

1 A bill to be entitled
2 An act relating to criminal justice; amending
3 s. 775.084, F.S.; clarifying that the gain-time
4 that the Department of Corrections may award to
5 a habitual felony offender, a habitual violent
6 felony offender, or a violent career criminal
7 is limited to monthly incentive gain-time;
8 amending s. 921.0017, F.S.; clarifying that
9 credit for time served means time spent in
10 state prison or county jail on the same
11 offense; amending s. 944.279, F.S.; providing
12 that a prisoner who is found to have brought a
13 frivolous or malicious action or brought false
14 information before the court is subject to
15 disciplinary procedures; defining the term
16 "prisoner"; amending s. 944.35, F.S., relating
17 to authorized use of force by a departmental
18 employee against an inmate or supervised
19 offender; removing requirement that a report on
20 such use of force be kept in the file of an
21 employee; providing for notation of a
22 use-of-force incident and outcome in the file
23 of an employee; amending s. 944.472, F.S.,
24 relating to drug-free corrections; providing
25 legislative findings and purposes with respect
26 to reasonable suspicion of substance-abuse
27 testing programs for inmates; amending s.
28 944.473, F.S.; providing for adoption of rules
29 for such programs; amending s. 944.801, F.S.,
30 relating to education for state prisoners;
31 entitling certain inmates who qualify for

1 special educational services and programs under
2 federal law to request hearings before the
3 Division of Administrative Hearings; providing
4 that administrative law judges are not required
5 to travel to state and private correctional
6 institutions and facilities to conduct such
7 hearings; amending s. 948.01, F.S., relating to
8 the court's authority to place a defendant on
9 probation or community control; authorizing the
10 court to revoke, modify, or continue
11 supervision upon violation; providing certain
12 sentencing authority upon violation;
13 prohibiting the court from giving credit for
14 time served; providing limitations on the court
15 for subsequent supervision upon violation;
16 amending s. 948.03, F.S., relating to terms and
17 conditions of probation or community control;
18 deleting attendance at an HIV/AIDS awareness
19 program as a standard condition; authorizing
20 courts to impose such a condition if such a
21 program is available as specified; amending s.
22 948.06, F.S.; prohibiting the award of credit
23 for time served while on probation or community
24 control for subsequent terms of supervision
25 following a revocation of probation or
26 community control; providing limitations on the
27 court for imposing a subsequent term of
28 supervision following revocation; amending s.
29 947.04, F.S.; authorizing the chairman of the
30 Parole Commission to serve successive terms;
31 amending s. 947.1405, F.S.; clarifying the

1 inclusion of violent career criminals as
2 eligible for conditional release supervision;
3 clarifying that conditional release supervision
4 applies to all sentences of an inmate if the
5 inmate's overall sentences include one or more
6 sentences that are eligible for conditional
7 release supervision; repealing s. 775.0121,
8 F.S., relating to a continuous revision cycle
9 of criminal penalties; amending s. 921.0016,
10 F.S.; providing that addiction, alcoholism, or
11 substance abuse, or diminished capacity due to
12 the influence of alcohol or controlled
13 substances, shall not be the basis for
14 mitigating a recommended guidelines sentence;
15 reenacting s. 921.001(6), F.S., relating to
16 Sentencing Commission and sentencing
17 guidelines, generally, to incorporate a
18 reference to said amendment; providing an
19 effective date.
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21 Be It Enacted by the Legislature of the State of Florida:
22

23 Section 1. Paragraph (j) of subsection (4) of section
24 775.084, Florida Statutes, 1996 Supplement, is amended to
25 read:

26 775.084 Violent career criminals; habitual felony
27 offenders and habitual violent felony offenders; definitions;
28 procedure; enhanced penalties.--

29 (4)

30 (j)1. A defendant sentenced under this section as a
31 habitual felony offender, a habitual violent felony offender,

1 or a violent career criminal is eligible for gain-time granted
2 by the Department of Corrections as provided in s.
3 944.275(4)(b)~~s. 944.275(4)~~.

