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

BILL #: CS/HB 241

RELATING TO: Sentencing

SPONSOR(S): Crime and Punishment Committee and Representative Valdes

STATUTE(S) AFFECTED: Sections 921.001 through Sections 921.016, F.S.

COMPANION BILL(S): SB 716(s)

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

(1) CRIME AND PUNISHMENT YEAS 8 NAYS 1
(2) CRIMINAL JUSTICE APPROPRIATIONS
(3)
(4)
(5)

I. SUMMARY:

This bill repeals the sentencing guidelines effective October 1, 1998. After that date, a judge will be able to impose any sentence within the statutory maximum, unless otherwise prohibited by a a statute requiring a mandatory minimum prison term for certain offenses. The statutory maximum for a third degree felony is 5 years in prison or any combination of prison and probation which does not exceed 5 years. The statutory maximum for a second degree felony is 15 years and the statutory maximum for a first degree felony is 30 years.

It is not possible to predict what effect the repeal of the guidelines will have on the prison population. The current high rates of downward departure suggest that there is already considerable flexibility to disregard the sentencing guidelines.

This bill abolishes the present Sentencing Commission and replaces it with the Sentencing Reform Commission on the date that this bill becomes law. On or before January 1, 1998, the new commission will be required to provide the Legislature with the recommendations for a sentencing policy and structure for the State.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Sentencing Guidelines

The Sentencing Guidelines as enacted on January 1, 1994, and revised on October 1, 1995, divide most felony crimes into 10 levels of rising degrees of severity. The points assigned to an offense within a particular level vary depending on whether the offense is the primary offense charged, an accompanying offense, or is part of a defendant's criminal record. When all the points are added up, the preparer of the score sheet is to subtract the total by 28 to get the number of months which become the middle of the guidelines. Any sentence 25% above or below the middle of the guidelines is still "within the guidelines" and is not considered a departure sentence. If the bottom of the guidelines is less than 12 months then the court may also give any nonstate prison sanction including a term in the county jail. The guidelines also assign additional points for such aggravating factors as victim injury, sexual penetration, violations of probation, and whether a firearm was used in the commission of a felony.

The Department of Corrections has just completed a study which analyzed whether implementation of the 1994 and 1995 guidelines met the goals set forth in section 921.001. Some of the conclusions are listed below:

Goal: Use of incarcerative sanctions is prioritized toward offenders convicted of serious offenses and certain offenders who have long prior records, in order to maximize the finite capacities of state and local correctional facilities. Section 921.001(4)(a)(7), F.S.

According to the Department of Corrections, serious offenders represent a 14% larger proportion of state prison admissions in FY 1995-96 than in FY 1992-93.
Caveat: The relative increase in the admissions of violent offenders is consistent with a trend that began in 1990.

Goal: Sentencing is neutral with respect to race, gender, and social and economic status.
Section 921.001(4)(a)(1), F.S.

The study found that race has no meaningful affect on the sentencing decisions made by the courts under the 1994 and 1995 guidelines. The 5 most important factors for determining the length of a sentence were found to be: 1. the seriousness of current crime; 2. whether there was victim injury; 3. whether there was a plea or trial disposition; 4. whether the current crime is punishable by life;
5. seriousness of prior record. Factors such as whether an offender is supporting a family or has had steady employment were not considered by this study.

According to a 1979 study of 1,000 felony cases by the Sentencing Study Commission, after holding legally relevant factors constant, non-white offenders were more likely to receive a jail or prison sentence than white offenders. Florida first adopted a version of sentencing guidelines in 1983.

Goal: The penalty imposed is commensurate with the severity of the primary offense and the penalty increases with the length and nature of the offender's prior record F.S. 921.001(4)(a).

The 1979 study found that as the severity of the primary offense increases, the proportion of offenders sentenced to state prison increases, and the length of the prison sentence increases. As the number of prior felony convictions increases, the percentage of offenders sentenced to state prison increases. No comparison was made to previous years.

