IN THE SUPREME COURT OF FLORIDA

GLEN R. DEASON

PETITIONER

VS.

STATE OF FLORIDA,

DEPARTMENT OF CORRECTIONS

AND FLORIDA PAROLE COMMISSION

RESPONDENTS.

CASE NO: 90-218

DCA.NO: 96-458

PETITIONER'S COUNTER BRIEF

ON APPEAL FROM THE FIRST DISTRICT COURT
CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE

GLEN R. DEASON PRO-SE
OKLAOOSA CORRECTIONAL INST.
3189 LITTLE SILVER ROAD
CRESTVIEW, FLORIDA 32539-6708

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PRELIMINARY STATEMENT

In this brief the Petitioner, Glen R. Deason, will be refered to as Petitioner or Mr.Deason as reteric s o Dictates-citations to the record will be to specifice document or exhibit and the record will be cited as (R-).

STATEMENT OF THE CASE AND FACTS

Glen Deason filed a writ of mandamus or alternately a writ of habeas corpus with the circuit court of the second judicial circuit in Leon county on November 17, 1995 (R1-14).

The circuit issued an order denying the Petitioner's pleading on January 18, 1996.

The Petitioner filed a notice of appeal on January 30, 1996 and the first District filed an opinion on February 28, 1997 in which the Honorable Micael E. Allen filed a dissenting opinion. The court certified the queston as to whether Florida Statute 947.1405 is applicable to a defendant who has been sentenced as a habitual offender but has not been convicted of a crime numerated in Fla.R.Crim.P. 3.701 category 1,2,3 or 4. The Petitioner filed a notice to invoke Discretionary Jurisdiction with the First District Court of Appeal on March 31, 1997. The notice was filed pursuant to Haag vs. State 591 So.2d 614 (Fla. 1992).

SUMMARY OF THE ARGUMENT

The Petitioner does not qualify under Fla. Statute 947.1405 (2) because he has never been convicted of a crime on or after October 1, 1988 under any of the four categories listed in Fla.R.Crim.P3.701. in order for this Statute to apply Mr. Deason would need a conviction in one of the four catagories and a conviction as a Habitual offender. When the legislature inacted Fla. Stat. 947.1405(2), that specifically used the word "and" preceded by a coma; This language is specific, an the doctrine of strict constructon mandates a literal interpretation. With any ambiguity be decided in Mr. Deason favor.

POINT ONE

THE DISTRICT COURT INCORRECTLY INTERPRETED SECTION 947.1405(2) AS TO WHEATHER PETITIONER IS ELIGIBLE FOR SUPERVISION FOR THE REMAINING PORTION OF HIS SENTENCE DUE TO RELEASE UNDER PROVISIONAL OR TENTATIVE RELEASE DATE.

ARGUMENT

Your Honor refer to pg. 8 of Respondent's brief, The law the Respondent uses here is the 1995 F.S.947.1405, This law has noting to do with this case at bar. The only law that has ANYTHING to do with the case at bar is the 1989 F.S. 947.1405. This is the law Mr. Deason was released under.

Your Honors refere to pg. 9 and 10. Respondent's brief

it say's here we agree with this reading of the Statute. While there may be some ambiguity in its language, accepted aids to Statutory construction support the commissions reading for example; a senate staff analysis for CS/HB 1574,1422,1430,1438,1439, and 1567 which passed as chapter 88-122 and enacted section 947-1405 Provided:

> SECTION 16 [LATER SECTION 19] CREATES SECTION 947.1405 F.S., THE CONDITIONAL RELEASE PROGRAM ACT" TO PROVIDE FOR POST-RELEASE SUPERVISION FOR PERSONS SENTENCED UNDER CATEGORY 1,2,3, OR 4 OF SENTENCING GUIDLINES OR AS HABITUAL OFFENDERS

Although it is true that the portion of the analysis quoted by the respondents supports the construction now placed upon section 947-1405 by the respondent, The respondent neglects to point out that the staff analysis did not relate to the consolidated bill as finally enacted. The staff analysis related to the first engrossed version of the consolidated bill as passed by the house on May 12, 1988. Rut when the senate took up the first engrossed bill on June 3, 1988, The senate amended the bill by striking everything after the enacting clause and inserting an entirerly new bill. Also amended the bill was passed by the senate and house on that date.

