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SAO AMENDMENT TO SB 716

Series

CURRENT LAW	"STRIKE EVERYTHING AMENDMENT"
	Section 1 repeals pertinent sections of the sentencing guidelines chapter, Chapter 921.
Chapter 921 created the Florida's sentencing guidelines.	Section 2 - Effective October 1, 1998, the "Florida Criminal Punishment Code" is created.
	Section 3 - Sets forth the legislative purpose for the Florida Criminal Punishment Code. To provide criminal penalties and sentencing criteria, and to make the best use of state prisons so that violent criminal offenders are appropriately incarcerated, the Legislature has determined that it is in the best interest of the state to develop, implement, and revise sentencing policy.
	Section 3- Sets forth "guiding principles." Sentencing is neutral with respect to race, gender, and social and economic status; the primary purpose is to punish the offender with rehabilitation as a desired goal but subordinate to the goal of punishment; the penalty imposed is commensurate with the severity of the primary offense and facts; the severity of the sentence increases with the length and nature of the defendant's record; and the sentence reflects the actual time to be served (exclusive of incentive & meritorious gain-time); trial judge may impose a sentence up to the statutory maximum for any offense; Code sentence is only appealable if it falls below the permissible sentencing range (a 'departure' sentence); "preponderance of the evidence" standard applies to departure
Section 921.0011 defines key terms, such as primary offense, additional offense, conviction, legal status, and victim injury.	Virtually the same. Section 4 incorporates the definitions in s. 921.011 under a new section designation and restructures the definition of victim injury.
Section 921.0012 provides a chart where felony offenses are ranked based upon the level of seriousness of the offense. There are 10 severity levels; Level 10 is the most serious level.	Virtually the same. Section 5 incorporates the ranking chart under a new section designation with minor changes to reference the Code.
Section 921.0013 assigns a severity level ranking to unlisted offense based upon the felony degree of the offense.	Same. Section 6 incorporates most of the substance of s. 921.0013 under a new section designation.

CURRENT LAW	"STRIKE EVERYTHING AMENDMENT"
<p>Section 921.0014 provides a worksheet that sets forth the sentence points to assign to the primary offense, additional offense, prior offense, victim injury and other factors. This section also contains a worksheet key explaining how to apply enhancements for prior serious felonies, and point multipliers for law enforcement protection, drug trafficking, possession of a firearm, grand theft auto, and being a criminal street gang member.</p> <p>Three sentencing ranges. If total sentence points are less than or equal to 40 points, a nonstate prison sanction is recommended. If points are more than 42 points, but less than 52 points, the judge may impose a prison sentence. If total sentence points are greater than 40 points, a prison sentence is required.</p> <p>Determining state prison months: If total points are greater than 40, then subtract 28 to determine state prison months. A prison sentence must be for at least a year. The judge may increase/ decrease the recommended sentence length in state prison by up to 25%. This increase/decrease is not appealable. If judge wants to increase/decrease this amount by more than 25%, this constitutes a departure sentence which is appealable. If total sentence points are less than or equal to 40 points, nonstate prison sanction is the appropriate sentence. However, the judge may increase these points by up to 15%. If this increase places the defendant within the range where a prison sentence may be imposed, the judge deducts 28 points to determine the length of the prison sentence. If total sentence points have been increased by up to 15%, the judge may not increase the recommended sentence length.</p> <p>Effective October 1, 1997, the DOC prepares the scoresheets.</p>	<p>Section 7 incorporates most of the substance of s. 921.0014 under a new section designation. <i>Sentence points, point enhancements, and point multipliers do not change.</i></p> <p>THIS IS NEW- Permissible Sentencing Range. The amendment eliminates the three sentencing ranges. The reason for the scoresheet is to determine the lowest sentencing range (subtract 28 points from the total sentence points and decrease the remaining total by 25%). Less than or equal to 12 points is a nonstate prison. The upper range is not determined by total sentence points but is based upon the maximum number of years that may be imposed for the felony offense under s. 775.082. The judge cannot sentence beyond the statutory maximum.</p> <p>THIS IS NEW- Section 3, 7, 8, 27, 28, A departure sentence is simply militating below the permissible sentencing range. This departure is subject to appeal by the state.</p> <p>THIS IS NEW- The state attorney or the DOC shall prepare the scoresheets. This requirement applies whether the defendant is sentenced under the sentencing guidelines or the Code.</p>

CURRENT LAW	"STRIKE EVERYTHING AMENDMENT"
<p>Section 921.0016 set forth circumstances for mitigating or aggravating a guidelines sentence. These statutory circumstances are not totally inclusive of all circumstances that may be raised.</p>	<p>THIS IS NEW- Pursuant to Sections 3, 8, and 41, there are no longer aggravating circumstances for defendants convicted of crimes on or after October 1, 1998, because there is no upward departure sentence. The defendant is sentenced up to the maximum term of years prescribed for the felony degree of the offense pursuant to s. 775.082:</p> <p>3rd degree = 5 years 2nd degree = 15 years 1st degree = 30 years (or life) Life felony = life, or term of years not exceeding life</p> <p>THIS IS NEW- Pursuant to sections 3, 8, and 41, mitigating circumstances in current law are essentially incorporated under a new section designation, except for the mitigating factor based upon a defendant's drug or alcohol abuse (Substance of SB 204/Cowin and Burt). Furthermore, s. 921.0016 is amended to repeal this mitigating factor. It appears that defendants who are sentenced for crimes committed on or after the effective date of the bill (as amended by the SAO, and assuming the amended bill were to become law) and before the repeal of s. 921.0016 on October 1, 1998, will be unable to avail themselves of this mitigating factor. For those sentenced under the Code, this mitigating factor is unavailable.</p>
<p>Section 921.001 does not authorize a judge to impose a state prison sentence of up to 22 months, if the defendant has a prior felony conviction, and the defendant's current felony does not score a prison sentence.</p>	<p>THIS IS NEW-Section 40 amends s. 921.001 to authorize a judge to impose a state prison sentence of up to 22 months, if the defendant has a prior felony conviction and the defendant's current felony does not score a prison sentence. (Similar SB 472/Gutman). The 22 month sentencing option applies to those defendants who are sentenced for felonies committed on or after July 1, 1997, and, it appears, before October 1, 1998. The SAO repeals s. 921.001, effective October 1, 1998.</p>
<p>Section 20.315 requires the Corrections Commission to perform a review of the recommendation of the sentencing Guidelines Commission and alternative proposals submitted by EDR.</p>	<p>THIS IS NEW- Section 9 repeals review by the Corrections Commission of guidelines recommendations.</p>
	<p>Amends various sections of the Florida Statutes that reference the sentencing guidelines, and inserts reference to the Criminal Punishment Code. Eliminates reporting requirements to the Sentencing Commission.</p>
<p>Section 893.15 provides that a defendant convicted of a drug possession may be required to participate in a substance abuse treatment program.</p>	<p>THIS IS NEW-Section 39 requires that defendants convicted of possession offense receive substance abuse treatment.</p>

CS/HB 241 — Florida Criminal Punishment Code

by Crime and Punishment Committee and Representatives Valdes, Ball, and others
(CS/SB 716 by Criminal Justice Committee and Senators Horne, Campbell, and Silver)

Effective October 1, 1998, the sentencing guidelines are repealed, the Sentencing Commission that oversees the sentencing guidelines is abolished, and a new criminal punishment code is created.

