

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 2, 1998 Revised: _____

Subject: Sentencing

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Barrow</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Martin</u>	<u>Smith</u>	<u>WM</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1522 provides for numerous technical, clarifying, and "housekeeping" changes to Florida's Criminal Punishment Code, which will become effective on October 1, 1998.

This bill substantially amends section 2 of ch. 97-194, Laws of Florida, and substantially amends, creates, or repeals the following sections of the Florida Statutes: 921.002, 921.0021, 921.0022, 921.0023, 921.0024, 921.0025, 921.0026, 921.00265, 775.082, 775.084, 728.051, 924.06, 924.07, 944.17, 944.70, 944.705, 948.015, 948.034, 948.51, and 958.04.

II. Present Situation:

The 1997 Legislature passed CS/HB 241 (Ch. 97-194, *Laws Of Florida*), which made sweeping changes to felony sentencing in Florida. Prior to the passage of this bill, Florida had utilized "sentencing guidelines" since 1983. Prior to sentencing guidelines ("guidelines") being mandated in Florida, discretionary sentencing was utilized by the courts in which statutory maximums established by statute were the only parameters imposed upon sentencing judges. Mainly because of criticisms pertaining to racial and regional disparity in sentencing, and a turnabout in state policy that moved away from "back-end," subjective and discretionary parole, sentencing guidelines were created to reduce the alleged disparity by creating a "front-end," objective sentencing mechanism for felony offenders. The sentencing guidelines have been amended several times since its creation in attempts to mainly focus on serious, repeat offenders and to enhance penalties for victim injuries and death.

For many years, the sentencing guidelines have been criticized for curbing the discretion of the sentencing judge, who is closer to the individual facts of his or her cases before the court. The

sentencing guidelines have also been criticized as levying “calculator justice.” Sentencing guidelines have necessitated prosecutors filling out sentencing scoresheets, which have been amended several times to become increasingly burdensome for the courtroom prosecutors who have large caseloads. Because offenses committed must be calculated on the scoresheet to determine what sentence will be imposed by the court, very little flexibility is provided to the sentencing court and the assistant state attorney prosecuting the case as to the type and length of the sentence imposed.

After previous failed attempts to abolish the sentencing guidelines and return to the pre-1983 days of total court discretion, the 1997 Legislature passed CS/HB 241. The legislative intent of the 1997 bill was to abolish the applicability of the sentencing guidelines for all crimes committed on or after October 1, 1998. The bill also creates the Florida Criminal Punishment Code (“punishment code” or “code”) as the new sentencing mechanism, which applies to all crimes committed on or after October 1, 1998. The Criminal Punishment Code, codified in ss. 921.002-921.0026, F.S., essentially authorizes the discretion of the court to impose a sentence for each crime that is committed, which could be up to the statutory maximum for each offense. However, the punishment code establishes a “floor” or minimum threshold sentence that is the minimum sentence that a court may impose for the offenses before the court, absent a departure reason authorized by statute.

Due to the rapid evolution of CS/HB 241 during the 1997 Regular Session, staff review of all the changes was limited prior to its passage, resulting in the necessity to further revise the punishment code before its implementation. During the legislative interim, the staff of the Criminal Justice Committee was assigned by the Senate President to examine the statutory changes made in CS/HB 241 and assess any revisions that are necessary to achieve the legislative intent and ensure a smooth implementation of the new sentencing structure.

After review of CS/HB 241 (enrolled) by Senate staff during the interim, along with consultation with House staff and other knowledgeable sources, including state attorneys, public defenders, the Office of the State Courts Administrator, staff for the Sentencing Commission, and the Office of the Governor, Senate Criminal Justice Committee staff identified several necessary changes that should be considered by lawmakers during the 1998 Legislative Session. The changes deemed to be necessary are contained in CS/SB 1522.

The staff of the Senate Criminal Justice Committee held a meeting with all interested persons on SB 1522 and the House draft companion bill on March 19, 1998. The intent of the meeting was to obtain feedback from persons who work within the criminal justice system on the two bills and to resolve differences between the Senate and House versions.

III. Effect of Proposed Changes:

Section 1. Clarifies that capital felonies are excluded from the Criminal Punishment Code.

Section 2.