Your Honors referr to pg 10 respondent's brief, The respondent's cite Lincoln vs. State 643 So.2d. 668 and the first 1st. D.C.A. cite lincoln also. In the opinion dated Feb. 28, 1998 like stated in Judge Allen's dissenting opinion, The case

of [LINCOLN VS. STATE] this case plainly states only this habitual offenders as a class are not exempted from the conditional release provisions of section 947.1405 Mr.Deason is not saying that an inmate sentenced as a habitual offender cant be released on conditional release. What MR. Deason is saying is that according to the way the 1989 conditional release law 947.1405 is written and worded, an inmate has to meet more then one provision and Mr. Deason is going to show this court just how there is more then one provision to be met.

Chap. 947.1405,1989 Plainly states sentenced as a habitual or violent habitual offender pursuant to S.775.084 (4)(E) it plainly states the provisions of S.947.1405 shall apply to persons sentenced as habitual offenders.

When the legislature wrote S.775.084 they specifically used the word "provisions" thus meaning there is in fact more than one provision in 947.1405 to be met before an inmate be release on 947.1405 conditional release,

Heider vs. U.S. 521 F.Supp 422 (D.C. Fla. 1981). Interpreting a Statute starts with consideration of its plain words.

Atlantic Coast Line R.Co. vs. Boyd 102 So.2d. 709 (Fla. 1958). In construing a statute court must give meaning to all words chosen by the legislature.

Vocelle vs. Knight Bros. Paper Co. 118 So.2d. 664 (Fla. App. 1960). Every statute must be construed as a whole and legislative intent determined, if possable, from what is said

in statute.

State Farm Mut. Auto Ins. Co. vs. Kuhn 374 So.2d. 1079.

Where the words used and the grammatical construation employed in the statute are clear and convey a definite meaning, the legislature is presumed to have meant what it said and, therefore, it is unnecessary to resort to the rules of satutory construction,

Leigh vs. State Ex. Rel. Kirkpatrick 298 So.2d. 215 (Fla. 1974).

When terms and provisions of statute are plain, there is no room for judicial or administrative interpretation, and legislature is presumed to have meant what it said.

Federal Elec. Corp. vs. Dunlop 419 F.Supp 221 (D.C. Fla. 1976) It is presumed that when congress drafts a statute, it does so with full knowledge of the existing law with great care for the precise language which must be used to achieve the desired result.

Thayer vs. State 335 So.2d. 815 (Fla. 1976) Legislature must be assumed to know meaning of words and to have expressed its intent by use of words found in statute,

Florida State Racing Com'n vs. Bourquardez 42 So.2d 87 (Fla. 1949). The legislature is presumed to know meaning of words and rules of gramer, and the only way that court is advised of legislature' intention is by giving thegenerally accepted construction, not only to phraseology of act but to manner in which it is punctuated.

Your Honors there are a lot more cases Mr.Deason could

cite but he feels this should be enuff.

Your Honors all of these listed cases deal with what Mr.Deason is saying in this case at bar.

Your Honors refere to pg.10-11 of Respondents brief, it says; also supporting the commissions interpretation of the statute is a significate change made to section 947.1405(2) by the 1995 legislature on pg 11 it says;

We conclude that this amendmemt was likely intended to clarify, rather than change the law.

How can this be? Your Honors Mr.Deason directs this courts attention to the 1995 F.S. 947.1405 (2) on pg.11 of Respondents brief. Look at all the changes the legislature made in the 1995 F.S. 947.1405 (2) from the original 1989 F.S. 947.1405 (2). The legislature added 25 words 3 dates 1 statute and 1 new criteria all of this was not in the original 1989 F.S. 947.1405(2). So your Honors how can the 1st. D.C.A. and Respondent come to the conclusion that the 1989 F.S. 947.1405(2) was only clarified in 1995 when it is quite clear the legislature did infact re-wrire F.S. 947.1405 (2) i.n 1995 from the original 1989 F.S. 947.1405.

It furher goes on to say on pg 11; In light of the above, We hold that a person subject to habitualized sentencing in 1990, as now, is eligible for conditional release.

Yes, your Honors if the 1989 F.S. 947.1405 (2) was wrtten then as it is in the 1995 F.S. 947 1405 (2) then yes this would br true. But the 1989 statute was not worded like 1.995 F.S.

947.1405 (2) so this can not be true.