On October 1, 1998, the Florida Criminal Punishment Code will be in full effect to establish sentencing criteria for the imposition of criminal penalties for crimes committed on or after October 1, 1998, in accordance with a sentencing policy that focuses on the punishment of offenders. Sentences will be scored to result in a minimum sentencing score to determine the offender's permissible sentencing range.

The new Criminal Punishment Code encompasses the current offense ranking chart that is provided under the sentencing guidelines. The same sentence points, point multipliers, victim injury points and other point enhancements that are currently provided under the sentencing guidelines remain in tact under the Criminal Punishment Code for the purpose of calculating an offender's permissible sentencing range.

An offender's permissible sentencing range will be the result of calculating total sentence points to establish the minimum prison sentence allowable. Judges will be required, at a minimum, to sentence an offender to the length of time determined by the points absent any valid written departure down from the minimum sentence. This is the "floor" of the permissible sentencing range, absent any mitigation, which is appealable by the state. The "ceiling" of the permissible sentencing range is to the statutory maximum allowable prison sentence under s. 775.082, F.S., for the felony degree of the primary offense. Any sentence within the permissible range is not appealable by the defendant.

By removing the three sentencing ranges under the sentencing guidelines for determining the type of sentencing, one permissible prison sentence range replaces them. If an offender scores less than or equal to 12 points, the offender scores a non-prison sentence. Sentences above 12 points are deemed to be prison sentences for the corresponding length of sentence by points up to the maximum allowable sentence for the corresponding level of crime under s. 775.082, F.S.

From July 1, 1997 until the Criminal Punishment Code becomes effective, non-prison sentence scores will be subject to a discretionary prison sentence of up to 22 months as determined by the sentencing court.

SENATE VOTE RECORD ON BILL NO. CS/SB 716

COMMITTEE ON: Governmental Reform and Oversight

ACTION: Favorably with 5 amendment(s)

DATE: April 8, 1997

TIME: 2:00 PM -- 5:00 PM

PLACE: Room 1C

OTHER COMMITTEE REFERENCES:

Criminal Justice - Fav/CS

Rules and Calendar

Ways and Means

FINAL BILL VOTE		SENATORS	04/08/97 Amend. #1 Gutman		04/08/97 Amend. #2 Gutman		04/08/97 Substitute Amend. #2 Gutman		04/08/97 Amend. #3 Gutman		04/08/97 Amend. #4 Gutman		
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	
X		Campbell											
		Crist											
X		Gutman											
X		Kurth											
X		Rossin											
		Scott											
X		Turner											
X		VICE CHAIRMAN Harris											
X		CHAIRMAN Williams											
7	0	TOTAL	FWO	-				FWO	-	FWO	-	FWO	-
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	

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Bill No. CS/SB 716

Amendment No. _____

462720

Senate

CHAMBER ACTION

House

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GOVERNMENTAL REFORM
AND EFFICIENCY

DATE: 4-7-97

TIME: 2:00 P.M.

Senator Gutman moved the following amendment:

Senate Amendment

On page 6, line 29, [†]after the period,

insert: The provisions of chapter 947, relating to parole,
shall not apply to persons sentenced under the Criminal
Punishment Code.

Bill No. CS/SB 716

Amendment No.



260284

CHAMBER ACTION

Senate

House

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GOVERNMENT REFORM

DATE: 4-7-97

TIME: 2:00 P.M.

Senator Gutman moved the following amendment:

Senate Amendment (with title amendment)

On page 98, between lines 17 and 18,

insert:

Section 42. (1) Sentences imposed by trial court judges under the 1994 revised sentencing guidelines on or after January 1, 1994, must be within the 1994 guidelines unless there is a departure sentence with written findings. However, a person sentenced for a felony committed on or after July 1, 1997, who has at least one prior felony conviction and whose maximum recommended sentence under the sentencing scoresheet is less than 22 months may be sentenced to community control or a term of incarceration not to exceed 22 months. As used in this subsection, the term "conviction" means a determination of guilt which is the result of a plea of guilty or nolo contendere or a trial, regardless of whether adjudication is withheld. Such sentence is not subject to appeal.

(2) The Florida Criminal Punishment Code applies to

Bill No. CS/SB 716

Amendment No. _____



260284

1 all felonies, except capital felonies, committed on or after
 2 October 1, 1998. Any revision to the Criminal Punishment Code
 3 applies to sentencing for all felonies, except capital
 4 felonies, committed on or after the effective date of the
 5 revision. Felonies, except capital felonies, with continuing
 6 dates of enterprise shall be sentenced under the Criminal
 7 Punishment Code in effect on the beginning date of the
 8 criminal activity.

9
10 (Renumber subsequent section.)

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13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:

15 On page 5, lines 11-13, delete those lines

16
17 and insert:

18 specified date whose maximum recommended
 19 sentence under the guidelines is less than 22
 20 months is eligible for incarceration up to a
 21 specified period; providing that capital
 22 felonies are excluded from the punishment code;
 23 providing clarification for application of
 24 future code revisions;

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Bill No. CS/SB 716

Amendment No. _____



CHAMBER ACTION

Senate

House

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Senator Gutman moved the following amendment:

Senate Amendment (with title amendment)

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Section 42. ~~(1) Sentences imposed by trial court~~
judges under the 1994 revised sentencing guidelines on or
after January 1, 1994, must be within the 1994 guidelines
unless there is a departure sentence with written findings.
However, a person sentenced for a felony committed on or after
July 1, 1997, who has at least one prior felony conviction and
whose maximum recommended sentence under the sentencing
scoresheet is less than 22 months may be sentenced to
community control or a term of incarceration not to exceed 22
months. As used in this subsection, the term "conviction"
means a determination of guilt which is the result of a plea
of guilty or nolo contendere or a trial, regardless of whether
adjudication is withheld. Such sentence is not subject to
appeal.

~~(2)~~ The Florida Criminal Punishment Code applies to

Bill No. CS/SB 716

Amendment No. _____



260284

1 all felonies, except capital felonies, committed on or after
 2 October 1, 1998. Any revision to the Criminal Punishment Code
 3 applies to sentencing for all felonies, except capital
 4 felonies, committed on or after the effective date of the
 5 revision. Felonies, except capital felonies, with continuing
 6 dates of enterprise shall be sentenced under the Criminal
 7 Punishment Code in effect on the beginning date of the
 8 criminal activity.

9
10 (Renumber subsequent section.)

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13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:

15 On page 5, lines 11-13, delete those lines

16
17 and insert:

18 ~~specified date whose maximum recommended~~
 19 sentence under the guidelines is less than 22
 20 months is eligible for incarceration up to a
 21 ~~specified period,~~ providing that capital
 22 felonies are excluded from the punishment code;
 23 providing clarification for application of
 24 future code revisions;

Bill No. CS/SB 716

Amendment No. _____



353932

CHAMBER ACTION

Senate

House

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CLERK OF SENATE

DATE: 4-7-97
TIME: 2:00 P.M.

Senator Gutman moved the following amendment:

Senate Amendment (with title amendment)

On page 98, between lines 17 and 18,

insert:

Section ²4~~3~~. The Division of Statutory Revision of the Joint Legislative Management Committee shall leave the repealed statutory provisions referenced herein in the Florida Statutes for 10 years from October 1, 1998.

(Renumber subsequent section.)

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 5, line 17, after the semicolon

insert:

providing a directive to the Division of Statutory Revision to maintain certain repealed

Bill No. CS/SB 716

Amendment No. _____



353932

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provisions in the Florida Statutes for ten
years;

Bill No. CS/SB 716

Amendment No.