Departure Sentences

Section 921.0016, F.S., allows a court to impose a sentence above or below the guidelines if a court finds that a particular aggravating or mitigating circumstance exist. Grounds for departure are listed in Section 921.0016, F.S., however, the reasons for departure listed by statute are **not** exclusive. Examples of aggravating circumstances include: the departure results from a plea bargain; the offense was one of violence and was committed in a manner that was especially heinous, atrocious, or cruel; the offense was motivated by prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, or national origin of the victim; the defendant is not amenable to rehabilitation as evidenced by an escalating pattern of criminal conduct. Examples of mitigating circumstances include: departure results from a plea bargain; the capacity of the defendant to appreciate the criminal nature of the conduct, and was substantially impaired; the defendant requires specialized treatment for addiction and is amenable to treatment; the defendant is to be sentenced as a youthful offender; the need to repay restitution outweighs the need for a prison sentence.

In practice, for all defendants who score prison, sentences below the guidelines occur more often than sentences within the guideline range. According to the Department of Corrections, 62% of all defendants who score prison time receive sentences below the bottom of the guidelines. These figures vary region to region from 85% downward departure in Miami to 30% in Key West. New information from the Department indicates that the 1995 guidelines appear to be mitigated at a rate of 38% higher than the 1994 guidelines. In contrast, 1.1% of defendants are sentenced to prison when the guidelines score does not call for state prison. However, the 1.1% figure does not take into account habitual offender sentences and mandatory minimum sentences which provide some flexibility for upward departure.

Habitual Offender and Mandatory Minimum Sentences

Over 12% of inmates are sentenced as habitual offenders or receive mandatory minimum sentences that usually exceed the guideline range. An example of an often used minimum mandatory is 775.087, F.S., which requires the imposition of a minimum three year sentence if a person carries a firearm during the commission of certain crimes such as robbery, aggravated assault, aggravated battery, and burglary.

A person may be sentenced as a habitual offender if the following criteria are met:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.

2. The felony for which the defendant is to be sentenced was committed within 5 years of the defendant's last felony, or within 5 years of the defendant's release from prison or parole.

3. The felony for which the defendant is to be sentenced, and one of the two prior felony convictions is not for possession of a controlled substance.

Reasons for High Frequency of Downward Departure Sentences

There are a number of possible reasons why so many defendants are receiving sentences below the guidelines. One reason could be that judges and prosecutors are making low plea offers to resolve heavy caseloads. Indeed, some of the most populous areas such as Miami and West Palm Beach have the highest rate of downward departure sentences, however, other large metropolitan areas including Jacksonville, Orlando and Tampa have departure rates slightly below the state average.

Another explanation could be that most defendants qualify for at least one of the mitigating circumstances for downward departure. Many defendants have addiction problems, many are youthful offenders and many owe substantial restitution. On the other hand, fewer defendants qualify for upward departure. A large proportion of crimes fit into three categories for which aggravating circumstances generally do not apply: 1. crimes against property; 2. possession or sale of controlled substances; 3. domestic related offenses. Judges may also be more reluctant to impose an upward departure than a downward departure because prosecutors do not often appeal a court's decision, but defendants regularly appeal their sentences. Furthermore, many of the defendants who qualify for upward departure are being sentenced as habitual offenders.

Ninety-eight percent of cases that result in the imposition of a sentence are resolved by a plea either "straight up" to the court, or as is most often the case, by plea agreement with the prosecutor. Because of the nature of plea negotiations, sentences below the guideline range will often outnumber sentences above the guideline range. The starting point for most plea negotiations is the guideline range, and a common sense understanding of what a fair sentence would be. From that starting point there are two considerations that lower plea offers, and which play a part in almost every plea negotiation. First is the likelihood that a defendant will be found guilty after trial. There is always a chance that the prosecution will lose; witnesses may fail to show up for trial, a mistake could be made at trial, etc. Second, courts would be overwhelmed if more than a small percentage of cases go to a jury trial every year, therefore, a plea offer usually includes an incentive for the defendant not to go to trial. There are also a myriad of other factors which may be critically important in deciding whether the offer should go up or down, including: whether the defendant is a habitual offender, whether the victim is

interested in the outcome, whether any of the aggravating or mitigation circumstances mentioned above exist, the relative experience of the attorneys, whether the defendant is supporting a family, caring for a parent, has steady employment, or is studying for a college degree, etc. Because of all the variables involved in every plea negotiation and every sentence, it is difficult to make conclusions as to why departure sentences are imposed.