Your Honors on pg 12 of the Respondent's brief they have the word or underlined the only reason the legislature put the word or after correctional institution was to make that sentence a proper sentence.

Your Honors refer to pg 13 of Respondents brief, it says however, because there was a difference of opinion on the reading of the 1989 statute by the panel of the district court it must be assumed that the statute's meaning in this regard is neither plain nor clear, but is some what ambiguous.

Your Honors this court has held that a statute is to be construed in such a manner as where it is clear as to its meaning. Also this court and the 1st. D.C.A. has ruled in prior cases that if there is ambiguity then the case must be sided in the PETITIONER'S BEHALF. Mr.Deason directs this court attention to pg 2 of the 1st D.C.A opinion, The 1st. D.C.A. openly states here while there may be some ambiguity in its language. Your Honors, right there the Judges in the 1st. D.C.A. should have found in Mr.Deason behalf, but thay did not the 1st. D.C.A. totally went against there own prior rulings they have handed down in the past.

Your Honors refer to pg 13-14 of Respondents brief it says;

The only sensible reading of he 1989 version of section 947.1405 (2) is that the "or" signifies the legislature's intention to subject to conditional release either **"violent"** offenders with at least one prior commitment or habitual offenders (If the drafters had thought to insert [or had not

clerically misplaced] a mere comma before "or", no ambiguity could exist in this regard and Petitioner would be deprived of any basis for his argument.

This interpretation alone makes sense because if only the inmates conviction of the enumerated violent offenses who were sentenced as habitual offenders wre contemplated as subject to conditional release, a multiple rapist and murderer who has avoided being sentenced by a trial court as a habitual offender, either because the prosecutor forgot to ask for such sentencing or for myrial other reasons, would not be subject to supervision, whereas a habitual bad check offender with one robbery conviction would. This result was never intended . The law is clear that an interpreation of a statute which leads to an unreasonable or ridiulous conclusion or result obviously not desighed by the legislature will not be adopted. DRURY VS. HARDING 461 So.2d. 104 (Fla.1984).

Your Honors, The Respondent here on pg 14 of there brief are like a clown in a circus taking long balloons and twisting them to make something the public wants to see. This is what the Respondents are doing here, they are twisting there words. But I am going to pop there balloon here they say; . ..A rapist and murderer who is not sentenced as a habitual offender would not be subject to supervision. This is wrong your Honors and Mr.Deason is going to show and prove to this court just how it is wrong.

A rapist and murderer who is not sentenced as a habitual

offender can be released on supervision if the rapist and murderer has served at least one prior felony commitment at a State of Federal Correctional Institution and this is what the respondents have said on pg 13 of there brief, But they twist words on pg 14 like twisting balloons.

Your Honors refer to pg 7 of Respondents brief, and Mr.Deason will show this court additional supporting evidence to prove he is right.

If this court will look at this law F.S. 947.1405 (2) 1989. This is the law Mr.Deason was released under. You will see that a inmate will be released on conditional release when he has infact been sentenced of a crime committed on or after Oct. 1, 1988 and the crime is contained in category 1,2,3, or 4. and has served one prior felony commitment or when he has infact been sentenced of a crime committed on or after Oct. 1, 1988 and the crime is contained in category 1,2,3 or 4 and, Who is a habitual or violent habitual offender.

Your Honors, under the plain language doctoring and the doctoring of strict construction it is clear that a law must be written as to where it is clearly understood by the words in the language used. Your Honors, here is the 1989 F.S. 947.1405 (2) taken straight out of the 1989 Florida Statute book it is word for word, The only thing MR.Deason altered in this law is that he underlined the word is in two places. He also underlined the word and in one place Mr.Deason is convinced that if this court will read the law with an open mind like

the general public would read it with the words stressed that Mr.Deason has underlined this court will see like Judge Allen in the 1ST. D.C.A. had seen in his dissenting opinion that the way Mr.Deason is reading and interpreting the 1989 F.S. 947.1405 (2) is the correct and only way to read and interpret said law.

947.1404 (2) CONDITIONAL RELEASE PROGRAM

(1). This section and S.947.141 may be cited as the "conditional release program act".