650782

#4

CHAMBER ACTION

Senate

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LEGISLATIVE REPORT
AND COMMITTEE

DATE: 4-7-97
TIME: 2:00 PM

Senator Gutman moved the following amendment:

Senate Amendment

On page 98, line 19, delete that line,

and insert: this act, sections 1 through 36, 42, and 43 of
this act shall take effect

15/36
Bill No. 716

Amendment No. _____

Senate

CHAMBER ACTION

House

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The Committee on Subcom. recommended the following amendment:

Senate Amendment

On page 97, lines 12-13, delete those lines

and insert:

..... has at least one prior felony

..... conviction and whose maximum

..... recommended sentence is under

..... 22 months may be sentenced to

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FLORIDA STATE SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT
DEPARTMENT OF STATE

R. A. GR... (This document is based only on the provisions contained in the legislation as of the latest date listed below.)
Tallahassee, FL

Series 18 Carton 2225

Date: April 3, 1997

Revised: 04/08/97

Subject: Sentencing

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Barrow	Miller	CJ	Favorable/CS
2.	Wilson <i>AW</i>	Wilson <i>AW</i>	GO	Fav/5 amendments
3.			RC	
4.			WM	
5.				

I. Summary:

Effective October 1, 1998, CS/SB 716 would repeal the sentencing guidelines and abolish the Sentencing Commission that oversees the sentencing guidelines.

Effective October 1, 1998, the Florida **Criminal Punishment Code** would be created to establish sentencing criteria for the imposition of criminal penalties in accordance with a sentencing policy that focuses on the punishment of offenders. Sentences would be scored to result in a "permissible sentencing range."

The new Criminal Punishment Code would encompass the current offense ranking chart that is provided under the sentencing guidelines. The same sentence points, point multipliers, victim injury points and other point enhancements that are currently provided under the sentencing guidelines would remain in tact under the Criminal Punishment Code for the purpose of calculating an offender's permissible sentencing range.

An offender's permissible sentencing range would be the result of calculating total sentence points to establish the minimum prison sentence allowable. Judges would be required, at a minimum, to sentence an offender to the length of time determined by the points absent any valid written departure down from the minimum sentence. A judge would be able to sentence an offender up to the statutory maximum allowable prison sentence for the respective level of offense the offender was convicted of pursuant to s. 775.082, F.S.

By removing the three sentencing ranges for determining the type of sentencing, one permissible prison sentence range replaces them. If an offender scores less than or equal to 12 points, the offender scores a non-prison sentence. Sentences above 12 points are deemed to be prison

The 1994 guidelines removed the discretionary provision that would allow judges to impose a prison sentence of up to 22 months if the defendant scored between 40 and 52 points on their scoresheet. Instead of the maximum 22 months option, the 1994 guidelines recommended a non-prison sentence if an offender scored 40 or less points. Judges, however, had the discretion to increase an offender's points by 15% to place him in another sentencing range. See Florida Department of Corrections, *The Impact of the 1994 and 1995 Structured Sentencing Policies in Florida*, p. 7 (prepared for the Florida Sentencing Commission) (March 1997). If an offender's total score points were between 40 and 52, imprisonment was optional. If an offender's total point score exceeded 52 points, a prison sentence is "mandatory."

The 1994 guidelines saw a reorganization of the ranking of offenses from categories to levels with increases in severity for several crimes. There were some reductions in ranking or point assessments as well; drug offenses seemed to lose their priority in severity of sentencing. Courts are allowed to increase or decrease the sentence by 25% unless the total sentence points were increased initially by 15% to obtain an increased point value of over 40 points. *Id.* at 8.

In 1995, the Legislature once again amended the sentencing guidelines in an attempt to "toughen" the recommended sentences through the "Crime Control Act of 1995." Many complaints about the guidelines had continued throughout 1994, particularly about property crimes not being treated seriously enough. See Crime and Delinquency, *Determinate Sentencing and Administrative Discretion Over Time Served in Prison: A Case Study of Florida*, pp. 137-139 (Vol 42, No. 1) (January 1996). It was represented that property offenders scored so low on the guidelines that imprisonment was not attainable without a valid departure in sentence. *Id.* As a result of these and other complaints, the 1995 guidelines were "strengthened" in an attempt to impact the serious and violent offenders through lengthier prison sentences.

The 1995 guidelines increased ranking severity or ranked previously unranked offenses for over 40 crimes. *Id.* Point values were increased in many aspects. For example, the point value for level 7 primary offenses increased from 42 to 56 points. Therefore, all level 7 offenses automatically scored for mandatory prison sentences, whereas before they were scoring in the discretionary range. See Florida Department of Corrections, *The Impact of the 1994 and 1995 Structured Sentencing Policies in Florida*, p. 8 (prepared for the Florida Sentencing Commission) (March 1997). The point value for victim injury points were also enhanced. *Id.* Other factors that experienced increases in point value assessments included additional and prior records, violations of court-ordered supervision, and criminal offenders who showed a recent history of serious felony behavior. *Id.* at 9.

By the beginning of the calendar year in 1995, Florida was able to end the practice of releasing inmates early on control release because prison space was becoming available. At the time the Legislature was amending the guidelines in 1995, the Legislature also passed the "Stop Turning Out Prisoners Act" which requires offenders who committed their crime on or after October 1, 1995, to serve at least 85% of their court-imposed sentence. As a likely result of these changes, prisoners have been serving an increased average portion of their court-imposed sentences.

Convictions for offenses committed by the offender more than 10 years before the primary offense would not be 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, to the date of the primary offense. An offender's prior record subtotal would also include juvenile dispositions for offenses committed by the offender within 3 years before the primary offense.

The statutorily eligible community sanctions for court-imposed sentences would still be probation, community control, or pre-trial intervention or diversion.

A Criminal Punishment Code worksheet, which is also similar to the sentencing guidelines score sheet, is also created and accompanied by a worksheet key to explain how a sentence is calculated. CS/SB 716 would maintain current law which authorizes the state attorney or the Department of Corrections to prepare the worksheet, rather than solely the department which would be the case effective October 1, 1997.

An offender's permissible sentencing range would be the result of calculating total sentence points to establish the minimum prison sentence allowable. Judges would be required, at a minimum, to sentence an offender to the length of time determined by the points absent any valid written departure down from the minimum sentence. A judge would be able to sentence an offender up to the statutory maximum allowable prison sentence for the respective level of offense pursuant to s. 775.082, F.S. Therefore, the statutory maximum sentence for an offense is the "ceiling" for possible a possible sentence to be imposed upon an offender.

The trial judges could depart down from the permissible sentencing range if valid written reasons are provided by the court. CS/SB 716 provides the valid mitigating factors that may be used for a downward departure in sentence. The use of a defendant's substance abuse or addiction would be prohibited from being used as a mitigating factor to depart from the permissible sentencing range. The state could appeal a downward departure sentence. Because the permissible sentencing range is broadened to the statutory maximum, "upward" departures would be eliminated.

By removing the three current sentencing ranges, non-prison, discretionary, and mandatory prison sentence, for determining type of sentencing, one permissible prison sentence range replaces them. If an offender scores less than or equal to 12 points, the offender scores a non-prison sentence. Sentences above 12 points are deemed to be prison sentences for the corresponding length of sentence by points. Non-prison sentence scores could still be subject to a discretionary prison sentence of *up to* 22 months as determined by the sentencing court. A sentence imposed pursuant to the "22 month" sentencing option is expressly not appealable.