- ▶ Clarifies that the code applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.
- ▶ Clarifies the actual time to be served by an offender may not be less than 85 percent of the offender's court-imposed sentence as provided in s. 944.275(4)(b)3., F.S.
- ▶ Provides technical changes by deleting references to "sentencing range" which was terminology used in the "former" sentencing guidelines and replaces those references with "lowest permissible sentence."
- ▶ Clarifies that departures below the lowest permissible sentence must be provided in writing by the trial court judge.
- ▶ Deletes references to aggravating factors as a reason for departure sentences because essentially there is no need for aggravating factors because the code gives sentencing judges the discretion to sentence any convicted felony offender up to the maximum statutory penalty under s. 775.082, F.S.
- ▶ Clarifies that a trial court judge may sentence an offender up to the statutory maximum for any offense before the court for sentencing, including an offense that is before the court because of a violation of community control.
- ▶ Beginning in 1999, requires the Department of Corrections to report by October 1 of each year on trends in sentencing practices and sentencing score thresholds and provide analyses on sentencing factors considered by courts.
- ▶ Requires the Criminal Justice Estimating Conference, with the aid of the Department of Corrections, to estimate the impact of any proposed change to the Criminal Punishment Code on future rates of incarceration and on the prison population. The Conference would be required to base its projections on historical data concerning sentencing practices which have been accumulated by the Department of Corrections and on records of the department that reflect the average time served for offenses that are changed by the Criminal Punishment Code and provide its projections by October 1 of each year.
- ▶ Authorizes the Department of Corrections to collect and evaluate code scoresheets generated from each judicial circuit to produce projections that would assist in making future modifications to the Criminal Punishment Code.
- ▶ Beginning in 1999, requires the Department of Corrections to provide an annual report by October 1 of each year to the Legislature showing the rate of compliance in the provision and completeness of scoresheets by each judicial circuit.

Section 3. Clarifies that the definitions that apply to the code apply to any felony offense, except capital felonies, committed on or after October 1, 1998.

Section 4.

- ▶ Clarifies that s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, applies to offenses committed on or after October 1, 1998.
- ▶ Clarifies that the least severe ranking of an offense is in level 1 of the offense severity ranking chart and the most severe ranking of an offense is in level 10 of the offense severity ranking chart.
- ▶ Clarifies that the reclassification of any other law that provides an enhanced penalty for a felony offense to any offense listed in the offense severity ranking chart does not cause the offense to become unlisted and is not subject to the provisions of s. 921.0023, F.S., which pertains to the default ranking of unranked offenses.
- ▶ Provides the following changes are proposed to the offense severity ranking chart of the Criminal Punishment Code:

Level 1

- ▶ Adds the description of possession of simulated identification under s. 322.212(1), F.S.
- ▶ Adds the description of supplying or aiding in supplying an unauthorized identification card under s. 322.212(4), F.S.
- ▶ Adds the description and the clarification of paragraph (a) for false application for an identification card.

Level 3

- ▶ Deletes escapes from juvenile facility under s. 39.061, F.S.
- ▶ Adds the description of possession of instruments for counterfeiting identification cards under s. 831.29, F.S.
- ▶ Adds escapes from a juvenile facility under s. 944.401, F.S.

Level 5

- ▶ Adds the description of selling, manufacturing, or delivering cannabis within 1,000 feet of a child care facility under s. 893.13(1)(c)2., F.S.
- ▶ Adds selling, manufacturing, or delivering cannabis or other drug prohibited under specified sections, within 1,000 feet of property used for religious services or a specified business site under s. 893.13(1)(e), F.S.

Level 6

- ▶ Adds failure to register or failure to renew driver's license or identification card by sexual predators under s. 775.21(9), F.S.
- ▶ Adds felony battery under s. 784.041, F.S.
- ▶ Adds aggravated stalking of a person under 16 years of age under s. 784.048(5), F.S.

- ▶ Deletes reference to the property-value qualification of \$100 or more for exploiting an elderly person or disabled adult under s. 825.103(2)(c), F.S.
- ▶ Adds failure to comply with the reporting requirements of sex offenders under s. 943.0435(6), F.S.

Level 7

- ▶ Adds attempted felony murder of a person, by a person other than the perpetrator or the perpetrator of an attempted felony, under s. 782.051(3), F.S.
- ▶ Adds giving false information about an alleged capital felony to a law enforcement officer under s. 837.05(2), F.S.
- ▶ Adds the description of selling, manufacturing, or delivering cocaine or other drug prohibited under the specified sections within 1,000 feet of a child care facility under s. 893.13(1)(e), F.S.
- ▶ Adds selling, manufacturing, or delivering cocaine or other drug prohibited under specified sections within 1,000 feet of property used for religious services or a specified business site.
- ▶ Adds trafficking in flunitrazepam (roofies) of the amount of 4 grams or more but less than 14 grams under s. 893.135(1)(g)1.a., F.S.

Level 8

- ▶ Adds attempted felony murder while perpetrating or attempting to perpetrate a felony other than a felony enumerated in s. 782.04(3), F.S., under s. 782.051(2), F.S.
- ▶ Adds perjury in official proceedings relating to prosecution of a capital felony under s. 837.02(2), F.S.
- ▶ Adds making contradictory statements in official proceedings relating to prosecution of a capital felony under s. 837.021(2), F.S.
- ▶ Adds trafficking in flunitrazepam (roofies) of the amount of 14 grams or more but less than 28 grams under s. 893.135(1)(g)1.b., F.S.

Level 9

- ▶ Adds attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3), F.S., under s. 782.051(1), F.S.

Section 5.

- ▶ Clarifies that s. 921.0023, F.S., pertaining to unranked offenses, would apply to offenses committed on or after October 1, 1998.
- ▶ Deletes redundant language that is contained in subsection (2) of s. 921.0022, F.S.

Section 6.

- ▶ Modifies the code's worksheet by moving the entries "moderate" and "slight" and places them underneath the entries of "death" and "severe" relating to victim injury rather than sexual penetration or sexual contact.

-
- ▶ Provides a line entry on the worksheet to indicate whether an offender being sentenced is a “prison releasee reoffender.”
 - ▶ Switches the order of words on the line for violent habitual offender to read “habitual violent offender.”
 - ▶ Provides a line entry on the worksheet and a description in the worksheet key for the multiplier of crimes of domestic violence in the presence of a child under 16 years of age who is a “household member” as defined in s. 741.28(2), F.S., of the victim or the perpetrator to multiply subtotal sentence points by 1.5, which is consistent with the changes made to the sentencing guidelines in 1997.
 - ▶ Clarifies in the worksheet key that prior capital felonies are those that are indicated in an offender’s prior record, which include those capital felonies for which the offender has entered a plea of nolo contendere or guilty to or has been found guilty of.
 - ▶ Clarifies that the lowest permissible sentence is the minimum sentence that a trial court may impose upon a defendant if no valid reasons to depart are found by the court.
 - ▶ Provides for the method of calculating an offender’s lowest permissible sentence is by first totaling the points of the scoresheet.
 - ▶ Provides that if an offender’s total sentence points are equal to or less than 44 points, the lowest permissible sentence for that offender is a non-state prison sanction, unless that court decides within its discretion that a prison sentence, up to the statutory maximum for all of the offenses the offender committed, is appropriate.
 - ▶ Provides that if an offender’s total sentence points are more than 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing that sum by 25 percent.
 - ▶ Clarifies that the permissible “range” for sentencing an offender is between the lowest permissible sentence calculated by utilizing the scoresheet to calculate the total sentence points, subtracting 28 points, then decreasing that sum by 25 percent, and up to and including the statutory maximum for the primary offense and any additional offenses that are before the court for sentencing.
 - ▶ Reiterates current law which authorizes the sentencing court to impose the sentences for each of the offenses before the court on sentencing either concurrently or consecutively, which is stated elsewhere in the code, and in the Florida Statutes, and is also the current practice under the sentencing guidelines.
 - ▶ Reiterates that any sentence to state prison must be longer than 1 year.