(2). Any inmate who is convicted of a crime committed on or after October 1. 1988 which crime is contained in category 1,2,3 or 4 of rule 3.701 and rule 3.988, Florida Rules of Criminal Procedure, and who has served at least one prior felony commitment at a State or Federal Correctional Institution or is sentence as a habitual or violent habitual offender pursuant to s. 775.084 shall upon reaching the rentative release date or provisional releae date, which ever is earlier, as established by the department of corrections be release under supervision subject to specified terms and conditions.... so you see Honors, If you read F.S. 947.1405 (2) like Mr.Deason and Judge Allen in the 1st. D.C.A. reads it you will see that a inmate has got to be convicted of a crime committed on or after October 1, 1988 by the way the word is, is used here. And said inmate has got to have said crime committed on or after October 1, 1988 in category 1,2,3 or 4 by the way the word is is used here. And said inmate has got to be a habitual offender by the way the word and is used here.

This is the only possible way this law can be interpreted

and the law is quite clear as to its meaning by the way said law is written and worded.

This court and the 1st. D.C.A. has ruled in prior cases, That if there is no ambiguity in the statute then there is no reason to depart from the statute to seek legislature intent in a law that is clearly written and clearly worded, So you see your honors, The 1st. D.C.A. totally went against there own prior rulings they have handed down in the past. In Judge Allen's dissenting opinion he states, I find myself in agreement with the construction of the statute urged by the Appellant. Plainly read, the statutory language means that an inmate will be subject to conditional release when he has both (A) been convicted of a category 1,2,3, or 4 crime and (B) been given a habitual felony offender sentence or served a prior felony commitment.

I disgree with the majority's reliance upon tidbits of legislative history to discern "legislative intent". In my view the law mean what its text most appropriately conveys, and we should content our selves with reading it rnther than psychoanalyzing those who enacted it. So it appears Judge Allen does not think F.S. 947.1405 (2) 1988 has any ambiguity in it, it would appear he thinks the law is quite clear as to its meaning.

Your Honors on pg 15-16 of the respondents brief they talk about searching for legislature's intent it says on pg 16.

The majority cited the senate staff analysis for CS/HB

1574, 1422, 1430, 1438, 1439, and 1567 which passed as chapter 88-122 Mr.Deason directs this court attention to pg 16-17 of respondents brief it say's.

The commission would further submit as evidence of legislative intent the Florida house of Representatives final staff analysis and economic impact statement for house bill 1574 (ATTACHED HERETO AS APPENDIX B) regarding chapter 88-122, laws of Florida, enacting the conditional release program act, Wherein the house staff acknowledged that the act.....targets ["HIGH RISK"] inmates being releaseo early due to gain time, requiring conditional supervision for up to 2 years. It targets the worst 6-7 % of inmates being released.. ..OFFENDERS WHO HAVE COMMITTED MURDER / MANSLAUGHTER, SEXUAL OFFENSES ROBBERY, AND VIOLENT PERSONAL CRIMES, AND INMATES SENTENCED AS "HABITURAL OFFENDERS".

(Emphasis Supplied) cleary, if the legislature has intended the statute's application to be an "either or " proposition, its staff would have so indicated in these analysis.

Your Honors Mr.Dason direst's this court's attention to the appendix B of the Respondent's brief. At the top of the page it has written there CS/HB 1574, 1422, 1430, 1438, 1439, and 1567 April 28,1988 so your Honor's Mr.Deason takes it that this is the famous CS/ and house bill's everybody keeps quoting. Well your honors, look under the heading of parole, The last paragraph it says;

The bi 11 would also create the "conditional release program

act of 1988" which would target the high risk" inmates being release earlier than sentenced due to gain time requiring conditional supervision for up to 2 years. It would target the worst 6-7% of inmates being released; offenders sentenced under categories 1,2,3, or 4 of rule 3.701 and rule 3.988 Fla.R.Crim.P. These are offenders who have committed murder, manslaughter, sexual offenses, robbery, and violent personal crimes. This program would also allow for restitution, revocation, and input from the crime victim.

Your Honor's, in what you just read in the house bill 1574 nowhere did it say, and inmates sentenced as "habitual offenders". **Now** refer back to pg 17 of Respondents brief it shows the very same house bill 1574 this court just read, except some one added something to this house bill that was not in the one in the appendix B they added and inmates sentenced as "habitual offenders". This show's me your Honors the Respondents are useing trickery here to lead this court and my self to beleive things that are not true. Refer to Mr.Deason EXHIBIT

Your Honors the Respondents use the case of BOARD OF PUBLIC INST. OF BROWARD COUNTY VS. DORAN 224 So.2d 693 (Fla 1969). The Respondent says here section 947.1405 must be construed in favor of the public even though it may contain a penal proision.