4 2. For an offense committed on or after October 1,
5 1995, a defendant sentenced under this section as a violent
6 career criminal is not eligible for any form of discretionary
7 early release, other than pardon or executive clemency, or
8 conditional medical release granted pursuant to s. 947.149.

9 Section 2. Section 921.0017, Florida Statutes, is
10 amended to read:

11 921.0017 Credit upon recommitment of offender serving
12 split sentence.--Effective for offenses committed on or after
13 January 1, 1994, if an offender's probation or community
14 control is revoked and the offender is serving a split
15 sentence pursuant to s. 948.01, upon recommitment to the
16 Department of Corrections, the court shall order credit for
17 time served in state prison or county jail only, without
18 considering any type of gain-time earned before release to
19 supervision, or any type of sentence reduction granted to
20 avoid prison overcrowding, including, but not limited to, any
21 sentence reduction resulting from administrative gain-time,
22 provisional credits, or control release. The court shall
23 determine the amount of jail-time credit to be awarded for
24 time served between the date of arrest as a violator and the
25 date of recommitment, and shall direct the Department of
26 Corrections to compute and apply credit for all other time
27 served previously on the prior sentence for the offense for
28 which the offender is being recommitted. This section does
29 not affect or limit the department's authority to forfeit
30 gain-time under ss. 944.28(1) and 948.06(6).

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1 Section 3. Section 944.279, Florida Statutes, 1996
2 Supplement, is amended to read:

3 944.279 Disciplinary procedures applicable to prisoner
4 ~~<O>Loss of gain-time~~ for filing frivolous or malicious actions or
5 bringing false information before court.--

6 (1) At any time, and upon its own motion or on motion
7 of a party, a court may conduct an inquiry into whether any
8 action or appeal brought by a prisoner was brought in good
9 faith. A prisoner who is found by a court to have brought a
10 frivolous or malicious suit, action, claim, proceeding, or
11 appeal in any court of this state or in any federal court,
12 which is filed after June 30, 1996, or who knowingly or with
13 reckless disregard for the truth brought false information or
14 evidence before the court, is subject to disciplinary
15 procedures pursuant to the rules of the Department of
16 Corrections forfeiture of gain-time and the right to earn
17 gain-time. The court shall issue a written finding and direct
18 that a certified copy be forwarded to the appropriate
19 institution or facility for disciplinary procedures pursuant
20 to the rules of the department ~~action~~ as provided in s. 944.09
21 944.28(2).

22 (2) This section does not apply to a criminal
23 proceeding or a collateral criminal proceeding.

24 (3) For purposes of this section, "prisoner" means a
25 person who is convicted of a crime and is incarcerated for
26 that crime or who is being held in custody pending extradition
27 or sentencing.

28 Section 4. Subsection (2) of section 944.35, Florida
29 Statutes, 1996 Supplement, is amended to read:

30 944.35 Authorized use of force; malicious battery and
31 sexual misconduct prohibited; reporting required; penalties.--

1 (2) Each employee of the department who either applies
2 physical force or was responsible for making the decision to
3 apply physical force upon an inmate or an offender supervised
4 by the department in the community pursuant to this subsection
5 shall prepare, date, and sign an independent report within 5
6 working days of the incident. The report shall be delivered to
7 the superintendent or the regional administrator, who shall
8 have an investigation made and shall approve or disapprove the
9 force used. The employee's report, together with the
10 superintendent's or regional administrator's written approval
11 or disapproval of the force used and the reasons therefor,
12 shall be forwarded within 5 working days of the date of the
13 completion of the investigation to the regional director. The
14 regional director shall, in writing, concur in the
15 superintendent's or regional administrator's evaluation or
16 disapprove it. Copies of the employee's report, the
17 superintendent's or regional administrator's evaluation, and
18 the regional director's review shall be kept in the files of
19 ~~both the inmate or the offender supervised by the department~~
20 ~~in the community, and the employee.~~ A notation of each
21 incident involving use of force and the outcome based on the
22 superintendent's or regional director's evaluation and the
23 regional administrator's review shall be kept in the
24 employee's file.