The mitigation rates are very high if only the population that scores "mandatory prison" is considered. The total downward departure rate for all cases is low because most defendants do not score prison "mandatory" prison, and no departure from the guidelines is needed to impose probation or county jail time. By statute, all sentences of incarceration for less than 1 year must be served in a county jail, and sentences of more than 1 year must be served in a state prison.

The Sentencing Commission

Chapter 921, Florida Statutes, establishes the sentencing guidelines that are presently used as well as the Sentencing Commission whose duties are evaluating the guidelines and recommending on a continuing basis changes necessary to ensure incarceration of violent offenders and repeat nonviolent offenders who demonstrate an inability to comply with less restrictive penalties. The membership of the Sentencing Commission is composed of the following:

1. Two members of the Senate appointed by the President of the Senate.

2. Two members of the House of Representatives appointed by the Speaker of the House of Representatives.

3. The Chief Justice of the Supreme Court or a member of the Supreme Court designated by the Chief Justice.

4. Three circuit court judges.

5. One county court judge.

6. One representative of the victim advocacy profession, appointed by the Chief Justice of the Supreme Court.

7. The Attorney General or a designee.

8. The Secretary of the Department of Corrections or a designee.

Statistics on Present Situation.

The Department of Corrections calculates the probability of a prison sentence in the following manner:

- Of all felony offenses known to police, about **20%** result in an arrest.

- Of those arrested, about **two-thirds** result in a conviction.

- Of those convicted, about **20%** result in incarceration in state prison. (**55%** of all sentence felons do not score prison.)

- Therefore, a typical arrest produces a probability of **1 in 40** of state prison.

Despite the 1 in 40 odds, Florida's incarceration rate per 100,000 in 1995 ranked tenth in the nation. Florida's prison population has increased every year since 1988 when there were 33,681 inmates. In November of 1996 there were 64,531 inmates which left a **surplus** of 5,000 empty beds. The Department of Corrections estimates that they will have no further capacity to hold a larger number of inmates by the end of 1998.

On June 30, 1986, the racial and gender make up of the state prison population was as follows: 47.8% white; 49.9 % black; and 2.1% latin; 4.6% female and 95.4% male.

On June 30, 1996, the racial and gender make up of the state prison population was as follows: 42% white; 56.1% black; 1.5% latin; .4% other; 5.4% female; 94.6% male.

B. EFFECT OF PROPOSED CHANGES:

This bill repeals the guidelines effective October 1, 1998. After that date a judge will be able to impose any sentence within the statutory maximum, unless otherwise prohibited by mandatory minimum sentences required for certain offenses. The statutory maximum for a third degree felony is 5 years in prison or any combination of prison and probation which does not exceed 5 years. The statutory maximum for a second degree felony is 15 years and the statutory maximum for a first degree felony is 30 years.

One crime that is likely to be penalized more seriously if the guidelines are repealed is possession and sale of cocaine. Drug offenses are often relatively easy to prove because drug offenders are usually caught in the commission of a crime by police officers. However, the present guidelines give a judge discretion to sentence a person for up to 16 months in prison only after the seventh conviction for possession of cocaine, or fifth conviction for sale of cocaine (assuming no other offenses). While drug admissions as a percent of total admissions to state prison have steadily declined since 1991, the 1994 guidelines intentionally gave less weight to the scoring of felony drug offenses. Therefore, it is probable that this bill would increase prison admissions for felony drug offenses.