Your Honors section 947.1405 The whole law is penal but the respondents say even though it may contain a penal provision it appears the Respondents does not know the whole law is penal or they are acting 1ike that do not. Your Honors the Respondents

use the case of STATE VS. HAMILTON 388 So.2d. 561 . . ..In STATE vs. HAMITON in 3. statutes key 235 it sats statute enacted for public benefit should be construed liberally in favor of the public even though it contasins a penal provision.

Your Honors the Respondents use cases that say even though it contain A penal provision. Section 947.1405 does not contain "A" penal provision "The whole Statute is penal" in STATE VS. HAMILTON this case deals with someone pollting and in BOARD OE PUBLIC INST. OF BROWARD COUNTY VS. DORAN this case deals with people secretly talking. The law Mr.Deason is talking about deals with someone who was paid for his work and staying out of trouble and then his pay was taken back from him and turned in to supervision and released him on supervision when he did not meet the criteria of chapter 947.1405 (2) to be released on conditional release.

CONCLUSION

The purpose and intent of the 1989 legislature was apparent from the language used in the statute 947.1405 (2) that when the common world would read it the people could only believe that it required both a conviction under the 4 categories and be sentenced as a habitual offender. The language is specific and any ambiguity should be decided in Mr.Deason's favor. Owr courts are not super legislatures and changing what the legislature meant through legislative theatrics violates the seperation of powers that we depend on to keep owr nation free.

We ask this court to read the statute and interpret its language as the comon world would read it.

RELIEF

If this court finds in Mr.Deason's behalf then Mr.Deason ask's this court to order the Fla.Parole.Comm. to take back the illegal conditional release violation and give Mr.Deason credit for the time spent on the illegal sentence and apply this time to Mr.Deason new committment and order the Fla.Parole.Comm. to give Mr.Deason credit for all his gain time Mr.Deason earned on this illegal sentence apply all said gain time to his new committment and order Mr.Deason's immediate release from custody.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have sent by U.S. MAIL a true copy of the foregoing to BRADLEY R. BISCHOFF AND WILLIAM C. CAMPER at 2601 Blairstone Road, Bldg. C. RM. 219 Tallahassee Florida 32399-12450 this 14 day of May 1997.

Glen R. Deason

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Mr.Deason searched for legislature intent in the legislative history under CH. 88-122, 89-531, 90-337, 91-225, 91-280, 92-310, 92-2, 93-277 and through all of the above legislative history Mr.Deason was unable to discern any thing any where in the above legislative history that even suggest that the lagislature intended that an inmate sentenced as a hibitual offender "only" that an inmate meets the criteria in F.S. 947-1405 (2) to be released on conditional release. Mr.Deason has 5 EXHIBITS he wishes this court to look at and it will show this court that if the legislature spicicfcally wanted an inmate who was sentenced as an hibitual offender and not convicted of a crime on or after Oct. 1, 1988 and the crime is in category 1, 2, 3, or 4 then the legislature would have put it in writting like thay did in these EXHIBITS that Mr.Deason has enclosed there is a lot more laws with these legislature intent's but Mr.Deason feels the 5 EXHIBITS he has furnished will be enough the F.S. 947.1405 (2) 1989 The way it is written and worded Mr.Deason did not meet the criteria to be released on F.S. 947-1405 (2) conditional release.

Section 49. Subsections (2) and (3) of section 941.23, Florida Statutes, are amended to read:

941.23. Application for issuance of requisition; by whom made; contents

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the state attorney of the county in which the offense was committed, the Parole ~~and Probation~~ Commission, the Department of Corrections, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement, or of the breach of the terms of his bail, probation, or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge, stating the offense with which the accused is charged, or of the judgment of conviction, or of the sentence. The prosecuting officer, Parole ~~and Probation~~ Commission, Department of Corrections, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Department of State, to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

Section 50. Subsection (1) of section 943.06, Florida Statutes, is amended to read:

943.06. Criminal Justice Information Systems Council

There is created a Criminal Justice Information Systems Council within the department.

(1) The council shall be composed of 10 members, consisting of the Attorney General or a designated assistant; the secretary of the Department of Corrections or a designated assistant; the chairman of the Parole ~~and Probation~~ Commission or a designated assistant; the State Courts Administrator or a designated assistant; and 6 members, to be appointed by the Governor, consisting of 2 sheriffs, 2 police chiefs, 1 public defender, and 1 state attorney.