25 Section 5. Paragraph (c) of subsection (1) and
26 subsection (2) of section 944.472, Florida Statutes, are
27 amended to read:

28 944.472 Drug-free corrections; legislative findings
29 and purposes.--

30 (1) FINDINGS.--The Legislature finds that:

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1 (c) Certain substance abuse testing standards are
2 necessary to ensure uniform and economical application of
3 policy throughout the state's institutions and to protect both
4 inmates and employers participating in random and reasonable
5 suspicion substance abuse testing programs.

6 (2) PURPOSES.--The purposes of the Drug-Free
7 Corrections Act of 1992 are to:

8 (a) Promote the goal of a drug-free correctional
9 system through fair, economical, and reasonable methods of
10 random and reasonable suspicion substance abuse testing of
11 inmates for the protection of inmates, employees, employers,
12 and the public.

13 (b) Establish an aggressive, routine random substance
14 abuse testing program and a reasonable suspicion substance
15 abuse testing program to identify substance-abusing inmates,
16 determine appropriate treatment, and provide a strong
17 deterrent to future substance abuse.

18 Section 6. Subsections (1) and (3) of section 944.473,
19 Florida Statutes, are amended to read:

20 944.473 Inmate substance abuse testing program.--

21 (1) RULES AND PROCEDURES.--The department shall
22 establish programs ~~a program~~ for random and reasonable
23 suspicion drug and alcohol testing by urinalysis or other
24 noninvasive procedure for inmates to effectively identify
25 those inmates abusing drugs, alcohol, or both. The department
26 shall also adopt rules relating to fair, economical, and
27 accurate operations and procedures of a random inmate
28 substance abuse testing program and a reasonable suspicion
29 substance abuse testing program by urinalysis or other
30 noninvasive procedure which enumerate penalties for positive
31 test results, including but not limited to the forfeiture of

1 both basic and incentive gain-time, and which do not limit the
2 number of times an inmate may be tested in any one fiscal or
3 calendar year.

4 (3) REPORTING REQUIREMENT.--The department shall, as
5 part of its annual report, report the number of random and
6 reasonable suspicion substance abuse tests administered in the
7 fiscal year, the number of positive results obtained, the
8 number of negative results obtained, the number of inmates
9 requesting and participating in substance abuse treatment
10 programs as the result of a positive random or reasonable
11 suspicion substance abuse test, and the number of repeat
12 substance abuse offenders.

13 Section 7. Effective upon this act becoming a law,
14 subsection (4) is added to section 944.801, Florida Statutes,
15 1996 Supplement, to read:

16 944.801 Education for state prisoners.--

17 (4) Notwithstanding s. 120.81(3), all inmates under 22
18 years of age who qualify for special educational services and
19 programs pursuant to the Individuals with Disabilities
20 Education Act, 20 U.S.C. ss. 1400 et seq., and who request a
21 due process hearing as provided by that act shall be entitled
22 to such hearing before the Division of Administrative
23 Hearings. Administrative law judges shall not be required to
24 travel to state or private correctional institutions and
25 facilities in order to conduct these hearings.

26 Section 8. Subsection (11) of section 948.01, Florida
27 Statutes, 1996 Supplement, is amended to read:

28 948.01 When court may place defendant on probation or
29 into community control.--

30 (11) The court may also impose a split sentence
31 whereby the defendant is sentenced to a term of probation

1 which may be followed by a period of incarceration or, with
2 respect to a felony, into community control, as follows:

3 (a) If the offender meets the terms and conditions of
4 probation or community control, any term of incarceration may
5 be modified by court order to eliminate the term of
6 incarceration.

7 (b) If the offender does not meet the terms and
8 conditions of probation or community control, the court may
9 revoke, modify, or continue the probation or community control
10 as provided in s. 948.06. If the probation or community
11 control is revoked, the court may impose any sentence that it
12 could have imposed at the time the offender was placed on
13 probation or community control. The court may not provide
14 credit for time served for any portion of a probation of
15 community control term toward a subsequent term of probation
16 or community control. However, the court may not impose a
17 subsequent term of probation or community control which, when
18 combined with any amount of time served on preceding terms of
19 probation or community control for offenses pending before the
20 court for sentencing, would exceed the maximum penalty
21 allowable as provided in s. 775.082 ~~shall impose a term of~~
22 ~~incarceration equal to the remaining portion of the order of~~
23 ~~probation or community control.~~ Such term of incarceration
24 shall be served under applicable law or county ordinance
25 governing service of sentences in state or county
26 jurisdiction. This paragraph does not prohibit any other
27 sanction provided by law.