The duty of performing an in-depth review of the recommendations of the Sentencing Commission on the need for changes in the sentencing guidelines by the Florida Corrections Commission would be deleted as obsolete language. The requirement that the court shall submit monthly to the Sentencing Commission the written reasons in which the court determined not to

It is possible that there could also be "stalling" on the part of the defendant to dispose of his case if there is not a successful plea bargain offered and accepted and the defendant wishes to take the case to trial. In this scenario, it is likely that the defendant would be in pre-trial detention in a county jail pending trial. If this is a long period of time, counties would be negatively impacted. If cases are successfully plea bargained and moved along more quickly, the opposite effect could occur and the county jails could reduce the amount of time that felony pre-trial detainees remain in the jails.

Provisions of existing s. 921.001(9)(b), F.S., provide that, after January 1, 1994, enactments of the Legislature which create new or enhanced criminal penalties likely to result in new state prison admissions are to take into consideration an assessment of funding sources to support these new initiatives. That provision is repealed in this bill. This is likely to cause a less precise effect in the projection of future prison admissions and prison system populations. As a result of less predictability and imprecision in estimates, it will be more difficult to plan the prison capacity needs of the state to avoid future prison system overcrowding and the problems that arise out of prison overcrowding. The Criminal Justice Estimating Conference [s. 216.136(5), F.S.] would still remain a statutory entity and it could make a policy choice to review individual bill impacts in its discretion.

VI. Technical Deficiencies:

In its repeal of s. 921.001, F.S., the bill eliminates the provision in existing law that Sentencing Guidelines do *not* apply to capital felonies. The result is that capital crimes would be subject to the Criminal Punishment Code but could not fit into the established parameters of the Offense Severity Ranking Chart [Section 5] in its proposed form. This confusion could be eliminated by restating the disclaimer in current law and not creating an additional avenue of appeal for an affected defendant. See *Amendments* section, below, also.

Section 1 of the bill inadvertently provides for the repeal of two sections of bill which it creates [ss. 921.001 and 921.0016]. A corrective amendment is suggested.

VII. Related Issues:

The style and drafting choice, that is, to repeal all of s. 921.001, F.S., rather than to amend, produces a circumstance in which all of the decisional law emanating from the appellate courts since the enactment of Chapter 83-87, Laws of Florida, could be placed in jeopardy. Both the Florida Supreme Court and the Legislature rejected the notion at the inception of Sentencing Guidelines that there be a statutory, or rule-based, enunciation of specific criteria for departures, aggravation, and mitigation. As a result, a common law of sentencing has developed based upon the Guidelines, then in existence in their original form, and now in their amended form. The probability of recreating a new corpus of decisional law and its attendant new appellate workload over an extended development period precipitated by this repeal should be considered. An alternative choice could be the addition of a new section providing a statement of legislative

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

R. A. GRAY BUILDING (This document is based only on the provisions contained in the legislation as of the latest date listed below.)
Tallahassee, FL 32399-0250

Series 18 Carton 2213

Date: April 3, 1997

Revised: 04/08/97

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>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/5 amendments</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u>Withdrawn</u>
4.	<u> </u>	<u> </u>	<u>WM</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

Effective October 1, 1998, CS/SB 716 would repeal the sentencing guidelines and abolish the Sentencing Commission that oversees the sentencing guidelines.

Effective October 1, 1998, the Florida **Criminal Punishment Code** would be created to establish sentencing criteria for the imposition of criminal penalties in accordance with a sentencing policy that focuses on the punishment of offenders. Sentences would be scored to result in a "permissible sentencing range."

The new Criminal Punishment Code would encompass the current offense ranking chart that is provided under the sentencing guidelines. The same sentence points, point multipliers, victim injury points and other point enhancements that are currently provided under the sentencing guidelines would remain in tact under the Criminal Punishment Code for the purpose of calculating an offender's permissible sentencing range.

An offender's permissible sentencing range would be the result of calculating total sentence points to establish the minimum prison sentence allowable. Judges would be required, at a minimum, to sentence an offender to the length of time determined by the points absent any valid written departure down from the minimum sentence. A judge would be able to sentence an offender up to the statutory maximum allowable prison sentence for the respective level of offense the offender was convicted of pursuant to s. 775.082, F.S.

By removing the three sentencing ranges for determining the type of sentencing, one permissible prison sentence range replaces them. If an offender scores less than or equal to 12 points, the offender scores a non-prison sentence. Sentences above 12 points are deemed to be prison

sentences for the corresponding length of sentence by points. Non-prison sentence scores could still be subject to a discretionary prison sentence of up to 22 months as determined by the sentencing court.

This CS substantially creates, amends, or repeals the following sections of the Florida Statutes: 20.315, 39.0581, 397.705, 775.0823, 775.084, 775.0845, 775.087, 777.03, 777.04, 782.051, 784.08, 794.023, 874.04, 893.13, 893.135, 893.15, 893.20, 921.0001, 921.001, 921.0012, 921.0013, 921.0014, 921.0015, 921.0016, 921.0021, 921.0022, 921.0024, 921.0026, 921.005, 921.188, 924.06, 924.07, 944.17, 947.141, 947.146, 947.168, 948.015, 948.034, 948.51, and 958.04.

II. Present Situation:

The Sentencing Commission was created in 1982 to initially develop a statewide system of sentencing guidelines, oversee the sentencing guidelines through continuous evaluation, and provide periodic recommendations for necessary changes to ensure the maintenance the legislative goals of incarcerating violent criminals and non-violent criminals who cannot comply with less restrictive penalties.

The original sentencing guidelines in Florida became effective October 1, 1983. The sentencing guidelines were created to minimize sentencing disparity by providing statewide uniformity in sentencing. This version of the guidelines provided a discretionary option that would allow judges to impose a prison sentence of up to 22 months if the defendant scored between 40 and 52 points on their scoresheet. Below 40 points, non-prison sentences were mandated without a valid departure. Above 52 points, the offender would be given a prison sentence with the length of time dictated by the point score.

The sentencing guidelines have been significantly amended two times effective on January 1, 1994 and on October 1, 1995. Each time there were such significant changes to the guidelines, sentencing scoresheets had to be developed for each version of the guidelines as they were amended. To date, there are three separate scoresheets that must be utilized to sentence defendants. The date the offender committed his crime dictates which sentencing scoresheet must be used. The 1994 and 1995 sentencing guideline structures utilize a point system to calculate the time an offender must serve in the state prison system, if any.

At the time the 1994 guidelines were being amended in a 1993 special session, inmates were serving approximately 33% to 40% of their court-imposed sentence and inmates were being released early on control release. Thus, the 1994 sentencing guidelines explicitly stated that the "primary purpose of sentencing is to punish the offender." The 1994 guidelines were amended by the "Safe Streets Act of 1993" and apply to offenders who committed their crime on or after January 1, 1994, and before October 1, 1995. Certain gain-time provisions were eliminated in conjunction with the guidelines amendments. Simultaneously, the state was aggressively building prison beds.

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The 1994 guidelines saw a reorganization of the ranking of offenses from categories to levels with increases in severity for several crimes. There were some reductions in ranking or point assessments as well; drug offenses seemed to lose their priority in severity of sentencing. Courts are allowed to increase or decrease the sentence by 25% unless the total sentence points were increased initially by 15% to obtain an increased point value of over 40 points. *Id.* at 8.