<u>The Sentencing Reform Commission</u>

This bill abolishes the present Sentencing Commission and replaces it with the Sentencing Reform Commission on the date that this bill becomes law. On or before January 1, 1998, the new commission would be required to provide the Legislature with the recommendations for a sentencing policy and structure for the State. The members of the Sentencing Reform Commission would be as follows:

1. The president of the Public Defenders Association, or a designee.

2. The president of the Florida Prosecution Attorneys Association, or a designee.
3. The chair of the Conference of Circuit Judges of Florida, or a designee.
4. The president of the Florida Sheriffs Association, or a designee.
5. The executive director of the Florida Police Chiefs Association, or a designee.
6. One representative of a victim advocacy group, appointed by the commission at its first meeting.
7. Two members of the House of Representatives appointed by the Speaker of the House of Representatives
8. Two members of the Senate appointed by the President of the Senate.
9. One member appointed by the Governor.
10. The Commissioner of the Florida Department of Law Enforcement or the Commissioner's designee.
11. The Attorney General or a designee.

No current member of the Sentencing Commission may be appointed to the new commission

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

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

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

The bill increases a judge's discretion over criminal sentences imposed.

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

The bill replaces the Sentencing Commission with the Sentencing Reform Commission. The new commission's responsibilities, obligations and work is no greater than the committee that would be replaced.

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

No.

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

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

The new commission's only obligation will be to recommend a sentencing policy and structure by January 1, 1998.

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

The Sentencing Reform Commission would cost no more than the Sentencing Commission that is being replaced.

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

Not Applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

Not Applicable.

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

Not Applicable.

4. Individual Freedom:

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

      The bill would give more importance to judicial elections. Voters in a community could elect judges who represent the values of the community.

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

      Not applicable.

5. Family Empowerment:

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

      (1) Who evaluates the family's needs?

          Not Applicable.

      (2) Who makes the decisions?

          Not Applicable.

      (3) Are private alternatives permitted?

          Not Applicable.

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

          Not Applicable.

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

          Not Applicable.

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

      Not Applicable.

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

(1) parents and guardians?

Not Applicable.

(2) service providers?

Not Applicable.

(3) government employees/agencies?

Not Applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: The bill repeals section 921.001, F.S., except s. 921.001(4)(b) and 921.001(10) are not repealed. Section 1 also provides for the repeal the Sentencing Commission and language setting forth the Commissions obligations; the principles of the guidelines, and provisions under which departure sentences are allowed and reviewed.

Section 2: repeals section 921.0011, F.S., through and including section 921.0016, F.S., effective October 1, 1998. These sections relate to the substance or the actual mechanics of the sentencing guidelines. Section 921.0011, F.S., lists definitions relevant to the guidelines. Section 921.0012, F.S., is the offense severity ranking chart which assigns crimes to the various levels. Section 921.0015, F.S., adopts the score sheet for the guidelines promulgated by the Supreme Court. Section 921.0016, F.S., lists the circumstances for which a departure sentence is permitted, however, the court is expressly not limited to these circumstances.

Section 3: The bill amends section 921.001(4)(b), F.S., to allow current law regarding the guidelines to be in effect for all offenses committed before October 1, 1998.

Section 4: creates the Sentencing Reform Commission on the date that this bill becomes law. On or before January 1, 1998, the new commission will be required to provide the Legislature with the recommendations for a sentencing policy and structure for the State.

Section 5: provides the effective date of the bill.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments

2. Recurring Effects:

   See Fiscal Comments

3. Long Run Effects Other Than Normal Growth:

   See Fiscal Comments.

4. Total Revenues and Expenditures:

   See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   See Fiscal Comments

2. Recurring Effects:

   See Fiscal Comments

3. Long Run Effects Other Than Normal Growth:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   See Fiscal Comments.

2. Direct Private Sector Benefits:

   See Fiscal Comments.

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

   See Fiscal Comments.

D. FISCAL COMMENTS:

The Department of Corrections can not calculate the impact of repealing the guidelines. The Criminal Justice Estimating Conference considers the impact indeterminate. It is probable that more drug offenders would go to prison. (See: Part II, Effect of Proposed Changes). The Department of Corrections has revised its forecast of prison population in the year 2002 from 116,205 to 84,099. The legislature has already agreed to fund 83,414 beds, with the funds to be appropriated in the year that the beds are to be occupied. There are currently almost 5,000 empty beds.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities have to raise revenues in the aggravate.