28 Section 9. Subsection (1) of section 948.03, Florida
29 Statutes, 1996 Supplement, is amended to read:

30 948.03 Terms and conditions of probation or community
31 control.--

1 (1) The court shall determine the terms and conditions
2 of probation or community control. Conditions specified in
3 paragraphs (a) through and including (m)~~(n)~~ do not require
4 oral pronouncement at the time of sentencing and may be
5 considered standard conditions of probation. Conditions
6 specified in paragraphs (a) through and including (m)~~(n)~~ and
7 (2)(a) do not require oral pronouncement at sentencing and may
8 be considered standard conditions of community control. These
9 conditions may include among them the following, that the
10 probationer or offender in community control shall:

11 (a) Report to the probation and parole supervisors as
12 directed.

13 (b) Permit such supervisors to visit him at his home
14 or elsewhere.

15 (c) Work faithfully at suitable employment insofar as
16 may be possible.

17 (d) Remain within a specified place.

18 (e) Make reparation or restitution to the aggrieved
19 party for the damage or loss caused by his offense in an
20 amount to be determined by the court. The court shall make
21 such reparation or restitution a condition of probation,
22 unless it determines that clear and compelling reasons exist
23 to the contrary. If the court does not order restitution, or
24 orders restitution of only a portion of the damages, as
25 provided in s. 775.089, it shall state on the record in detail
26 the reasons therefor.

27 (f) Effective July 1, 1994, and applicable for
28 offenses committed on or after that date, make payment of the
29 debt due and owing to a county or municipal detention facility
30 under s. 951.032 for medical care, treatment, hospitalization,
31 or transportation received by the felony probationer while in

1 that detention facility. The court, in determining whether to
2 order such repayment and the amount of such repayment, shall
3 consider the amount of the debt, whether there was any fault
4 of the institution for the medical expenses incurred, the
5 financial resources of the felony probationer, the present and
6 potential future financial needs and earning ability of the
7 probationer, and dependents, and other appropriate factors.

8 (g) Support his legal dependents to the best of his
9 ability.

10 (h) Make payment of the debt due and owing to the
11 state under s. 960.17, subject to modification based on change
12 of circumstances.

13 (i) Pay any attorney's fees and costs assessed under
14 s. 27.56, subject to modification based on change of
15 circumstances.

16 (j) Not associate with persons engaged in criminal
17 activities.

18 (k)1. Submit to random testing as directed by the
19 correctional probation officer or the professional staff of
20 the treatment center where he is receiving treatment to
21 determine the presence or use of alcohol or controlled
22 substances.

23 2. If the offense was a controlled substance violation
24 and the period of probation immediately follows a period of
25 incarceration in the state correction system, the conditions
26 shall include a requirement that the offender submit to random
27 substance abuse testing intermittently throughout the term of
28 supervision, upon the direction of the correctional probation
29 officer as defined in s. 943.10(3).

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1 (l) Be prohibited from possessing, carrying, or owning
2 any firearm unless authorized by the court and consented to by
3 the probation officer.

4 (m) Be prohibited from using intoxicants to excess or
5 possessing any drugs or narcotics unless prescribed by a
6 physician. The probationer or community controlee shall not
7 knowingly visit places where intoxicants, drugs, or other
8 dangerous substances are unlawfully sold, dispensed, or used.

9 (n) Attend an HIV/AIDS awareness program consisting of
10 a class of not less than 2 hours or more than 4 hours in
11 length, the cost for which shall be paid by the offender, if
12 such a program is available in the county of the offender's
13 residence.

14 (o) Pay not more than \$1 per month during the term of
15 probation or community control to a nonprofit organization
16 established for the sole purpose of supplementing the
17 rehabilitative efforts of the Department of Corrections.

