing options to be offered and the types and number of offenders to be included in each program.

(c) Specific goals and objectives for reducing the projected percentage of commitments to the state prison system of persons with low total sentencing scores of ~~40 to 52 points, inclusive~~, pursuant to the Criminal Punishment Code.

(d) Specific evidence of the population status of all programs which are part of the plan, which evidence establishes that such programs do not include offenders who otherwise would have been on a less intensive form of community supervision.

(e) The assessment of population status by the public safety coordinating council of all correctional facilities owned or contracted for by the county or by each county within the consortium.

(f) The assessment of bed space that is available for substance abuse intervention and treatment programs and the assessment of offenders in need of treatment who are committed to each correctional facility owned or contracted for by the county or by each county within the consortium.

(g) A description of program costs and sources of funds for each community corrections program, including community corrections funds, loans, state assistance, and other financial assistance.

Section 21. Subsection (3) of section 958.04, Florida Statutes, as amended by section 36 of chapter 97-194, Laws of Florida, is amended to read:

958.04 Judicial disposition of youthful offenders.—

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

Section 22. This act shall take effect October 1, 1998.

Became a law without the Governor's approval May 24, 1998.

Filed in Office Secretary of State May 22, 1998.