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

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

V. COMMENTS:

Study of Sentencing Guidelines by the Department of Justice

As of 1994, there were 9 states including Florida that have sentencing guidelines which are not merely voluntary. The U.S. Department of Justice, Office of Justice Programs, completed a study in February of 1996, which assessed “structured sentencing” nationwide. The conclusion of this study was that there are some benefits of well implemented sentencing guidelines, primarily, control of prison populations and limiting disparate treatment of similarly situated offenders. However, despite attempts to target violent and career offenders for lengthy prison stays, there is no evidence that guidelines have measurably reduced crime rates.

The study by the Department of Justice suggests that one reason that guidelines do not reduce the crime rate is that they typically impose longer sentences on older offenders with a long history of convictions even though that person is now “burning out” of his or her criminal career. On the other hand, youthful offenders who are in the earlier stages of their criminal career would receive lighter sentences. In Florida, 921.0011, F.S., allows juvenile offenses to be scored only if they occurred within three years of the primary offense for which a defendant is being sentenced.

The study by the U.S. Department of Justice did indicate that guidelines, if implemented correctly, could reduce disparate treatment of similarly situated offenders, however, those benefits can be nullified by excessive departure sentences and by the alleged selective use of minimum mandatory sentences. The report recommended that subjective reasons for departure should be kept to a minimum, and states should specify as much as possible the type of departures that are acceptable. The report also recommends that the use of minimum mandatory sentences be limited.

Laws referring to the sentencing guidelines and not addressed by this Bill

This bill renders many statutory provisions meaningless and these provisions should be deleted or amended:

Section 20.315(4) F.S.: creates the Florida Corrections Commission which has 9 primary functions, one of which is to review the recommendations of the Sentencing Guideline Commission. This bill will leave the Corrections Commission with one less primary responsibility.

Sections 773.0823, 777.04, 784.08, 893.135, and 893.20, F.S.: these Sections, in part, require that people who commit crimes, such as battery on an elderly person, certain drug trafficking and violent offenses, to be sentenced according to the guidelines. That portion of these sections will be rendered meaningless and a judge will be able to impose any sentence up to the statutory maximum.

Section 921.188, F.S.: allows defendants to be sentenced to between 12 and 22 months in a local jail if there is a contractual agreement between the jail manager and the Department of Corrections. This section only allows a prison sentence to be served at a local jail if a defendant scores between 40 and 52 points. If the State or the defendant object to a sentence under this provision, there may be grounds for appeal, because the sentence would be based on nonexistent criteria.

Section 924.06(1)(e) and 924.07(1)(I),F.S.: these subsections allow the State and the defendant to appeal a departure from the guidelines. Provisions allowing appeal for departure sentences will not have any meaning if this bill passes.

Section 944.275(2)(b), F.S.: provides for the award of gain-time depending on offense severity levels for offenses occurring between January 1, 1994 and October 1. 1995. A system of awarding gain-time can not be taken from prisoners, therefore, this bill should have no effect on section 994.275, F.S.

Impact of Increasing Judicial Discretion

It is not possible to predict what effect the repeal of the guidelines would have on the prison population. An argument could be made that the high rate of downward departure sentences demonstrate that the courts and prosecutors are not willing to be more punitive. On the other hand, it could also be argued that the guidelines are the starting point of plea negotiations and the ending point is usually lower. If the starting point of prosecutors bargaining position is raised, then perhaps the outcome of plea negotiations would be higher sentences. Of course, if a judge indicates that he/she would impose a lower sentence than the current guideline range, then sentences will be lower.