18 Section 10. Section 948.06, Florida Statutes, is
19 amended to read:

20 948.06 Violation of probation or community control;
21 revocation; modification; continuance; failure to pay
22 restitution or cost of supervision.--

23 (1) Whenever within the period of probation or
24 community control there are reasonable grounds to believe that
25 a probationer or offender in community control has violated
26 his probation or community control in a material respect, any
27 parole or probation supervisor may arrest or request any
28 county or municipal law enforcement officer to arrest such
29 probationer or offender without warrant wherever found and
30 forthwith return him to the court granting such probation or
31 community control. Any committing magistrate may issue a

1 warrant, upon the facts being made known to him by affidavit
2 of one having knowledge of such facts, for the arrest of the
3 probationer or offender, returnable forthwith before the court
4 granting such probation or community control. Any parole or
5 probation supervisor, any officer authorized to serve criminal
6 process, or any peace officer of this state is authorized to
7 serve and execute such warrant. The court, upon the
8 probationer or offender being brought before it, shall advise
9 him of such charge of violation and, if such charge is
10 admitted to be true, may forthwith revoke, modify, or continue
11 the probation or community control or place the probationer
12 into a community control program. If probation or community
13 control is revoked, the court shall adjudge the probationer or
14 offender guilty of the offense charged and proven or admitted,
15 unless he has previously been adjudged guilty, and impose any
16 sentence which it might have originally imposed before placing
17 the probationer on probation or the offender into community
18 control. If such violation of probation or community control
19 is not admitted by the probationer or offender, the court may
20 commit him or release him with or without bail to await
21 further hearing, or it may dismiss the charge of probation or
22 community control violation. If such charge is not at that
23 time admitted by the probationer or offender and if it is not
24 dismissed, the court, as soon as may be practicable, shall
25 give the probationer or offender an opportunity to be fully
26 heard on his behalf in person or by counsel. After such
27 hearing, the court may revoke, modify, or continue the
28 probation or community control or place the probationer into
29 community control. If such probation or community control is
30 revoked, the court shall adjudge the probationer or offender
31 guilty of the offense charged and proven or admitted, unless

1 he has previously been adjudged guilty, and impose any
2 sentence which it might have originally imposed before placing
3 the probationer or offender on probation or into community
4 control.

5 (2) When the court imposes a subsequent term of
6 supervision following a revocation of probation or community
7 control, it shall not provide credit for time served while on
8 probation or community control toward any subsequent term of
9 probation or community control. However, the court may not
10 impose a subsequent term of probation or community control
11 which, when combined with any amount of time served on
12 preceding terms of probation or community control for offenses
13 before the court for sentencing, would exceed the maximum
14 penalty allowable as provided by s. 775.082.No part of the
15 time that the defendant is on probation or in community
16 control shall be considered as any part of the time that he or
17 she shall be sentenced to serve.

18 (3) Notwithstanding any other provision of this
19 section, a probationer or an offender in community control who
20 is arrested for violating his probation or community control
21 in a material respect may be taken before the court in the
22 county or circuit in which he was arrested. That court shall
23 advise him of such charge of a violation and, if such charge
24 is admitted, shall cause him to be brought before the court
25 which granted the probation or community control. If such
26 violation is not admitted by the probationer or offender, the
27 court may commit him or release him with or without bail to
28 await further hearing. The court, as soon as is practicable,
29 shall give the probationer or offender an opportunity to be
30 fully heard on his behalf in person or by counsel. After such
31 hearing, the court shall make findings of fact and forward the

1 findings to the court which granted the probation or community
2 control and to the probationer or offender or his attorney.
3 The findings of fact by the hearing court are binding on the
4 court which granted the probation or community control. Upon
5 the probationer or offender being brought before it, the court
6 which granted the probation or community control may revoke,
7 modify, or continue the probation or community control or may
8 place the probationer into community control as provided in
9 this section.

10 (4) In any hearing in which the failure of a
11 probationer or offender in community control to pay
12 restitution or the cost of supervision as provided in s.
13 948.09, as directed, is established by the state, if the
14 probationer or offender asserts his inability to pay
15 restitution or the cost of supervision, it is incumbent upon
16 him to prove by clear and convincing evidence that he does not
17 have the present resources available to pay restitution or the
18 cost of supervision despite sufficient bona fide efforts
19 legally to acquire the resources to do so. If the probationer
20 or offender cannot pay restitution or the cost of supervision
21 despite sufficient bona fide efforts, the court shall consider
22 alternate measures of punishment other than imprisonment.
23 Only if alternate measures are not adequate to meet the
24 state's interests in punishment and deterrence may the court
25 imprison a probationer or offender in community control who
26 has demonstrated sufficient bona fide efforts to pay
27 restitution or the cost of supervision.

28 (5) Any parolee in a community control program who has
29 allegedly violated the terms and conditions of such placement
30 is subject to the provisions of ss. 947.22 and 947.23.

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1 (6) Any provision of law to the contrary
2 notwithstanding, whenever probation, community control, or
3 control release, including the probationary, community control
4 portion of a split sentence, is violated and the probation or
5 community control is revoked, the offender, by reason of his
6 misconduct, may be deemed to have forfeited all gain-time or
7 commutation of time for good conduct, as provided by law,
8 earned up to the date of his release on probation, community
9 control, or control release. This subsection does not deprive
10 the prisoner of his right to gain-time or commutation of time
11 for good conduct, as provided by law, from the date on which
12 he is returned to prison. However, if a prisoner is sentenced
13 to incarceration following termination from a drug punishment
14 program imposed as a condition of probation, the sentence may
15 include incarceration without the possibility of gain-time or
16 early release for the period of time remaining in his
17 treatment program placement term.

18 Section 11. Section 947.04, Florida Statutes, 1996
19 Supplement, is amended to read:

20 947.04 Organization of commission; officers;
21 offices.--

22 (1) Before July 1 of each even-numbered year, the
23 Governor and Cabinet shall select a chairman who shall serve
24 for a period of 2 years and until a successor is selected and
25 qualified. The Governor and Cabinet shall, at the same time
26 that a chairman is selected, select a vice chairman to serve
27 during the same 2-year period as the chairman, in the absence
28 of the chairman. The chairman may ~~not~~ succeed himself or
29 herself. The chairman, as chief administrative officer of the
30 commission, has the authority and responsibility to plan,
31 direct, coordinate, and execute the powers, duties, and

1 responsibilities assigned to the commission, except those of
2 granting and revoking parole as provided for in this chapter.
3 Subject to approval by the Governor and the Cabinet, the
4 chairman may assign consenting retired commissioners or former
5 commissioners to temporary duty when there is a workload need.
6 Any such commissioner shall be paid \$100 for each day or
7 portion of a day spent on the work of the commission and shall
8 be reimbursed for travel expenses as provided in s. 112.061.
9 The chairman is authorized to provide or disseminate
10 information relative to parole by means of documents,
11 seminars, programs, or otherwise as he determines necessary.
12 The chairman shall establish, execute, and be held accountable
13 for all administrative policy decisions. However, decisions to
14 grant or revoke parole shall be made in accordance with the
15 provisions of ss. 947.172, 947.174, and 947.23. The
16 commissioners shall be directly accountable to the chairman in
17 the execution of their duties as commissioners, and the
18 chairman has authority to recommend to the Governor suspension
19 of a commissioner who fails to perform the duties provided for
20 by statute.

21 (2) Notwithstanding the provisions of s. 20.05(1)(g),
22 the chairman shall appoint administrators with responsibility
23 for the management of commission activities in the following
24 functional areas:

25 (a) Administration.

26 (b) Operations.

27 (c) Clemency.

28 (3) The commissioners shall select from their number a
29 secretary who shall serve for a period of 1 year or until a
30 successor is elected and qualified.

31

1 (4) The commission may establish and maintain offices
2 in centrally and conveniently located places in Florida.
3 Headquarters shall be located in Tallahassee. The business of
4 the commission shall be transacted anywhere in the state as
5 provided in s. 947.06. The commission shall keep its official
6 records and papers at the headquarters, which it shall furnish
7 and equip.

8 (5) Acts and decisions of the chairman may be modified
9 as provided in s. 947.06.

10 Section 12. Section 947.1405, Florida Statutes, 1996
11 Supplement, is amended to read:

12 947.1405 Conditional release program.--

13 (1) This section and s. 947.141 may be cited as the
14 "Conditional Release Program Act."

15 (2) Any inmate who:

16 (a) Is convicted of a crime committed on or after
17 October 1, 1988, and before January 1, 1994, and any inmate
18 who is convicted of a crime committed on or after January 1,
19 1994, which crime is or was contained in category 1, category
20 2, category 3, or category 4 of Rule 3.701 and Rule 3.988,
21 Florida Rules of Criminal Procedure (1993), and who has served
22 at least one prior felony commitment at a state or federal
23 correctional institution;

24 (b) Is sentenced as a habitual or violent habitual
25 offender or violent career criminal pursuant to s. 775.084; or

26 (c) Is found to be a sexual predator under s. 775.21
27 or former s. 775.23,

28
29 shall, upon reaching the tentative release date or provisional
30 release date, whichever is earlier, as established by the
31 Department of Corrections, be released under supervision

1 subject to specified terms and conditions, including payment
2 of the cost of supervision pursuant to s. 948.09. Such
3 supervision is applicable to all sentences within the overall
4 term of sentences if an inmate's overall term of sentences
5 includes one or more sentences that are eligible for
6 conditional release supervision as provided in this section.
7 Effective July 1, 1994, and applicable for offenses committed
8 on or after that date, the commission may require, as a
9 condition of conditional release, that the releasee make
10 payment of the debt due and owing to a county or municipal
11 detention facility under s. 951.032 for medical care,
12 treatment, hospitalization, or transportation received by the
13 releasee while in that detention facility. The commission, in
14 determining whether to order such repayment and the amount of
15 such repayment, shall consider the amount of the debt, whether
16 there was any fault of the institution for the medical
17 expenses incurred, the financial resources of the releasee,
18 the present and potential future financial needs and earning
19 ability of the releasee, and dependents, and other appropriate
20 factors. If an inmate has received a term of probation or
21 community control supervision to be served after release from
22 incarceration, the period of probation or community control
23 must be substituted for the conditional release supervision. A
24 panel of no fewer than two commissioners shall establish the
25 terms and conditions of any such release. If the offense was a
26 controlled substance violation, the conditions shall include a
27 requirement that the offender submit to random substance abuse
28 testing intermittently throughout the term of conditional
29 release supervision, upon the direction of the correctional
30 probation officer as defined in s. 943.10(3). The commission
31 shall also determine whether the terms and conditions of such

1 release have been violated and whether such violation warrants
2 revocation of the conditional release.

3 (3) As part of the conditional release process, the
4 commission shall determine:

5 (a) The amount of reparation or restitution.

6 (b) The consequences of the offense as reported by the
7 aggrieved party.

8 (c) The aggrieved party's fear of the inmate or
9 concerns about the release of the inmate.

10 (4) The commission shall provide to the aggrieved
11 party information regarding the manner in which notice of any
12 developments concerning the status of the inmate during the
13 term of conditional release may be requested.

14 (5) Within 180 days prior to the tentative release
15 date or provisional release date, whichever is earlier, a
16 representative of the commission shall interview the inmate.
17 The commission representative shall review the inmate's
18 program participation, disciplinary record, psychological and
19 medical records, and any other information pertinent to the
20 impending release. A commission representative shall conduct
21 a personal interview with the inmate for the purpose of
22 determining the details of the inmate's release plan,
23 including his planned residence and employment. The results
24 of the interview must be forwarded to the commission in
25 writing.

26 (6) Upon receipt of notice as required under s.
27 947.175, the commission shall conduct a review of the inmate's
28 record for the purpose of establishing the terms and
29 conditions of the conditional release. The commission may
30 impose any special conditions it considers warranted from its
31 review of the record. If the commission determines that the

1 inmate is eligible for release under this section, the
2 commission shall enter an order establishing the length of
3 supervision and the conditions attendant thereto. However, an
4 inmate who has been convicted of a violation of chapter 794 or
5 found by the court to be a sexual predator is subject to the
6 maximum level of supervision provided, with the mandatory
7 conditions as required in subsection (7), and that supervision
8 shall continue through the end of the releasee's original
9 court-imposed sentence. The length of supervision must not
10 exceed the maximum penalty imposed by the court.

11 (7) Any inmate who is convicted of a crime committed
12 on or after October 1, 1995, or has been previously convicted
13 of a crime committed on or after October 1, 1995, and who
14 meets the criteria of s. 775.21 or former s. 775.23(2)(a) or
15 (b) shall have, in addition to any other conditions imposed,
16 the following special conditions imposed by the commission:

17 (a) A curfew, if appropriate, during hours set by the
18 commission.

19 (b) If the victim was under the age of 18, a
20 prohibition on living within 1,000 feet of a school, day care
21 center, park, playground, or other place where children
22 regularly congregate.

23 (c) Active participation in and successful completion
24 of a sex offender treatment program, at the releasee's own
25 expense, unless one is not available within a 50-mile radius
26 of the releasee's residence.

27 (d) A prohibition on any contact with the victim,
28 directly or indirectly, including through a third person,
29 unless approved by the commission.

30 (e) If the victim was under the age of 18, a
31 prohibition, until successful completion of a sex offender

1 treatment program, on unsupervised contact with a child under
2 the age of 18, unless authorized by the commission without
3 another adult present who is responsible for the child's
4 welfare, has been advised of the crime, and is approved by the
5 commission.

6 (f) If the victim was under age 18, a prohibition on
7 working for pay or as a volunteer at any school, day care
8 center, park, playground, or other place where children
9 regularly congregate, as prescribed by the commission.

10 (g) Unless otherwise indicated in the treatment plan
11 provided by the sexual offender treatment program, a
12 prohibition on viewing, owning, or possessing any obscene,
13 pornographic, or sexually explicit material.

14 (h) A requirement that the releasee must submit two
15 specimens of blood to the Florida Department of Law
16 Enforcement to be registered with the DNA database.

17 Section 13. Section 775.0121, Florida Statutes, as
18 created by section 1 of chapter 96-388, Laws of Florida, is
19 repealed.

20 Section 14. Paragraphs (c) and (d) of subsection (4)
21 of section 921.0016, Florida Statutes, 1996 Supplement, are
22 amended to read:

23 921.0016 Recommended sentences; departure sentences;
24 aggravating and mitigating circumstances.--

25 (4) Mitigating circumstances under which a departure
26 from the sentencing guidelines is reasonably justified
27 include, but are not limited to:

28 (c) The capacity of the defendant to appreciate the
29 criminal nature of the conduct or to conform that conduct to
30 the requirements of law was substantially impaired. However, a
31 person's capacity, if diminished by the influence of alcohol

1 or controlled substances at the time of the offense, may not
2 in any manner be considered a reason to impose a sentence
3 below the guidelines, or for any other manner of mitigation.

4 (d) The defendant requires specialized treatment for a
5 ~~addiction,~~ mental disorder, or physical disability, and the
6 defendant is amenable to treatment. However, addiction,
7 alcoholism, or substance abuse may not in any manner be
8 considered a reason to impose a sentence below the guidelines,
9 or for any other manner of mitigation.

10 Section 15. For the purpose of incorporating the
11 amendment to s. 921.0016, Florida Statutes, 1996 Supplement,
12 in a reference thereto, subsection (6) of section 921.001,
13 Florida Statutes, is reenacted to read:

14 921.001 Sentencing Commission and sentencing
15 guidelines generally.--

16 (6) A court may impose a departure sentence outside
17 the sentencing guidelines based upon circumstances or factors
18 which reasonably justify the aggravation or mitigation of the
19 sentence in accordance with s. 921.0016. The level of proof
20 necessary to establish facts supporting a departure from a
21 sentence under the guidelines is a preponderance of the
22 evidence. When multiple reasons exist to support a departure
23 from a guidelines sentence, the departure shall be upheld when
24 at least one circumstance or factor justifies the departure
25 regardless of the presence of other circumstances or factors
26 found not to justify departure. Any sentence imposed outside
27 the range recommended by the guidelines must be explained in
28 writing by the trial court judge.

29 Section 16. This act shall take effect July 1, 1997.
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