Section 51. Subsection (5) of section 944.012, Florida Statutes, is amended to read:

944,012. Legislative ~~intent~~

The Legislature hereby finds and declares that:

(5) In order to make the correctional system an efficient and effective mechanism, the various agencies involved in the correctional process must coordinate their efforts. Where possible, interagency offices should be physically located within major institutions and should include representatives of the Florida State Employment Service, the vocational rehabilitation programs of the Department of Health and Rehabilitative Services, and the Parole ~~and Probation~~ Commission. Duplicative and unnecessary methods of evaluating offenders must be eliminated and areas of responsibility consolidated in order to more economically utilize present scarce resources.

Section 52. Subsection (3) of section 944.02, Florida Statutes, is amended to ***read:***

944.02. Definitions

The following words and phrases used in this chapter shall, unless the context. clearly indicates otherwise, have the following meanings:

(3) "Commission" means the Parole ~~and Probation~~ Cotnmission.

(3) "Drug offender probation" means a form of intensive supervision which emphasizes treatment of drug offenders in accordance with individualized treatment plans administered by officers with restricted caseloads. Caseloads should be ~~are~~ restricted to a maximum of 50 cases per officer in order to ensure an adequate level of staffing.

Section 33. Section 948.51, Florida Statutes, is amended to read:

948.51. Community corrections assistance to counties

(1) **Legislative intent.-The** purpose of this section ~~act~~ is to:

(a) Divert nonviolent offenders from the state prison system by punishing such offenders with community-based sanctions, thereby reserving the state prison system for those offenders who are deemed to be most dangerous to the community.

(b) Forge a partnership between state and county correctional and public safety programs and facilities so that state funds may be effectively contractually disbursed to **counties** to build and operate corrections and public safety programs.

(c) Promote accountability of offenders to their community by requiring financial restitution to victims of crime and by requiring public service to be performed for local governments and community agencies.

(d) Make victim restitution a greater priority and provide closer monitoring of offenders to ensure payment to victims.

(e) Maintain safe and cost-efficient community correctional programs which also require supervision and counseling, and substance abuse testing, assessment, and treatment of appropriate offenders.

(f) Provide, through the development of sanctions, services, and treatment, alternative punishments which are available for the judge at sentencing and for pretrial intervention.

(g) Reduce, for contracting counties, both the percentage ~~number~~ of nonviolent felony offenders committed to the state prison system and the percentage ~~number~~ of nonviolent misdemeanants committed to the county detention system by punishing such offenders within the community or by requiring them to reside within community-based facilities.

(h) **Require** nonviolent offenders to meet their community obligations by maintaining employment, thereby providing resources for their families, service to the community, and payment for their cost of supervision and treatment.

(i) Extend the average length of incarceration for those sentenced to community corrections programs beyond the actual time which they would have served at the state level.

(2) Eligibility of counties.-A county may contract with the Department of Corrections for community corrections funds as provided in this section ~~herein~~. In order to enter into a community corrections partnership contract, a county must ~~shall~~ have a public safety coordinating council ~~county correctional planning committee as required by s. 951.26~~ and shall designate a county officer or agency to be responsible for administering community corrections funds received from the state. The public safety coordinating council ~~county correctional planning committee~~ shall prepare, develop, and implement a comprehensive county public safety ~~correctional~~ plan and shall submit an annual report to the Department of Corrections concerning the status of the program. To be eligible for community corrections funds under the contract, a county's initial public safety ~~correctional~~ plan must be approved by the governing board of the county and the secretary of the Department of Corrections based on the requirements of this section. A county may cooperate with one or more other counties in developing a unified public safety plan and may submit a single application to the department for funding. Continued contract funding shall be pursuant to subsection (6). The plan shall cover at least a 5-year period and shall include:

(a) A description of programs offered for the job placement and treatment of offenders in the community.

