

STORAGE NAME: H1033.CP

DATE: March 25, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1033

RELATING TO: Sentencing Guidelines

SPONSOR(S): Representatives Crist, Ball, and others

STATUTE(S) AFFECTED: Section 921.001, F.S.

COMPANION BILL(S): SB 472, SB 30

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
- (2)
- (3)
- (4)
- (5)

SUMMARY:

This bill gives a judge complete discretion to impose a sentence up to 22 months in prison if the following conditions are met:

1. The defendant is to be sentenced for a new felony offense committed on or after July 1, 1997; and
2. The defendant has been convicted of a prior felony offense; and
3. For the new offense, the defendant does not qualify for prison under the sentencing guidelines.

I. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Effective October 1983, the Legislature completely revised criminal sentencing laws and adopted a point-scoring formula known as the "sentencing guidelines". This change in criminal sentencing substantially departed from previous practice which vested discretion in the sentencing court to determine an appropriate sentence. Such sentences were not subject to appeal unless the sentence exceeded a statutory maximum.

When the guidelines calculation does not score out to a prison sentence, the sentencing court is required to impose any non-prison sentence. Such a sentence may include up to one year in a county jail. Should an exception apply, the judge may depart from the guidelines and sentence the defendant to serve the sentence in a state prison.

In 1988, the Legislature granted sentencing courts the discretion to impose a prison sentence up to 22 months regardless of whether the convicted felon "scored" prison under the guidelines. [Chapter 88-131, Laws of Florida] These discretionary prison sentences were not subject to appeal. In 1993, the Legislature removed the provision giving judges the discretion to impose the 22 month prison sentence. [Chapter 93-406, Laws of Florida]

Currently, a judge cannot impose a prison sentence if the defendant does not "score" prison under the guidelines regardless of the facts in the case, unless the sentencing court can legally depart for an enhanced penalty above the guidelines, or the defendant qualifies for an enhanced penalty.

B. EFFECT OF PROPOSED CHANGES:

This bill would amend s. 921.001, F.S., to provide that a defendant convicted of a felony offense on or after July 1, 1997, who has a prior felony conviction, and a recommended guidelines sentence which is not a state prison sanction, may be sentenced to a term of incarceration not to exceed 22 months in state prison. This sentence can only be appealable if the sentence is subsequently found unconstitutional or illegal.

According to an analysis of this bill by the Department of Corrections, "the bill removes the prohibition within the guidelines system of sentencing offenders who score 40 or less points to state prison. This population would be eligible to receive up to 22 months in state prison. Widening of discretion has the potential for an increase in the disparity of sentencing. In addition, the ability to predict the need for correctional resources could be diminished."

The Department of Corrections further states that "upon examination of the 96,134 score sheets with sentence dates between July 1, 1995, and June 30, 1996, there were 52,826 that had total points in the 'non-state prison range' of less than 34.8 points. Of these, 22,683 (42.9%) had at least one prior felony, and therefore would have qualified for the 22 month discretionary sentence provided for by this bill.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not applicable.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

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

See fiscal comments.

D. FISCAL COMMENTS:

Section 921.0012(9)(b), F.S. requires the Criminal Justice Estimating Conference (CJEC) to review any legislation that creates or modifies a criminal penalty to determine its impact on the state prison system. On March 21, 1997, the CJEC met and determined the following for SB 472 which is the Senate companion bill to HB 1033:

FY	Cumulative Prison Bed Impact
----	------------------------------

1997-98	608
1998-99	962
1999-00	1,065
2000-01	1,076
2001-02	1,086

Fiscal impact methodology was not agreed upon at this meeting, so a fiscal impact is not included.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18, of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

The actual language in this bill refers to a defendant who "...[has] a recommended sentence under the guidelines which is not a state prison sanction". Not included within the scope of this bill are defendants whose guideline range calls for either a short prison sanction or a non-prison sanction. The 22 month sentence permitted by this bill can only be applied to the less serious offenders whose guideline range does not allow any prison. For example, a person with a prior level one offense who is convicted of a new level one offense qualifies for the 22 month discretionary sentence. A person who commits a fourth level four offense can only receive a maximum of 13 months in prison, even though level four offenses are ranked higher on the Offense Severity Ranking Chart, and are generally more serious than level one offenses. To correct this discrepancy, the applicable pool of all offenders who

STORAGE NAME: H1033.CP

DATE: March 25, 1997

PAGE 8

qualify for a discretionary prison term under the guidelines would need to be included within the scope of the 22 month discretionary penalty provided by this bill.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VI. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

Brandon Biederman

Willis Renuart