In 1995, the Legislature once again amended the sentencing guidelines in an attempt to "toughen" the recommended sentences through the "Crime Control Act of 1995." Many complaints about the guidelines had continued throughout 1994, particularly about property crimes not being treated seriously enough. See Crime and Delinquency, *Determinate Sentencing and Administrative Discretion Over Time Served in Prison: A Case Study of Florida*, pp. 137-139 (Vol 42, No. 1) (January 1996). It was represented that property offenders scored so low on the guidelines that imprisonment was not attainable without a valid departure in sentence. *Id.* As a result of these and other complaints, the 1995 guidelines were "strengthened" in an attempt to impact the serious and violent offenders through lengthier prison sentences.

The 1995 guidelines increased ranking severity or ranked previously unranked offenses for over 40 crimes. *Id.* Point values were increased in many aspects. For example, the point value for level 7 primary offenses increased from 42 to 56 points. Therefore, all level 7 offenses automatically scored for mandatory prison sentences, whereas before they were scoring in the discretionary range. See Florida Department of Corrections, *The Impact of the 1994 and 1995 Structured Sentencing Policies in Florida*, p. 8 (prepared for the Florida Sentencing Commission) (March 1997). The point value for victim injury points were also enhanced. *Id.* Other factors that experienced increases in point value assessments included additional and prior records, violations of court-ordered supervision, and criminal offenders who showed a recent history of serious felony behavior. *Id.* at 9.

By the beginning of the calendar year in 1995, Florida was able to end the practice of releasing inmates early on control release because prison space was becoming available. At the time the Legislature was amending the guidelines in 1995, the Legislature also passed the "Stop Turning Out Prisoners Act" which requires offenders who committed their crime on or after October 1, 1995, to serve at least 85% of their court-imposed sentence. As a likely result of these changes, prisoners have been serving an increased average portion of their court-imposed sentences.

Currently, inmates in the state prison system are serving, on average, approximately 65% of their court-imposed sentence.

The Department of Corrections and the Criminal Justice Estimating Conference have been tracking sentencing practices under the 1994 and 1995 guidelines in an effort to provide more effective predictability concerning future prison populations and future prison bed impacts from proposed legislation. The rate of mitigation or "departing down" and the rate of aggravating or "departing up" by courts from sentencing guideline scores have been recently formulated into some surprising figures. The statewide average for aggravating sentences is approximately 1% of cases, whereas, recently, it was found that the mitigation rate, or downward deviation percentages from sentencing guidelines recommended sentences were as follows:

STATEWIDE AVERAGE

1994 Guidelines (Safe Streets Act) - 58% mitigation rate

1995 Guidelines (Crime Control Act) - 63% mitigation rate

DADE COUNTY AVERAGE

1994 Guidelines (Safe Streets Act) - 66% mitigation rate

1995 Guidelines (Crime Control Act) - 85% mitigation rate

III. Effect of Proposed Changes:

CS/SB 716 would repeal the current sentencing guidelines and abolish the Sentencing Commission that oversees the sentencing guidelines effective October 1, 1998.

Simultaneously, effective October 1, 1998, the Florida Criminal Punishment Code would be created to establish definitions, sentencing criteria, and to impose criminal penalties in accordance with a sentencing policy that focuses on the punishment of offenders. The new sentencing policy would focus on incarcerating violent criminal offenders and imposing penalties that are commensurate with the crime committed by the offender.

Sentences under this new code would be scored to result in a "permissible sentencing range." Essentially, the Criminal Punishment Code would operate somewhat like minimum mandatory sentences. However, the sentences would not be as absolute as minimum mandatory sentences because there would be circumstances in which the sentencing court could mitigate a sentence by departing down from a permissible sentencing range if the reasons are valid and memorialized in writing. The range of permissible sentences is broader which would provide more flexibility to the court and to the prosecutor.

The new Criminal Punishment Code would encompass the current offense ranking chart that is provided under the sentencing guidelines. The same sentence points, point multipliers, victim injury points and other point enhancements that are currently provided under the sentencing guidelines would remain in tact under the Criminal Punishment Code for the purpose of calculating an offender's permissible sentencing range.

Convictions for offenses committed by the offender more than 10 years before the primary offense would not be 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, to the date of the primary offense. An offender's prior record subtotal would also include juvenile dispositions for offenses committed by the offender within 3 years before the primary offense.

The statutorily eligible community sanctions for court-imposed sentences would still be probation, community control, or pre-trial intervention or diversion.

A Criminal Punishment Code worksheet, which is also similar to the sentencing guidelines score sheet, is also created and accompanied by a worksheet key to explain how a sentence is calculated. CS/SB 716 would maintain current law which authorizes the state attorney or the Department of Corrections to prepare the worksheet, rather than solely the department which would be the case effective October 1, 1997.

An offender's permissible sentencing range would be the result of calculating total sentence points to establish the minimum prison sentence allowable. Judges would be required, at a minimum, to sentence an offender to the length of time determined by the points absent any valid written departure down from the minimum sentence. A judge would be able to sentence an offender up to the statutory maximum allowable prison sentence for the respective level of offense pursuant to s. 775.082, F.S. Therefore, the statutory maximum sentence for an offense is the "ceiling" for possible a possible sentence to be imposed upon an offender.

The trial judges could depart down from the permissible sentencing range if valid written reasons are provided by the court. CS/SB 716 provides the valid mitigating factors that may be used for a downward departure in sentence. The use of a defendant's substance abuse or addiction would be prohibited from being used as a mitigating factor to depart from the permissible sentencing range. The state could appeal a downward departure sentence. Because the permissible sentencing range is broadened to the statutory maximum, "upward" departures would be eliminated.

By removing the three current sentencing ranges, non-prison, discretionary, and mandatory prison sentence, for determining type of sentencing, one permissible prison sentence range replaces them. If an offender scores less than or equal to 12 points, the offender scores a non-prison sentence. Sentences above 12 points are deemed to be prison sentences for the corresponding length of sentence by points. Non-prison sentence scores could still be subject to a discretionary prison sentence of *up to* 22 months as determined by the sentencing court. A sentence imposed pursuant to the "22 month" sentencing option is expressly not appealable.

The duty of performing an in-depth review of the recommendations of the Sentencing Commission on the need for changes in the sentencing guidelines by the Florida Corrections Commission would be deleted as obsolete language. The requirement that the court shall submit monthly to the Sentencing Commission the written reasons in which the court determined not to

impose a habitual felony offender sanction, or a habitual violent felony offender sanction, or a violent career criminal sanction is deleted as obsolete language with the abolition of the Sentencing Commission.

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:

Indeterminate.

C. Government Sector Impact:

The Criminal Justice Estimating Conference (Impact Conference) has not yet met to form a consensus on the prison bed impact of this CS at the time this analysis was prepared to provide a more specific impact. Therefore, the fiscal impact upon the Department of Corrections is not known.

It is possible that this CS could also have an impact upon the courts as well. The direction of the impact is arguable as well. It is possible that many more defendants may try to plea bargain to get the lowest sentence possible, which would mean less trials, less court time, and the disposal of more criminal cases from the court system possibly resulting in a cost savings. However, the argument can also be made that there could be a negative fiscal impact upon the courts because offenders would be more apt to take their case to trial because they would feel they have nothing to lose if the initial plea bargain was not favorable to the defendant.

It is possible that there could also be "stalling" on the part of the defendant to dispose of his case if there is not a successful plea bargain offered and accepted and the defendant wishes to take the case to trial. In this scenario, it is likely that the defendant would be in pre-trial detention in a county jail pending trial. If this is a long period of time, counties would be negatively impacted. If cases are successfully plea bargained and moved along more quickly, the opposite effect could occur and the county jails could reduce the amount of time that felony pre-trial detainees remain in the jails.