CRIMES-SEXUAL PREDATORS—NOTIFICATION OF COMMUNITY

Chapter 95-264

C.S.S.B. No. 56

AN ACT relating to sexual predators; amending s. 775.21, F.S.; providing additional legislative findings and intent with respect to the Florida Sexual Predators Art; amending s. 775.22, F.S., relating to the requirement that persons convicted of certain sexual offenses register with the Department of Law Enforcement; revising legislative findings and purpose: clarifying the offenders who are subject to registration as sexual predators: requiring the Department of Law Enforcement, the Department of Corrections, the county sheriff, or the employing agency of the officer supervising the offender to notify a sexual predator of certain hearing requirements; creating s. 775.225, F.S.; requiring the state attorney to file a petition with the circuit, court for a hearing to determine if the sexual predator poses a threat to the public; providing for the sexual predator to present testimony and be represented by counsel; requiring the sheriff or chief of police to publish notice notifying the community where the sexual predator resides if the court finds that the sexual predator poses a threat to the public; providing immunity from civil liability for certain officials, employees, and agencies; amending s. 775.2% F.S.; clarifying the term "sexual predator"; requiring the court to notify a sexual predator at the time of sentencing of the requirement for a hearing following release to determine whether the sexual predator poses a threat to the public: amending s. 947.1405, F.S.; requiring conditional release supervision upon release for a sexual predator; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 775.21, Florida Statutes, is amended to read:

775.21. **The** Florida Sexual **Predators Act; legislative findings and intent**

(1) SHORT TITLE.—Sections 775.21–775.23 ~~This act~~ may be cited as "The Florida Sexual Predators Act."

(2) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Sex offenders are extremely likely to use physical violence anti to repeat their offenses, and most sex offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of SOS offender victimization to society at large, while incalculable, clearly exorbitant.

(b) The high level of threat that a violent or repeat sex offender presents to the public safety, and the long-term effects that sex offenses cause victims, provide the state with sufficient justification to design and implement innovative mechanisms as part of a strategy to achieve a significant reduction in the commission of violent and repeat sex offenses, a strategy that includes:

1. Maintaining adequate facilities to ensure that decisions to release sexual predators into the community are not made on the basis of inadequate space.

~~2. Providing an adequate number of well-trained probation officers to ensure that sexual predators are released into the community under supervision.~~

2.3. Providing for postincarceration supervision for the sexual predator population, subject to specified terms and conditions established by the Parole Commission as set forth in s. 947.1405(2), implemented at the time of release from incarceration, with a requirement that those who are financially able must pay all or part of the costs of supervision. When the commission has reasonable grounds to believe that a sexual predator has violated the terms and conditions of release, such offender shall be subject to the provisions of s. 947.141 and shall be subject to forfeiture of gain-time pursuant to s. 944.28(1).

3.4. Providing for supervision of' sexual predators who are released into the community, by an adequate number of well-trained probation officers with low caseloads, with terms and conditions which may include electronic monitoring.

4.5. Requiring the registration of sexual predators, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities.

5. Providing for notification of the community concerning the presence of certain sexual predators.

(c) The public is not adequately protected from violent or repeat sex offenses. The nature of sex offenses, the devastation to the victims, the likelihood of violent and repeat offenses, and the costs of victimization are compelling reasons to focus state resources on addressing the problem of sexual predators.

(d) The state has a compelling interest in protecting the public from serious sex offenses and there is sufficient justification for requiring that the public be notified of the presence of certain sexual predators.

(3) LEGISLATIVE INTENT.—It is the intent of the Legislature to address the problem of sexual predators by providing probation officers with low caseloads pursuant to the conditional release program, and requiring registration and the maintenance of access by law enforcement to locator and other registration information, and requiring Lhc sheriff or chief of police to notify the public if, after a hearing, the circuit court finds that a sexual predator poses a threat to the public.

Section 2. Section 776.22, Florida Statutes, is amended Lo read:

775.22. Sexual predator registration; requirements, procedure, and penalties

(1) LEGISLATIVE FINDINGS AND PURPOSE.---

(a) In order to deter the commission of repeat sex offenses anti sex offenses involving physical violence, to enhance law enforcement's ahility to react when violent or repeat sex offenses arc committed, and to collect and analyze statistical and informational data for monitoring and tracking purposes, it is essential to require statewide registration of sexual predators.. This must be accomplished by maintaining an accurate and current computer data base system for instant 24-hour-a-day access that allows the tracking of sexual predators. The purpose of this section is to enhance the public safety by requiring the registration nf sexual predators, providing for the monitoring nf their activities and the tracking of their whereabouts, and facilitating law enforcement and prosecution, and providing information to communities to enhance public safety. The goal of this section is the on-line establishment of a centralized system through which certain information concerning sexual predators, including locator information, can be instantaneously accessed by local, state, and federal law enforcetnent.

