

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1632

SPONSOR: Senator Cowin

SUBJECT: Sentencing

DATE: March 23, 2000

REVISED: 03/28/00 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This bill provides for an offender serving a sentence for sexual battery or murder to receive a consecutive sentence if he/she is found guilty of a separate offense of sexual battery or murder.

This bill substantially amends the following section of the Florida Statutes: 921.16.

## II. Present Situation:

The circumstances under which a sentence may run concurrently or consecutively has been addressed by the Legislature in s. 921.16(1), F.S., which states as follows:

“A defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits shall serve the sentences of imprisonment concurrently unless the court directs that two or more of the sentences be served consecutively. Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently.”

The courts adhere to the plain meaning of the statute that sentences for different crimes run consecutively unless otherwise directed by the trial judge. *Loving v. St.*, 379 So.2d 968 (Fla. 1st DCA 1979) citing *Helton v. Mayo*, 153 Fla. 616, 15 So.2d 416 (Fla. 1943).

The general sentencing rule is reiterated in s. 775.021(4), F.S., which also sets forth the statutory definition of what constitutes a “separate” offense. Subsection (4)(a) of 775.021, F.S., states in part: “For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial”.

Statutory law has been created which goes beyond the general rule in s. 921.16(1), F.S., by setting forth particular crimes which must be sentenced consecutive to any other sentence. For instance, Florida's 10-20-life statute, s. 775.087, F.S., states:

“The court shall impose any term of imprisonment provided for in this subsection consecutively to any other term of imprisonment imposed for any other felony offense.”  
s. 775.087 (2)(d).

Likewise, the escape statute, s. 944.40, F.S., provides “[t]he punishment of imprisonment imposed under this section shall run consecutive to any former sentence imposed upon any prisoner.”

In *Farrow v. State*, 464 So.2d 689 (Fla. 5th DCA 1985), the court found that the escape statute (s. 944.40, F.S., quoted above) controls over any apparent conflict with s. 921.16, F.S., the statute which gives the courts discretion to sentence concurrently or consecutively. The court's ruling is based on the principle of statutory construction that “a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects in general terms”. *Id.* at 690, quoting *Adams v. Culver*, 111 So.2d 665 (Fla. 1959), *Pedroso v. State*, 450 So.2d 902 (Fla. 3rd DCA 1984).

### III. Effect of Proposed Changes:

This bill, as written, would amend s. 921.16(1), F.S., to provide that an offender serving a sentence for sexual battery or murder who is found guilty of a separate offense of sexual battery or murder shall serve a consecutive sentence for each separate offense.

The intent is to punish separate sexual batteries and murders separately and consecutively.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

Florida courts have held that consecutive sentences, even the maximum lawful penalties imposed consecutively, do not constitute cruel and unusual punishment. *Chavigny v. State*, 163 So.2d 47 (Fla. 2nd DCA 1964); *Cole v. State*, 262 So. 2d 902 (Fla. 3rd DCA 1972).

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

There is believed to be an indeterminate impact on the criminal court system, including the judiciary, prosecutors and defense attorneys, in that trials could increase due to the restriction on plea bargaining for concurrent sentences in these cases. There would be an indeterminate impact on the correctional system as well, due to the increased lengths of sentences which would result from consecutive sentences.

**VI. Technical Deficiencies:**

The bill is not clear with regard to what constitutes “each separate offense” but could be clarified with an amendment referring to s. 775.021(4), F.S.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Criminal Justice:

The amendment deleted page 1, line 28 through page 2, line 2 of the bill and inserted language which states that a defendant who has been designated a sexual predator under s. 775.21 (4) or (5), F.S., who is subsequently convicted of sexual battery as defined in chapter 794, F.S., shall serve a consecutive sentence for the subsequent conviction in accordance with s. 775.021 (4), F.S. (WITH TITLE AMENDMENT)