Provisions of existing s. 921.001(9)(b), F.S., provide that, after January 1, 1994, enactments of the Legislature which create new or enhanced criminal penalties likely to result in new state prison admissions are to take into consideration an assessment of funding sources to support these new initiatives. That provision is repealed in this bill. This is likely to cause a less precise effect in the projection of future prison admissions and prison system populations. As a result of less predictability and imprecision in estimates, it will be more difficult to plan the prison capacity needs of the state to avoid future prison system overcrowding and the problems that arise out of prison overcrowding. The Criminal Justice Estimating Conference [s. 216.136(5), F.S.] would still remain a statutory entity and it could make a policy choice to review individual bill impacts in its discretion.

VI. Technical Deficiencies:

In its repeal of s. 921.001, F.S., the bill eliminates the provision in existing law that Sentencing Guidelines do *not* apply to capital felonies. The result is that capital crimes would be subject to the Criminal Punishment Code but could not fit into the established parameters of the Offense Severity Ranking Chart [Section 5] in its proposed form. This confusion could be eliminated by restating the disclaimer in current law and not creating an additional avenue of appeal for an affected defendant. See *Amendments* section, below, also.

Section 1 of the bill inadvertently provides for the repeal of two sections of bill which it creates [ss. 921.001 and 921.0016]. A corrective amendment is suggested.

VII. Related Issues:

The style and drafting choice, that is, to repeal all of s. 921.001, F.S., rather than to amend, produces a circumstance in which all of the decisional law emanating from the appellate courts since the enactment of Chapter 83-87, Laws of Florida, could be placed in jeopardy. Both the Florida Supreme Court and the Legislature rejected the notion at the inception of Sentencing Guidelines that there be a statutory, or rule-based, enunciation of specific criteria for departures, aggravation, and mitigation. As a result, a common law of sentencing has developed based upon the Guidelines, then in existence in their original form, and now in their amended form. The probability of recreating a new corpus of decisional law and its attendant new appellate workload over an extended development period precipitated by this repeal should be considered. An alternative choice could be the addition of a new section providing a statement of legislative

intent that decisional case law in effect on the effective date of the new statute, and not otherwise in conflict with its provisions, shall apply.

VIII. Amendments:

#1 by Governmental Reform and Oversight

Provides that the Criminal Punishment Code shall not make offenders sentenced under it eligible for parole under Chapter 947, Florida Statutes.

#2 by Governmental Reform and Oversight:

Provides that capital felonies are not subject to sentencing under the Criminal Punishment Code.
(WITH TITLE AMENDMENT)

#3 by Governmental Reform and Oversight:

Directs that the Florida Statutes shall continue to reflect both the existing Sentencing Guidelines and the Criminal Punishment Code provisions in its manuscript for ten years. (WITH TITLE AMENDMENT)

#4 by Governmental Reform and Oversight:

Provides a reformatting of effective dates based upon the previous amendments.

5 by Governmental Reform and Oversight:

Prevents the harsher sentencing of an offender who scores less on the Offense Severity Chart than one who scores with a greater presumptive seriousness.

C O P Y

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

reproduced by

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

FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0250

Date: April 1, 1997

Revised: _____

Series 10 Carton 2213

Subject: Sentencing

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Barrow <i>LKB</i>	Miller <i>mm</i>	CJ	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	WM	_____
5.	_____	_____	_____	_____

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The trial judges could depart down from the permissible sentencing range if valid written reasons are provided by the court. CS/SB 716 provides the valid mitigating factors that may be used for a downward departure in sentence. The use of a defendant's substance abuse or addiction would be prohibited from being used as a mitigating factor to depart from the permissible sentencing range. The state could appeal a downward departure sentence. Because the permissible sentencing range is broadened to the statutory maximum, "upward" departures would be eliminated.

By removing the three current sentencing ranges, non-prison, discretionary, and mandatory prison sentence, for determining type of sentencing, one permissible prison sentence range replaces them. If an offender scores less than or equal to 12 points, the offender scores a non-prison sentence. Sentences above 12 points are deemed to be prison sentences for the corresponding length of sentence by points. Non-prison sentence scores could still be subject to a discretionary prison sentence of *up to* 22 months as determined by the sentencing court. A sentence imposed pursuant to the "22 month" sentencing option is expressly not appealable.

The duty of performing an in-depth review of the recommendations of the Sentencing Commission on the need for changes in the sentencing guidelines by the Florida Corrections Commission would be deleted as obsolete language. The requirement that the court shall submit monthly to the Sentencing Commission the written reasons in which the court determined not to impose a habitual felony offender sanction, or a habitual violent felony offender sanction, or a violent career criminal sanction is deleted as obsolete language with the abolition of the Sentencing Commission.

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:

Indeterminate.

C. Government Sector Impact:

The Criminal Justice Estimating Conference (Impact Conference) has not yet met to form a consensus on the prison bed impact of this CS at the time this analysis was prepared to provide a more specific impact. Therefore, the fiscal impact upon the Department of Corrections is not known.

It is possible that this CS could also have an impact upon the courts as well. The direction of the impact is arguable as well. It is possible that many more defendants may try to plea bargain to get the lowest sentence possible, which would mean less trials, less court time, and the disposal of more criminal cases from the court system possibly resulting in a cost savings. However, the argument can also be made that there could be a negative fiscal

impact upon the courts because offenders would be more apt to take their case to trial because they would feel they have nothing to lose if the initial plea bargain was not favorable to the defendant.

It is possible that there could also be "stalling" on the part of the defendant to dispose of his case if there is not a successful plea bargain offered and accepted and the defendant wishes to take the case to trial. In this scenario, it is likely that the defendant would be in pre-trial detention in a county jail pending trial. If this is a long period of time, counties would be negatively impacted. If cases are successfully plea bargained and moved along more quickly, the opposite effect could occur and the county jails could reduce the amount of time that felony pre-trial detainees remain in the jails.

Another impact that can be identified is that a mechanism by which the Criminal Justice Estimating Conference can use to provide some predictability in sentencing, such as the sentencing guidelines, would be removed. This is likely to cause a less precise effect in projecting future prison admissions and prison system populations. As a result of less predictability and imprecision in estimates, it will be more difficult to plan the prison capacity needs of the state to avoid future prison system overcrowding and the problems that arise out of prison overcrowding.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 716

1. Repeals all statutory provisions relating to the sentencing guidelines effective October 1, 1998.
2. Creates the Florida Criminal Punishment Code to apply to any felony committed on or after October 1, 1998.
3. Establishes sentencing criteria to provide for the imposition of criminal penalties that primarily focus on punishing criminals.
4. Creates permissible sentencing ranges whereby the sentencing score establishes the minimum prison sentence an offender may receive, if the offender's score is over 12 points, with the maximum sentence that may be imposed being the statutory maximum allowable sentence under s. 775.082, F.S.
5. Eliminates "upward" departures by expanding the "ceiling" on possible prison sentences to maximum allowable sentences under s. 775.082, F.S.
6. Authorizes trial judges to depart down from the minimum sentence score with valid written departure reasons, but the state may appeal a downward departure sentence.
7. Retains the manner in which sentencing scores are calculated by maintaining the offense severity ranking chart and assessing the same sentence points, victim injury and other enhancement points, and sentence multipliers.
8. Creates a Criminal Punishment Code worksheet to compute the subtotal and total sentence points accompanied by a worksheet key explaining how a sentence is calculated.
9. Authorizes the state attorney or the Department of Corrections to prepare the sentencing scoresheet.
10. Authorizes trial court judges to impose a term of incarceration of up to 22 months upon offenders who are sentenced for a felony committed on or after July 1, 1997, and have at least one prior felony conviction and score a non-prison sentence.
11. Provides essentially the same mitigating factors as the current sentencing guidelines as valid reasons for downward departures from permissible sentencing ranges.

12. Prohibits the use of a defendant's substance abuse or addiction as a mitigating factor to depart from the permissible sentencing range.

Committee on Criminal Justice

Staff Director E. A. Miller

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FLORIDA STATE ARCHIVES SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT
DEPARTMENT OF STATE

R. A. GRAY BUILDING
Tallahassee, FL 32399-0250 (This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Series 18 Carton 2213

Date: March 25, 1997

Revised: _____

Subject: Sentencing

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Barrow <i>WKB</i></u>	<u>Miller <i>elm</i></u>	<u>CJ</u>	<u>_____</u>
2.	<u>_____</u>	<u>_____</u>	<u>GO</u>	<u>_____</u>
3.	<u>_____</u>	<u>_____</u>	<u>RC</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

I. Summary:

Effective October 1, 1998, SB 716 would repeal §§ 921.001 and 921.005, F.S., which would:

- ▶ abolish the Sentencing Commission that oversees the sentencing guidelines, the effects of the guidelines on the criminal offender population, and, in conjunction with the Department of Corrections, the effects of the guidelines on the rates of incarceration and the prison population;
- ▶ remove the mandate that all felonies, other than capital felonies, committed on or after October 1, 1983, be sentenced pursuant to the sentencing guidelines;
- ▶ remove statutory references as to the means in which an offender who is convicted and sentenced under the guidelines may be released from incarceration; and
- ▶ remove the criteria for sentencing offenders whose crimes were committed before the effective date of the 1983 sentencing guidelines.

SB 716 would create the Sentencing Reform Commission which would consist of 12 members comprising of the enumerated representatives. On or before January 1, 1998, the Sentencing Reform Commission would be required to recommend to the Legislature a statewide sentencing policy and structure.

The bill would be effective upon becoming law.

This bill substantially creates or repeals the following sections of the Florida Statutes: 921.001; 921.005; and an unnumbered section.

II. Present Situation:

The Sentencing Commission was created in 1982 to initially develop a statewide system of sentencing guidelines, oversee the sentencing guidelines through continuous evaluation, and provide periodic recommendations for necessary changes to ensure the maintenance the legislative goals of incarcerating violent criminals and non-violent criminals who cannot comply with less restrictive penalties.

The original sentencing guidelines in Florida became effective October 1, 1983. The sentencing guidelines were created to minimize sentencing disparity by providing statewide uniformity in sentencing. This version of the guidelines provided a discretionary option that would allow judges to impose a prison sentence of up to 22 months if the defendant scored between 40 and 52 points on their scoresheet. Below 40 points, non-prison sentences were mandated without a valid departure. Above 52 points, the offender would be given a prison sentence with the length of time dictated by the point score.

The sentencing guidelines have been significantly amended two times effective on January 1, 1994 and on October 1, 1995. Each time there were such significant changes to the guidelines, sentencing scoresheets had to be developed for each version of the guidelines as they were amended. To date, there are three separate scoresheets that must be utilized to sentence defendants. The date the offender committed his crime dictates which sentencing scoresheet must be used. The 1994 and 1995 sentencing guideline structures utilize a point system to calculate the time an offender must serve in the state prison system, if any.

At the time the 1994 guidelines were being amended in a 1993 special session, inmates were serving approximately 33% to 40% of their court-imposed sentence and inmates were being released early on control release. Thus, the 1994 sentencing guidelines explicitly stated that the "primary purpose of sentencing is to punish the offender." The 1994 guidelines were amended by the "Safe Streets Act of 1993" and apply to offenders who committed their crime on or after January 1, 1994, and before October 1, 1995. Certain gain-time provisions were eliminated in conjunction with the guidelines amendments. Simultaneously, the state was aggressively building prison beds.

The 1994 guidelines removed the discretionary provision that would allow judges to impose a prison sentence of up to 22 months if the defendant scored between 40 and 52 points on their scoresheet. Instead of the maximum 22 months option, the 1994 guidelines recommended a non-prison sentence if an offender scored 40 or less points. Judges, however, had the discretion to increase an offender's points by 15% to place him in another sentencing range. See Florida Department of Corrections, *The Impact of the 1994 and 1995 Structured Sentencing Policies in Florida*, p. 7 (prepared for the Florida Sentencing Commission) (March 1997). If an offender's

total score points were between 40 and 52, imprisonment was optional. If an offender's total point score exceeded 52 points, a prison sentence is "mandatory."

The 1994 guidelines saw a reorganization of the ranking of offenses from categories to levels with increases in severity for several crimes. There were some reductions in ranking or point assessments as well; drug offenses seemed to lose their priority in severity of sentencing. Courts are allowed to increase or decrease the sentence by 25% unless the total sentence points were increased initially by 15% to obtain an increased point value of over 40 points. *Id.* at 8.

In 1995, the Legislature once again amended the sentencing guidelines in an attempt to "toughen" the recommended sentences through the "Crime Control Act of 1995." Many complaints about the guidelines had continued throughout 1994, particularly about property crimes not being treated seriously enough. *See Crime and Delinquency, Determinate Sentencing and Administrative Discretion Over Time Served in Prison: A Case Study of Florida*, pp. 137-139 (Vol 42, No. 1) (January 1996). It was represented that property offenders scored so low on the guidelines that imprisonment was not attainable without a valid departure in sentence. *Id.* As a result of these and other complaints, the 1995 guidelines were "strengthened" in an attempt to impact the serious and violent offenders through lengthier prison sentences.

The 1995 guidelines increased ranking severity or ranked previously unranked offenses for over 40 crimes. *Id.* Point values were increased in many aspects. For example, the point value for level 7 primary offenses increased from 42 to 56 points. Therefore, all level 7 offenses automatically scored for mandatory prison sentences, whereas before they were scoring in the discretionary range. *See Florida Department of Corrections, The Impact of the 1994 and 1995 Structured Sentencing Policies in Florida*, p. 8 (prepared for the Florida Sentencing Commission) (March 1997). The point value for victim injury points were also enhanced. *Id.* Other factors that experienced increases in point value assessments included additional and prior records, violations of court-ordered supervision, and criminal offenders who showed a recent history of serious felony behavior. *Id.* at 9.

By the beginning of the calendar year in 1995, Florida was able to end the practice of releasing inmates early on control release because prison space was becoming available. At the time the Legislature was amending the guidelines in 1995, the Legislature also passed the "Stop Turning Out Prisoners Act" which requires offenders who committed their crime on or after October 1, 1995, to serve at least 85% of their court-imposed sentence. As a likely result of these changes, prisoners have been serving an increased average portion of their court-imposed sentences. Currently, inmates in the state prison system are serving, on average, approximately 65% of their court-imposed sentence.