- ▶ Requires a scoresheet to be prepared and submitted to the court for every felony defendant to determine the permissible range, which is the lowest permissible sentence up to the statutory maximums for the offenses committed, for the sentence the court is authorized to impose pursuant to the code.
- ▶ Clarifies that if the lowest permissible sentence under the code exceeds the statutory maximum sentence for the offenses committed, the sentence under the code must be imposed.
- ▶ Provides that if the total sentence points are equal to or more than 363 points, an offender may be sentenced to life imprisonment, and prohibits any form of early release for such offenders except clemency or conditional medical release.
- ▶ Requires the Department of Corrections to consult with the Office of the State Courts Administrator, the state attorneys, and the public defenders, to develop and submit the revised Criminal Punishment Code scoresheet to the Supreme Court for approval by June 15 of each year, as deemed necessary.
- ▶ Requires the Department of Corrections to produce and provide enough copies of the revised scoresheets by September 30 of each year upon the approval of the Supreme Court of the revised scoresheet.
- ▶ Deletes involvement of the clerks of the circuit courts in the provision and distribution of sufficient copies of the scoresheet.
- ▶ Requires scoresheets to include item entries for 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.
- ▶ Requires the Department of Corrections to collect and evaluate data on sentencing practices in the state from each of the judicial circuits and provide technical assistance to the Legislature.
- ▶ Requires the department to provide an annual report to the Legislature by October 1 of each year, beginning in 1999, which shows the rate of compliance of each judicial circuit in providing scoresheets to the department.
- ▶ Requires a sentencing scoresheet to be prepared for every felony defendant who is sentenced except for offenders who score 44 points or less.
- ▶ Provides references to Rules 3.702 and 3.703, or any other rule pertaining to the preparation and submission of felony sentencing scoresheets.

Section 7. Adopts and implements, in accordance with ch. 921, F.S., Rules 3.701, 3.702, 3.703, and 3.988, Florida Rules of Criminal Procedure, and any other rules adopted by the

Supreme Court pertaining to the preparation and submission of scoresheets for application to the Criminal Punishment Code.

Section 8.

- ▶ Clarifies that mitigating circumstances under s. 921.0026, F.S., apply to felony offenses, other than capital felonies, committed on or after October 1, 1998.
- ▶ Prohibits expressly, rather than “discourages,” a court to impose a sentence that is less than an offender’s lowest permissible sentence, as calculated pursuant to s. 921.0024, F.S., unless there are factors or circumstances present, as provided in s. 921.0026, F.S., which would reasonably justify a downward departure.

Section 9.

- ▶ Clarifies that the code applies to non-capital felony offenses committed on or after October 1, 1998.
- ▶ Provides the assumption that an offender’s lowest appropriate sentence is the lowest permissible sentence that is calculated from the total sentence points pursuant to s. 921.0024(2), F.S.
- ▶ Prohibits departures from the lowest permissible sentence unless there are mitigating circumstances as provided in s. 921.0026, F.S., that reasonably justify a departure below the lowest permissible sentence.
- ▶ Requires departure sentences below the lowest permissible sentences be accompanied by a written statement by the sentencing court providing the reasons for departure within 7 days after the date of sentencing.
- ▶ Authorizes a written transcription of orally stated reasons for departure from the lowest permissible sentence within 7 days after the date of sentencing in lieu of a written statement of the court.
- ▶ Requires all departure sentences and minimum mandatory sentences to be provided on the sentencing scoresheets that are submitted to the court and ultimately the Department of Corrections.

Section 10.

- ▶ Provides express guidelines for the applicability of the appropriate sentencing structure depending on the date the offense was committed by the defendant.
- ▶ Clarifies that all felonies with continuing dates of enterprise are to be sentenced under the version of the sentencing guidelines or Criminal Punishment Code in effect on the date the criminal activity began.

Section 11.

- ▶ Clarifies that the habitual felony offender and the habitual violent felony offender statutes may be applied to offenders who were placed on community control without an adjudication of guilt to count as a “prior conviction” if the subsequent offense for which the offender is to be sentenced for was committed during the period of community control and the offender otherwise qualifies to have penalties enhanced under these statutes.
- ▶ Requires the court, on a monthly basis, to submit to the Office of Economic and Demographic Research the written reasons or transcripts in each case in which the court did not sentence a defendant as a habitual felony offender or a habitual violent felony offender.
- ▶ Requires the court, on a monthly basis, to submit to the Office of Economic and Demographic Research the written reasons or transcripts in each case in which the court did not sentence a defendant as a violent career criminal.

Section 12. Creates the offense of attempted felony murder under s. 782.051, F.S., to narrowly provide instances in which a person can be held responsible for attempted murder where the offender committed an intentional act that is not an essential element of the underlying felony and that intentional act could, but does not, cause the death of another person and provides for the ranking of the offense in levels 7, 8, or 9, depending on the circumstances of the offense.

Section 13. Provides for the appeal by a defendant when a sentence imposed under the Criminal Punishment Code exceeds the consecutive statutory maximum penalty permitted for the offenses committed as provided under s. 775.082, F.S., or the consecutive statutory maximums for offenses at conviction, unless otherwise provided by law which would allow a sentencing court to exceed the statutory maximum, which is consistent with current law under the guidelines.