There is some reason to believe that the length of prison sentences may not increase for the more serious crimes. According to the Department of Corrections, the 1995 revision of the guidelines, which dramatically increased the number of points assigned to levels 7,8,9,and 10, had no effect on the average length of prison sentences. In fact, while the number of guilty dispositions has remained the same, the percentage of those guilty dispositions resulting in a prison sentence has decreased. Surprisingly, the percentage of sentences over 56 months has declined from 76.6% under the 1994 guidelines to

73.1% of cases sentenced under the 1995 revisions. This information has caused the Criminal Justice Estimating Conference to revise its forcast of prison population in the year 2002 from 116,205 to 84,099.

There are many possible explanations as to why the length and number of prison sentences are decreasing. Many of the people with lengthy criminal histories, who qualify for long prison sentences are already in prison. There are no statistics to show whether the rate of violent crime has increased since the 1995 revision became law on October 1, 1995. While the crime rate per 100,000 people has come down in recent years, the total number of violent crimes has remained fairly constant from 1991 through 1995.

Another possible reason the 1995 revision did not have much impact could be that judges and prosecutors are not willing or able to give longer sentences for the serious types of crimes whose penalties were increased by the revisions. The increase in downward departure rates more than compensated for the more severe sanctions allowed by the 1995 revisions. Many of the crimes affected by the revision, such as sex offenses, are often very difficult to prove. As mentioned earlier, drug offenses are often not very difficult to prove. It is likely that this bill would increase the rate of incarceration for drug offenses. (See Effect of Proposed Changes, pa. 6)

Unequal sentences

The guidelines thus far have allowed regional disparity and disparity between judges within a region. A majority of inmates receive downward departure sentences. Over 12% of inmates receive habitual offender or minimum mandatory sentences which would usually exceed the guidelines. It is not known whether disparities between similarly situated defendants would be increased by this bill. However, to the extent that regional differences increase, those differences could reflect the values of local voters who elect the judges and the State Attorney in their region. The Department of Corrections is concerned that disparate sentences could make inmates more difficult to control. The Department is very much in favor of keeping the guidelines as a “management tool” that will help them to match capacity to prison populations.

Perspective of Judges and Prosecutors

Many judges and prosecutors favor this bill because the guidelines limit the judges discretion and to some degree reduce issues of justice and fairness to a mathematical formula which can not always take into account all the variables that should be considered. Within individual crimes there are often tremendous differences that the guidelines do not consider. A hypothetical example of a less serious burglary would be person who used a key to retrieve property from a former roommate and while retrieving property from an unoccupied apartment, drank a soda belonging to the “victim”. That hypothetical burglary scores “mandatory” prison the same as a burglary committed by a person who slips in through a window and steals jewelry while the victim is sleeping. Of course, in the first example the court and the prosecutor would be unlikely to require prison. The guidelines present another inequity in that a defendant who is sentenced at

one time for two separate criminal acts scores fewer months in prison than the same defendant would score if each offense is resolved separately.

Among prosecutors there is a belief that drug cases are not treated seriously, and that downward departures are easier and more frequent than upward departures. Another concern is that guidelines create more issues for a defendant to appeal.

If judges are freed from the limitations imposed by the guidelines, then it would be useful to have a way to measure how the courts treat similarly situated offenders. Disparities could be reduced if judges and communities had a standard by which to compare sentences imposed for felony crimes. The current guidelines score sheet provides enough information for DOC to compare sentencing practices.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The original bill repealed all of 921.001, F.S. The committee substitute repeals that section as well, but leaves in and amends section 921.001(4)(b), F.S., relating to which guidelines apply before the repeal on October 1, 1998. The committee bill also leaves in section 921.001(10), F.S., which relates to how gain time is to be awarded. Pursuant to the request of the sponsor, and an amendment by Representative Meek, the committee substitute changes the people who will make up the new Sentencing Reform Committee which is to replace the present Sentencing Commission.

The committee substitute repeals sections not included in the original bill: Section 921.0011, F.S., through and including section 921.0016, F.S., are repealed effective October 1, 1998. These sections relate to the substance or the actual mechanics of the sentencing guidelines.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:	Legislative Research Director:
J. Willis Renuart	J. Willis Renuart