The Department of Corrections and the Criminal Justice Estimating Conference have been tracking sentencing practices under the 1994 and 1995 guidelines in an effort to provide more effective predictability concerning future prison populations and future prison bed impacts from proposed legislation. The rate of mitigation or "departing down" and the rate of aggravating or "departing up" by courts from sentencing guideline scores have been recently formulated into

some surprising figures. The statewide average for aggravating sentences is approximately 1% of cases, whereas, recently, it was found that the mitigation rate, or downward deviation percentages from sentencing guidelines recommended sentences were are follows:

Statewide Average

1994 Guidelines (Safe Streets Act) - **58%** mitigation rate

1995 Guidelines (Crime Control Act) - **63%** mitigation rate

Dade County Average

1994 Guidelines (Safe Streets Act) - **66%** mitigation rate

1995 Guidelines (Crime Control Act) - **85%** mitigation rate

III. Effect of Proposed Changes:

SB 716 would repeal § 921.001, F.S., relating to the sentencing guidelines and the Sentencing Commission. It would abolish the Sentencing Commission that oversees the sentencing guidelines, the effects of the guidelines on the criminal offender population, and, in conjunction with the Department of Corrections, the effects of the guidelines on the rates of incarceration and the prison population.

The bill would also remove the mandate that all felonies, other than capital felonies, committed on or after October 1, 1983, be sentenced pursuant to the sentencing guidelines. Abolishing this mandate would leave the courts open to sentence offenders as otherwise provided by law. Offenders who committed their crime before the effective date of SB 716, which would be when the bill would become law, would still have the choice to be sentenced under the time-appropriate version of the sentencing guidelines or be sentenced otherwise as provided by law. If such an offender chooses not to be sentenced under the guidelines, he could be sentenced pursuant to the discretion of the judge. The discretion of the judge would be legally guided by statutory maximum allowable sentences and fines under Chapter 775, F.S., or where otherwise provided, and statutory minimum mandatory sentences that may apply to the offense or the offender.

SB 716 would remove the statutory references in § 921.001 (10), F.S., regarding the ways in which an offender who was previously convicted and sentenced under the guidelines may be released from incarceration. Section 921.005, F.S., would also be deleted to remove the criteria for sentencing offenders whose crimes were committed before the effective date of the 1983 sentencing guidelines.

SB 716 would create the Sentencing Reform Commission which would consist of 12 members. The membership of the Sentencing Reform Commission would consist of the following:

- ▶ The president or chairperson of the Florida Public Defenders Association or designee;

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- ▶ The president or chairperson of the Florida Prosecuting Attorneys Association or designee;
 - ▶ The president or chairperson of the Conference of Circuit Judges of Florida or designee;
 - ▶ The president or chairperson of the Florida Sheriffs Association or designee;
 - ▶ A representative of a victim's advocacy group, appointed by the Sentencing Reform Commission at its first meeting;
 - ▶ The president or chairperson of the Florida Police Chiefs Association or designee;
 - ▶ Two members appointed by the Governor;
 - ▶ Two members appointed by the President of the Senate; and
 - ▶ Two members appointed by the Speaker of the House of Representatives.

The members of the Commission would not be compensated for their service on the Sentencing Reform Commission. However, the members would be entitled to reimbursement for travel and per diem expenses incurred directly related to their duties and service on the Commission as provided in §112.061, F.S.

The Commission would be required to hold its first meeting no later than 30 days after the effective date of SB 716 where the Commission would elect a chairperson. The Commission members would choose the location of its first meeting. The chairperson would be authorized to convene meetings at times and in-state locations that are convenient to the members. The Commission would be required to meet at least on a quarterly basis, but may meet more often if necessary. Staff of the Senate Committee on Criminal Justice and the Justice Council of the House of Representatives would be required to "assist" the Commission.

On or before January 1, 1998, the Sentencing Reform Commission would be required to recommend to the Legislature a statewide sentencing policy and structure. It appears that the Commission may recommend whatever it wants to recommend, including re-enacting sentencing guidelines if it determined it was appropriate to make such a recommendation. The recommendations of the Sentencing Reform Commission would not be binding upon the Legislature or the state in any way.

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:

Indeterminate.

C. Government Sector Impact:

It is anticipated that the repeal of the sentencing guidelines will have an impact upon the state prison system. What type of impact the repeal will have is the subject of controversy and disagreement. It has been argued that if the sentencing guidelines were repealed, prison sentences would be harsher. The people who have argued for the repeal of the guidelines believe that the guidelines force judges to impose sentences that are more lenient and shorter in length than if the judges were allowed to use their own discretion to sentence offenders. Which means that if this argument is true, the repeal of the guidelines would see massive admissions into the prison system and longer sentences. Other people, however, have argued that the sentencing guidelines force judges to impose sentences that are harsher than if the judges were left to their own discretion to sentence offenders. The people that are against repealing the guidelines use the statewide mitigation rates to support their argument. These people state that, by using the mitigation rates as evidence, if the sentencing guidelines were repealed, fewer offenders would be sentenced to prison and for those offenders sentenced to prison, the length of prison sentences would be shorter than under the sentencing guidelines.

Another impact that can be identified is that a mechanism by which the Criminal Justice Estimating Conference can use to provide some predictability in sentencing, such as the

sentencing guidelines, would be removed. This is likely to cause a less precise effect in projecting future prison admissions and prison system populations. As a result of less predictability and imprecision in estimates, it will be more difficult to plan the prison capacity needs of the state to avoid future prison system overcrowding and the problems that arise out of prison overcrowding.

Local governments may be negatively impacted by a possible increase in county jail sentences for felony offenders as compared to state prison sentences that would be otherwise mandated by the sentencing guidelines. In light of the fact that judges are mitigating sentencing guidelines sentences in approximately 60% of cases, this result is not entirely unlikely. The extent of the impact is indeterminate.

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.

Bill No. SB 716

Amendment No. _____



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CHAMBER ACTION

Senate

House

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Senator Horne moved the following amendment:

Senate Amendment

On page 1, line 21, and on page 3, line 1, delete 1998

and insert: 2000

Bill No. SB 716

Amendment No. _____



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CHAMBER ACTION

Senate

House

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Senator Horne moved the following amendment:

Senate Amendment

On page 2, lines 11-14, delete those lines

and insert:

(h) Two members appointed by the President of the Senate from the membership of the Senate. One member shall be a member of the majority party and one member shall be a member of the minority party.

(i) Two members appointed by the Speaker of the House of Representatives from the membership of the House. One member shall be a member of the majority party and one member shall be a member of the minority party.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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Revised: _____

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- ▶ Two members appointed by the Governor;
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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:

Indeterminate.

C. Government Sector Impact:

It is anticipated that the repeal of the sentencing guidelines will have an impact upon the state prison system. What type of impact the repeal will have is the subject of controversy and disagreement. It has been argued that if the sentencing guidelines were repealed, prison sentences would be harsher. The people who have argued for the repeal of the guidelines believe that the guidelines force judges to impose sentences that are more lenient and shorter in length than if the judges were allowed to use their own discretion to sentence offenders. Which means that if this argument is true, the repeal of the guidelines would see massive admissions into the prison system and longer sentences. Other people, however, have argued that the sentencing guidelines force judges to impose sentences that are harsher than if the judges were left to their own discretion to sentence offenders. The people that are against repealing the guidelines use the statewide mitigation rates to support their argument. These people state that, by using the mitigation rates as evidence, if the sentencing guidelines were repealed, fewer offenders would be sentenced to prison and for those offenders sentenced to prison, the length of prison sentences would be shorter than under the sentencing guidelines.

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sentencing guidelines sentences in approximately 60% of cases, this result is not entirely unlikely. The extent of the impact is indeterminate.

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.