Section 14. Provides that the state may appeal a sentence where the sentence imposed by the court is below the lowest permissible sentence and no mitigating factors or circumstances existed and the court did not provide those factors in writing within 7 days after the date of sentencing.

Section 15. Authorizes the Department of Corrections to refuse to accept offenders into the state correctional system unless provided a copy of the code scoresheet and any attachments pursuant to Rules 3.702 and 3.703, as well as Rule 3.701, or any other rule pertaining to the preparation and submission of felony sentencing scoresheets.

Section 16. Reiterates current law pertaining to the conditions or circumstances in which an offender can be released from incarceration by resurrecting language that was codified in former s. 921.001(10), F.S., which would otherwise be repealed effective October 1, 1998, but this bill would move the language to ch. 944, F.S.

Section 17. Makes technical changes to correct statutory cross-references.

Section 18. Makes a technical change to use the terminology associated with the Criminal Punishment Code, such as “lowest permissible sentence” instead of “recommended sentence.”

Section 19. Deletes obsolete chapter-references to ch. 396, F.S., and changes references to the Department of Health and Rehabilitative Services to the Department of Children and Family Services, relating to terms and conditions of probation and residential drug punishment centers.

Section 20. Corrects cross-references relating to juveniles from ch. 39, F.S., to ch. 985, F.S., and deletes reference to the sentencing guidelines discretionary range of 40 to 52 points with regard to the Community Corrections Partnership Act.

Section 21.

- ▶ Makes a technical change to use the terminology associated with the Criminal Punishment Code, such as “permissible sentence range,” which is the lowest permissible sentence up to the statutory maximum for each offense committed, instead of “maximum recommended sentence range,” which is used under the sentencing guidelines.
- ▶ Provides a statutory cross-reference to a defendant’s right to appeal a sentence under the Criminal Punishment Code relating to the judicial disposition of youthful offenders.

Section 22. provides an effective date for the changes in the bill to be October 1, 1998, which is the same date the Criminal Punishment Code becomes effective.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference made a finding on March 27, 1998, as to the fiscal impact of CS/SB 1522. It found that the CS could have a “potentially significant impact,” based solely on the fact that the bill expressly provides for consecutive sentencing or “stacking” of sentences. However, there is a difference of opinion among legislative staff attorneys on this point. Senate Criminal Justice staff disputes that there is a “potentially significant” fiscal impact for CS/SB 1522, while House staff maintain that there is an impact.

The Conference based its impact statement on the premise that consecutive sentencing is not currently authorized by law. Senate Criminal Justice staff argue that, in fact, consecutive sentencing is current law, both in statute and case law; and that the clarifying language provided in CS/SB 1522 would not add to or compound lengths of sentences from that which was authorized by the 1997 passage of CS/HB 241. They assert that consecutive sentencing is currently authorized in statute s. 775.021, F.S., as well as in the sentencing guidelines under s. 921.0016, F.S. Furthermore, the Criminal Punishment Code, in its legislative intent section, s. 921.002, F.S., states under paragraph (g) of subsection (1) that one of the guiding principles of the code is that a trial judge may impose a sentence up to and including the statutory maximum for *any offense* (not just one offense, it means all), including an offense that is before the court due to a violation of probation. They conclude that courts can and could continue to sentence offenders to consecutive sentences for *every* offense that the offender committed and is before the court at sentencing. Thus, this CS would not initiate authorization for consecutive sentencing. House staff, on the other hand, assert that the current law is ambiguous, and they do not agree that consecutive sentencing is currently authorized, even though such sentencing is currently being imposed by judges. The Criminal Justice Impact Conference has therefore taken the more conservative position of warning that this bill would have a potentially significant impact on prison populations and costs *if* it is determined that current law does not permit consecutive sentencing.

The rankings of the offenses are all offenses that are currently provided in statute and the placement in the offense severity ranking chart would not constitute a fiscal impact, per se. The only additional offense that is created and provided in the offense severity ranking chart is “attempted felony murder,” which is anticipated to have an insignificant impact.

There could be a slight negative fiscal impact upon the Department of Corrections as a result of the data collection and compilation that is required by this CS. However, the impact is anticipated to be insignificant, if any, and should be able to be absorbed by the department with no additional funding needed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