(b)1. The Legislature finds that sexual predators often present a high risk of engaging in sexual offenses after being released from incarceration or commitment and that protection of the public from sexua l predators is of paramount and compelling governmental importance. The Legislature further finds that local law enforcement's efforts to protect their communities, conduct appropriate investigations, and apprehend offenders who commit sexual offenses are impaired by the lack of information available to the public about convicted sexual predators and that the lack of information shared with the pubnc may result in the failure of the criminal justice system to identify, investigate, apprehend, and prosecute offenders.

2. The state has a compelling interest in protecting the public from the commission of serious sexual offenses. The purpose of this act is to enhance the public safety by providing for notification to the community concerning the presence of offenders who fit the criteria for the category of sexual predator as defined in this chapter.

(2) REGISTRATION CRITERIA.—Each offender who is convicted, on a current offense committed on or after October 1, 1993, of, or is found to have committed, regardless of adjudication, or pleads guilty or nolo contendere to:

(a) Any capital, life, or first degree felony violation of chapter 794 or s. 847.0145, or of a similar law of another jurisdiction; or

(b) Any second degree or greater felony violation of chapter 794, s. 800.04, s. 827.071, or s. 847.0145, or of a similar law of another jurisdiction, and who has previously been convicted of or found to have committed, regardless of adjudication, or has pled nolo contendere or guilty

948.03. **Terms and conditions of probation or community control**

(9) As a condition of probation, community control, or any other court-ordered community supervision, the court shall order persons convicted of offenses specified in s. 943.325 to submit to the drawing of the blood specimens as prescribed in that section as a condition of the probation, community control, or other court-ordered community supervision. For the purposes of this subsection, conviction shall include a finding of guilty, or entry of a plea of nolo contendere or guilty, regardless of adjudication, or, in the case of a juvenile, the finding of delinquency.

(10) Any order issued pursuant to subsection (9) shall also require the convicted person to reimburse the appropriate agency for the costs of drawing and transmitting the blood specimens to the Florida Department of Law Enforcement.

Section 54. Section 775.21, Florida Statutes, is amended to read:

775.21. **The Florida Sexual Predators Act; legislative findings and intent**

(1) SHORT TITLE.—This act may be cited as "The Florida Sexual Predators Act."

(2) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Sex offenders are extremely likely to use physical violence and to repeat their offenses, and most sex offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sex offender victimization to society at large, while incalculable, clearly exorbitant.

(b) The high level of threat that a violent or repeat sex offender presents to the public safety, and the long-term effects that sex offenses cause victims, provide the state with sufficient justification to design and implement innovative mechanisms as part of a strategy to achieve a significant reduction in the commission of violent and repeat sex offenses, a strategy that includes:

1. Maintaining adequate facilities to ensure that decisions to release sexual predators into the community are not made on the basis of inadequate space.

2. Providing an adequate number of well-trained probation officers to ensure that sexual predators are released into the community under supervision.

3. Postincarceration supervision for the sexual predator population, implemented at the time of release from incarceration, with a requirement that those who are financially able must pay all or part of the costs of supervision.

4. Supervision of sexual predators who are released into the community, by probation officers with low caseloads, with terms and conditions which may include electronic monitoring and which must include the special conditions as required in s. 947.1405(7).

5. Registration of sexual predators, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities.

(c) The public is not adequately protected from violent or repeat sex offenses. The nature of sex offenses, the devastation to the victims, the likelihood of violent and repeat offenses, and the costs of victimization are compelling reasons to focus state resources on addressing the problem of sexual predators.

(d) The state has a compelling interest in protecting the public from serious sex offenses.

(3) LEGISLATIVE INTENT.—It is the intent of the Legislature to address the problem of sexual predators by providing probation officers with low caseloads and special conditions pursuant to the conditional release program, and requiring registration and the maintenance of access by law enforcement to locator and other registration information.

Section 55. Subsection (2) of section 775.22, Florida Statutes, is amended to read:

775.22. **Sexual predator registration; requirements, procedure, and penalties**

(2) REGISTRATION CRITERIA.—Each offender who is convicted, on a current offense committed on or after October 1, 1993, of, or is found to have committed, regardless of adjudication, or pleads guilty or nolo contendere to: