ORIGINAL

IN THE SUPREME COURT OF FLORIDA

FLORIDA PAROLE COMMISSION,

Petitioner,

vs. Case No. 90,237

MARK COOPER,
DC # 634429

Respondent.
_____/

PETITIONER'S REPLY BRIEF ON THE MERITS

On Certification from the District Court of Appeal,
Fourth District of Florida

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PRELIMINARY STATEMENT

The Appellant below, Mark Cooper, a/k/a Mark Martin, a/k/a Mark Johnson, a/k/a Malcolm Martin, a/k/a Craig Cooper, a/k/a Red Cooper, a/k/a Roger Coswell, a/k/a Mark Courathes, a/k/a Martin Malcolm, a/k/a Christopher Steegal, will be referred to as "Respondent" in this brief. Appellee below, Florida Parole Commission, will be referred to either as "Petitioner" or "the Commission." References to the record on appeal below will be designated "R" followed by the appropriate page number(s).

In rebuttal to Cooper's complaint in his brief that the Parole Commission's listing of his aliases is "unsubstantiated" and "undocumented", the Commission submits as evidence in opposition thereto a printout from the official Florida Department of Corrections database, an official action of the executive department of the State of Florida, which may be judicially noticed pursuant to Section 90.202(5), Florida Statutes. The Commission moves that this Court so notice this official record, attached hereto as Appendix A1.

STATEMENT OF THE CASE AND THE FACTS

Petitioner relies on the Statement of the Case and the Facts set forth in its Brief on the Merits.

STATEMENT OF THE ISSUE

WHEN AN INMATE WHO IS SERVING CONCURRENT SENTENCES IS RELEASED AFTER ACCRUING SUFFICIENT GAIN TIME AND HIS RELEASE ON ONE OR MORE OF THOSE SENTENCES IS CONDITIONAL UNDER SECTION 947.1405, FLORIDA STATUTES, IS HIS RELEASE STATUS REVOKED AS TO ALL THE CONCURRENT SENTENCES, INCLUDING THE SENTENCES IMPOSED FOR OFFENSES THAT DID NOT QUALIFY FOR CONDITIONAL RELEASE?

SUMMARY OF THE ARGUMENT

Whereas as a result of the opinion below, the Florida Legislature recently amended the statute in question, Section 947.1405(2), Florida Statutes, and expressly clarified its intent as to what the statute has always meant, the question certified by the lower court must be answered in the affirmative. Respondent Cooper was properly placed on (and revoked from) Conditional Release supervision as to his overall bundle of concurrent sentences even though one of the sentences, standing alone, would not have been conditional release eligible. Lowry v. Parole and Probation Commission, 473 So.2d 1248 (Fla. 1985); CS for CS for SB 310 (May 2, 1997).

Based on this legislative clarification of intent, it is clear that Respondent Cooper's Conditional Release supervision extended to all sentences within his bundle or overall term of concurrent sentences, including his longer Grand Theft sentence. Because the Legislature has clarified that the Commission's long-standing interpretation of 947.1405(2), as applied to the Respondent, is and always has been the correct interpretation, this Court must answer the certified question in the affirmative and reverse the judgment of the District Court below.

ARGUMENT

ISSUE:

The District Court of Appeal, Fourth District of Florida, certified the following question as one of great public importance:

> WHEN AN INMATE WHO IS SERVING CONCURRENT SENTENCES IS RELEASED AFTER ACCRUING SUFFICIENT GAIN TIME AND HIS RELEASE ON ONE OR MORE OF THOSE SENTENCES IS CONDITIONAL UNDER SECTION 947.1405, FLORIDA STATUTES, IS HIS RELEASE STATUS REVOKED AS TO ALL THE CONCURRENT SENTENCES, INCLUDING THE SENTENCES IMPOSED FOR OFFENSES THAT DID NOT QUALIFY FOR CONDITIONAL RELEASE?

In his Answer Brief on the Merits, Respondent Cooper concedes that "...amendments to a statute enacted (soon) after controversies arise regarding the legislative intent may be considered as a legislative interpretation of the original law rather than a substantive change..." (Answer Brief, p. 8).[1] Respondent, however, proposes that this principle and rule of construction be ignored in this case because the Parole Commission has "...failed to establish that the bill was enacted as a response to controversies regarding the legislative intent." (Answer Brief, p. 8). This is specious, as the Florida Legislature has recently enacted legislation (the Cooper Amendment) which was submitted to the Legislature by

[1] Lowry v. Florida Parole Commission, 473 So.2d 1248 (Fla. 1985).

the Parole Commission specifically in response to the Fourth District's March 13, 1997, opinion and March 21, 1997, opinion on rehearing in Cooper[2] which clearly called into question the legislative intent of the provision in question. Inasmuch as the Parole Commission has since 1988 interpreted Section 947.1405(2) as it did in the Cooper case, the issue here and in the District Court of Appeal has always been one of legislative intent, although the Parole Commission has always drawn that conclusion based on the language of the statute.[3] However, one wonders that if the statute was indeed clear and unambiguous, as both parties claim, why do both parties interpret it so differently and why did the Legislature feel compelled to clarify it soon after this controversy erupted? Obviously, the statute was not clear and unambiguous and the Legislature felt that it was necessary to clarify its intent in order to resolve the controversy.

In response to Respondent's suggestion that the Cooper amendment had nothing to do with the Fourth District's Cooper decision, The Parole Commission submits the Senate Committee on Ways and Means, Committee on Criminal Justice, CS for CS for SB 310 (1997) Staff Analysis and Economic Impact Statement,

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[2] Cooper v. Florida Parole Commission, et. al., _____So.2d____, 22 Fla. L. Weekly D781 (Fla. 4thDCA, March 21, 1997)

[3] An agency's interpretation of a statute it is charged with enforcing is entitled to great deference and will not be overturned on appeal unless clearly erroneous. Ameristeel Corp. v. Clark, ___ So.2d ___, 22 Fla. L. Weekly S178 (Fla. April 10, 1997); PW Ventures, Inc. v. Nichols, 533 So.2d 281 (Fla. 1988)

dated March 21, 1997,[4] which contains on the last page the Statement of Substantial Changes dated March 23, 1997, which states:

> The bill clarifies that the Legislature intends that offenders subject to post-prison supervision because of the offender's criminal history should not be discharged from further supervision merely because a component of the inmate's sentence expires. This statutory clarification is in response to the March 13, 1997 decision of the Fourth District Court of Appeal in Cooper v. Florida Parole Commission, Case No. 96-3641 (1997).

(Appendix B1). *See also* CS for CS for SB 310 (1997)(Second Engrossed) (attached hereto as Appendix C1).

This Court in Lowry stated that "(w)hen, as occurred here, an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof." Lowry, 473 So.2d at 1250. There can be no question in light of the above expression of legislative intent that the Cooper amendment was enacted to address the Cooper case.

As to the requirement that the amendment be enacted "soon", Cooper, as finalized, was decided on March 21, 1997, the proposed clarifying amendment was submitted soon thereafter, and Committee Substitute for Committee Substitute

[4] Judicial notice of this official action and record of the Florida Legislature is appropriate pursuant to Section 90.202(5), Florida Statutes, and Petitioner moves that this Court take proper judicial notice thereof.

for Senate Bill 310, containing the Cooper amendment, was passed on May 2, 1997. In rebuttal and opposition to Respondent's argument that the Cooper amendment was a substantive change in the law, the Commission submits that the Legislature's plain statement that the amendment was intended as a clarification speaks for itself. *See* Appendices B1, C1.

Respondent Cooper relies on a Senate Staff Analysis dated March 17, 1997,[5] which was issued before the Fourth District's Opinion on Motion for Rehearing, Clarification and Certification in Cooper was issued on March 21, 1997, for the proposition that the Cooper amendment did not involve the Cooper decision. This is fallacious, because at that point, the Commission had not even sought the clarifying amendment. Respondent further speculates that the amendment was in response to Gwong v. Singletary, 683 So.2d 109 (Fla. 1996) and Lynce v. Mathis, ___ U.S. ___, 117 S.Ct 891, 137 L.Ed.2d 63 (1997) (Answer Brief, p. 8), but it is clear that neither case involved, even tangentially, conditional release or an interpretation of Section 947.1405(2), Florida Statutes, and that the Staff Analysis which refers to these cases was dated **prior** to the final Cooper decision on rehearing below.

[5] Respondent's Appendix

On page 9 of his brief, Respondent urges this Court to "focus on the language employed by the Legislature." The Commission points out that the amendment to Section 947.1405(2)(c), the provision under review, is the most recent language employed by the Legislature, and which, despite Respondent's wishes, cannot be ignored. In Lowry, supra at 1249, this Court stated that: "(p)etitioner and respondents have all urged cogent arguments supporting their disparate interpretations of the statute in question. Where reasonable differences arise as to the meaning or application of a statute, the legislative intent must be the polestar of judicial construction." (emphasis supplied, citations omitted) Here, the Cooper amendment provides the polestar by which this Court may be guided to the safe harbor of proper statutory construction.

In Respondent Cooper's Answer Brief he claims that the First District's opinion in Westlund v. Florida Parole Commission, 637 So.2d 52 (Fla. 1st DCA 1994), "...stands for the proposition that the parole commission cannot calculate conditional release supervision using non-qualifying offenses." (Answer Brief, p. 4). This is an unjustified extrapolation of the First District's opinion, which was decided on the narrow ground that convictions occurring prior to the effective date of the Conditional Release Act cannot form a basis for conditional release eligibility. The First District decided Westlund based on an interpretation of

Section 947.1405.[6] Unlike the situation in Westlund, however, the Florida Legislature has recently enacted the Cooper Amendment which clarifies that in situations such as the one *sub judice*, it is the Legislature's expressed intention that the application of Section 947.1405(2), Florida Statutes, is not limited to sentences currently being served. See Appendix B1.

It is important to point out that Respondent misstates the Commission's position at page 10 of his brief when he states that "(t)he Petitioner infers that **all** early released inmates are subject to post release supervision." The Commission's position is simply that conditional release supervision applies to:

> Any inmate who Is convicted of a crime committed on or after October 1, 1988, which crime is contained in category 1, category 2, category 3, or category 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 sentenced as a habitual or violent habitual offender pursuant to s. 775.084... Such supervision shall be applicable to all sentences within the overall term of sentences if the inmate's overall term of sentences includes one or more conditional release eligible sentences as provided herein

Because Respondent Cooper is a member of the class of offenders whose overall term of concurrent sentences included one or more conditional release eligible sentences, he is subject to conditional release supervision as to all

[6] It is clear that an *ex post facto* analysis would have led to the same conclusion in Westlund.

sentences therein. Respondent would have this Court ignore this clear expression of legislative intent as to the interpretation of the statute dating back to its enactment in 1988. As stated by the Legislature, the Cooper Amendment is a **clarification** of the existing statute, and not a substantive change thereto. *See* Lowry, supra, Appendix B1, infra.

Respondent Cooper further misstates the Commission's position at page 10 of his brief when he insinuates that the Commission believes that a conditional release eligible offender is forever eligible on subsequent and unrelated incarcerations. The Commission's position is simply that set forth by the Legislature, that in a case such as this one, conditional release extends to all concurrent sentences within the overall term of sentences. Period.

Finally, Respondent asserts that because his current 1993 Grand Theft offense was committed prior to his 1995 conditional release qualifying Strong Arm Robbery, Battery on a Law Enforcement Officer, and Resisting Arrest With Violence offenses, that placement on conditional release violates the *Ex Post Facto* Clause. Not only is this claim not encompassed by the Certified Question and not addressed by the lower court, and hence not properly before this Court, but the claim lacks merit.

It is elemental that in order to violate *ex post facto*, a law must be applied retroactively. *See e.g.* Weaver v. Graham, 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed. 2d 17 (1981); California Department of Corrections v. Morales, 514 U.S. ___, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995). The Conditional Release Program has been in place since October 1, 1988, and was in force at the time that Cooper committed his 1993 Grand Theft. Respondent Cooper was clearly on constructive notice that because of his previous commitment to state prison, his commission of Sentencing Guidelines category 1 through 4 offenses in the future would subject him to mandatory conditional release supervision. This Court has held that every citizen is charged with knowledge of the domestic law of his jurisdiction. Akins et al. v. Bethea et al., 33 So.2d 638 (Fla. 1948). Cooper's claim of retroactive application of Section 947.1405, Florida Statutes, is without basis in fact. As further evidence of lack of retroactivity, it must be remembered that the Cooper Amendment is merely a clarification of existing law, and not a new substantive statutory provision.

Respondent has moved this Court to strike the last two pages of Appendix C to Petitioner's Brief on the Merits in that the document is not identified and is not subject to judicial notice (Answer Brief, p. 8). In response thereto, this document was prepared by the Parole Commission and presented to legislators and

legislative staff during the last legislative session in support of the Cooper amendment, which amendment was included in CS for CS for Senate Bill 310 and codified as Chapter 97-78, Laws of Florida. The Commission agrees that this document is not subject to judicial notice and regrets that it was included inadvertently with the other legislative information in the Commission's Brief on the Merits.

In sum, this Court must answer the Certified Question presented in the affirmative where the Legislature has unmistakably clarified the meaning of Section 947.1405(2), Florida Statutes, to explain the proper interpretation thereof to provide that where an inmate's overall term of concurrent sentences contains one or more conditional release eligible sentences, that conditional release supervision applies to all sentences within the overall term.

CONCLUSION

Based on the foregoing arguments and citations of legal authorities, Petitioner respectfully urges this Honorable Court to answer the Certified Question in this case in the affirmative and reverse the judgment of the District Court below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing has been furnished by U.S. Mail to Mark Cooper, DC # 634429, Moore Haven Correctional Institution, Dorm 2-E-5, P.O. Box 718501, Moore Haven, Florida 33471; Susan Maher, Deputy General Counsel, Florida Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500; and Diane Cuddihy, Assistant Public Defender, 201 S.E. 6th Street, Third Floor, Fort Lauderdale, Florida 33301-3302, this 9th day of July, 1997.

BRADLEY R. BISCHOFF
Assistant General Counsel

APPENDIX TO PETITIONER'S

BRIEF ON THE MERITS

NAME: COOPER, MARK C. DOC NO: 634429 STATUS: ACTIVE

THE FOLLOWING ENTRIES REFLECT ALL NAMES BY WHICH THE OFFENDER IS KNOWN.

TYPE	NAME
TRUE	COOPER, MARK
COMMIT.	COOPER, MARK C.
COMMIT.	MARTIN, MARK C.
COMMIT.	COOPER, MARK
ALIAS	JOHNSON, MARK
ALIAS	MARTIN, MARK
ALIAS	MARTIN, MALCOLM
ALIAS	COOPER, CRAIG
ALIAS	CCOPER, RED
ALIAS	COSWELL, ROGER
ALIAS	COURATHES, MARK
ALIAS	MALCOLM, MARTIN
ALIAS	STEEGAO, CHRISTOPHER

NAME: COOPER, MARK C. DOC NO: 634429 STATUS: ACTIVE

THE FOLLOWING ENTRIES REFLECT ALL NAMES BY WHICH THE OFFENDER IS KNOWN.

TYPE	NAME
SSN	
SSN	
SSN	

APPENDIX B_1

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.)

Date: March 21, 1997 Revised: _____ _____ _____ _____

Subject: Criminal Punishment

	Analyst	Staff Director	Reference	Action
1.	Dugger & Barrow	Miller	CJ	Favorable/CS
2.	Martin	Smith	WM	Favorable/CS
3.				
4.				
5.				

I. Summary:

CS/CS/SB 310 would make the penalty provision of the exploitation statute the same as it was when it was re-written in 1995 by eliminating the first degree misdemeanor penalty for exploiting an elderly person or disabled adult when the property involved in the crime was valued at less than $100. Instead, the CS would make it a third degree felony to exploit an elderly person or disabled adult when the value of the property involved in the crime is less than $20,000. The minimum threshold for the third degree felony classification would no longer be $100; it would include any property valued under $100.

CS/CS/SB 310 would expand the list of predicate offenses constituting racketeering activity under the RICO statute to include abuse, neglect, and exploitation of elderly persons or disabled adults.

CS/CS/SB 310 would provide legislative findings that offenders who are placed on conditional release, or would otherwise qualify for conditional release but are placed on probation upon release from prison, pose the greatest risk to public safety. Such offenders would be required to be intensely supervised by the most experienced probation officers with a maximum caseload of 40 cases per officer, subject to legislative appropriation.

This CS would substantially amend or create the following sections of the Florida Statutes: 825.103, 895.02, 921.0012, 947.1405, and 948.12.

II. Present Situation:

Chapter 825, F. S. (Supp. 1996), defines and provides criminal penalties for the abuse, neglect, and exploitation of elderly persons and disabled adults. Section 825.103, F. S. (Supp. 1996), proscribes the offense of exploiting an elderly person or disabled adult. Penalties are provided, ranging from a first degree felony to a first degree misdemeanor, depending on the value of the property involved in the offense.

- If the value of the funds, assets, or property is $100,000 or more, it is punishable as a first degree felony and ranked as a Level 8 offense (requires a prison sentence) within the sentencing guidelines under s. 921.0012, F. S. (Supp. 1996).

- If the property is valued at $20,000 or more, but less than $100,000, it is a second degree felony and ranked as a Level 7 offense (requires a prison sentence).

- If the value of the property is $100 or more, but less than $20,000, it is punishable as a third degree felony and ranked as a Level 6 offense (without additional sentencing factors, allows for a discretionary prison sentence if the court increases total sentence points by 15%).

- If the property is valued at less than $100, it is punishable as a first degree misdemeanor (an offender is eligible for up to a year in jail).

When the exploitation statute was re-written in 1995 because it was found to be unconstitutional in *Cuda v. State*, 639 So.2d 22 (Fla. 1994), it did not contain the misdemeanor exploitation offense covering property that was valued at less than $100. Instead, the minimum penalty was a third degree felony and it covered all property valued at less than $20,000. Chapter 95-158, Laws of Florida. Moreover, the exploitation statute that was found to be unconstitutional did not provide for a misdemeanor penalty.

Currently, crimes against elderly persons or disabled adults are not specifically enumerated as predicate offenses in the Florida Racketeer Influenced and Corrupt Organization Act (RICO), ch. 895, F.S. (Supp. 1996). A violation occurs under RICO when a person, through a pattern of racketeering activity, acquires or maintains an interest in or control of an enterprise or real property; participates in an enterprise; or conspires to do any of the above. "Pattern of racketeering" requires at least two interrelated racketeering acts occurring within five years of each other. "Racketeering activity" includes crimes chargeable under the federal RICO statute, crimes chargeable under 22 chapters and 36 sections of the Florida Statutes (predominantly felony offenses), and attempt, conspiracy, or solicitation of another to commit any of these predicate crimes. The RICO statute provides criminal penalties as well as civil remedies for engaging in racketeering activity. The most significant civil remedy is the forfeiture of all real or personal property used or intended for use in the course of, derived from, or realized through racketeering activity.

The "Conditional Release Program Act" authorizes the Department of Corrections to continue to supervise certain authorizes the Department of Corrections to continue to supervise certain repeat offenders after their release from prison by reason of their accrual of gain time, and to revoke their gain time in the event they violate one or more conditions. This statute targets "high risk" inmates convicted of murder, manslaughter, sexual offenses, robbery, violent personal crimes, and habitual offenders (categories 1 through 4 of the sentencing guidelines) who are being released early due to gain time but still require conditional supervision for the public's safety. Upon reaching the tentative release date or provisional release date, whichever is earlier, the inmate may be released under supervision subject to specific terms and conditions. s. 947.1405, F.S. (1996 Supp.)

On March 13, 1997, the Fourth District Court of Appeal in *Cooper v. Florida Parole Commission,* Case No. 96-3641 (1997), issued an opinion holding that when sentences are served concurrently the inmate's last date of conditional release supervision should be calculated with reference only to those sentences that are subject to the Act. In other words, when the statutorily enumerated offense which qualifies the inmate for conditional release expires, the inmate is no longer eligible for supervision after release from prison when the inmate is serving a longer sentence on another concurrently imposed sentence that does not fall under the enumerated offenses. In such a situation, the inmate must be released unconditionally.

The *Gwong* and *Lynce* Case Decisions

Two recent court decisions by the Florida Supreme Court and the United States Supreme Court have constituted a devastating blow to the State of Florida as well as other states that have struggled with correctional system overpopulation. In particular, the *Lynce* case expanded inmates' substantive rights concerning gain-time awards that have been enacted (and abolished) over the years by our state, regardless of the purpose for the creation of the different types of gain-time and the grounds upon which the types of gain-time are awarded to state inmates. The *Lynce* case has expanded the application of the *ex post facto* prohibition and stated that it also applies to "administrative mechanisms" created by a state as a short-term solution to assist in dealing with inmate overcrowding crises.

This decision means that the State of Florida will only be able to prospectively abolish most, if not all, types of gain-time or other credits created to shorten an inmate's sentence. The decision also means that the state will have to undertake alternative means in dealing with its prison population, such as carefully monitoring the number of inmates entering the state prison system and maintaining prison beds sufficient in number to accommodate the influx of inmates into the system. Prison population forecasting will become increasingly important for the state to ensure that it does not relive a crisis situation in its prison system as was the case in the late 1980's and early 1990's.

The *Gwong v. Singletary* Case

Subsequent to the Florida Attorney General's legal opinion that the Department of Corrections could use its discretion to prospectively deny gain-time awards to inmates already in the prison system, the Department adopted a rule that would limit gain-time earnings to 15% for specified inmates who were deemed to be violent by the Department of Corrections. Rule 33-11.0065 was amended and made effective on April 21, 1996, and was applied prospectively to inmates who had been convicted of committing or had previously been convicted of committing, or attempting to commit (including conspiracy or solicitation to commit) crimes involving a homicide, sexual battery, certain specified lewd or indecent assaults or acts, kidnapping, child abuse, or other specified crimes that were committed in combination with a sex act being attempted or completed during the commission of those crimes.

Essentially, the administrative rule worked in much the same manner as the S.T.O.P. Act in limiting the amount of gain-time that may be earned by state inmates to a maximum of 15% of their court-imposed sentence to have the effect of requiring inmates to serve at least 85% of their sentences. Although the S.T.O.P. Act applies prospectively in that it applies to crimes committed on or after October 1, 1995, Rule 33-11.0065 tried to apply its limitation in a different "prospective" manner. The rule's gain-time limitation applied to inmates already in the system who had already been convicted of a crime and sentenced and was applied prospectively from the time the amended rule was adopted/effective. The application of the administrative gain-time limitation did not consider when the crime was committed. The "prospective" nature of the administrative rule limiting gain-time was from the time the rule was effective; it did not take away gain-time already earned. This meant that many inmates who were subject to the rule may have already earned gain-time that equals 15% of their court-imposed sentence or more. Under the administrative rule, those inmates would not lose that gain-time earned, they would simply not be able to earn any more gain-time from the time the rule became effective on April 21, 1996.

Administrative rule 33-11.0065 was soon legally challenged in the Florida Supreme Court by an inmate in *Gwong v. Singletary*. The Court unanimously held in favor of the petitioner, inmate Richard Gwong, finding that the amended rule retroactively denies certain prisoners, who have 85% or less of their prison sentences remaining, the ability to earn incentive gain-time. The Court held that at the time Gwong committed his criminal offense (on January 13, 1987, he committed second-degree murder) for which he was subsequently convicted and sentenced, the law provided that he was eligible to earn incentive gain-time under s. 944.275(4)(b), F.S., and that such eligibility could not be retroactively eliminated. Although the Department of Corrections argued that administrative gain-time limitations differ from legislative gain-time limitations because the department was exercising its statutory "discretion" and would be legally permissible under this situation, the Court disagreed and held that such action was contrary to prior court holdings prohibiting *ex post facto* application in the *Weaver v. Graham* and the *Waldrup v. Dugger* cases. The Court found that the amended rule applies to a class of inmates who committed their offenses before the effective date of the rule's amendment and that the rule acts to enhance the measure of punishment to those inmates by limiting or eliminating the ability to earn gain-time. Determining whether an offender's punishment is enhanced or more

"onerous" is a key element in determining whether there is a violation of the *ex post facto* clause. Thus, the Florida Supreme Court barred the Department from applying the amended rule to inmates convicted of the specified offenses before the amended rule's effective date.

It is purported that this administrative rule would affect approximately 2,000 inmates currently in the state prison system, keeping the inmates in the system longer. However, the recent *Gwong* ruling would allow the affected inmates to exit the prison system at an accelerated pace, as was the case before the Department amended rule 33-11.065 in April, 1996. The Criminal Justice Estimating Conference is tracking and forecasting the number of inmates that were affected by the application and recision of rule 33-11.0065.

As of November 22, 1996, the *Gwong* decision was considered technically "final" from which the state appealed to the U.S. Supreme Court through a Petition for Certiorari. The United States Supreme Court denied the state's Petition for Certiorari in February, 1996, exhausting all avenues for appeal and thereby making the Florida Supreme Court's decision in *Gwong* final.

The *Lynce v. Mathis* Case

A Florida case that was appealed to the U.S. Supreme Court, *Lynce v. Mathis*, had oral arguments before the Court on November 4, 1996. In 1992, the Legislature retrospectively canceled all provisional credits for inmates under the custody of the Department of Corrections. Provisional credits had been a legislatively created mechanism that was considered an administrative remedy for reducing prison overcrowding. In the *Lynce* case, an inmate alleged that when provisional credits were canceled and retroactively withdrawn from his sentence-expiration calculation by the state after they had previously been applied against his sentence, it violated the U.S. Constitution's prohibition against *ex post facto* application of the law. "Inmate Lynce" also received other types of gain-time including "basic" gain-time and "administrative" gain-time for credits against his length of sentence. After Lynce was released from prison after receiving 1,860 days in provisional credits against his sentence and over 3,000 days of credit from other types of early release credits, he was arrested and placed back in prison to serve time equal to the amount of provisional credits that were applied to his sentence.

On February 19, 1997, the U.S. Supreme Court issued its unanimous decision in the *Lynce* case, which held in favor of Lynce. The Court held that the 1992 statute retroactively canceling provisional credits violated the *Ex Post Facto* Clause of the Constitution. Citing *Weaver v. Graham*, 450 U.S. 24, 29 (1981), and *Collins v. Youngblood*, 497 U.S. 37, 50 (1990), the Court found that to fall within the *ex post facto* prohibition, a law must be retrospective and "disadvantage the offender affected by it," by increasing the punishment for the crime. The Court found in *Lynce* that the 1992 statute that abolished and canceled provisional credits was "clearly retrospective," and a determination that it disadvantaged Inmate Lynce by increasing his punishment is supported by *Weaver v. Graham* in which the Court held that retroactively decreasing the amount of gain-time awarded for an inmate's good behavior violated the *Ex Post Facto* Clause. The Supreme Court in *Lynce* distinguished its recent holding in *California Department of Corrections v. Morales*, 415 U.S. __ (1996) by finding that because *Weaver* and

subsequent cases focused on whether the Legislature's action *lengthened* the prisoner's sentence without examining the subjective purposes behind the sentencing scheme. The Court found that the fact that the generous gain-time provisions (such as administrative gain-time or provisional credits) were motivated by more by the interest in avoiding prison overcrowding rather than by a desire to reward good behavior (such as with incentive gain-time) was *irrelevant* to the *ex post facto* inquiry.

The U.S. Supreme Court was not persuaded by the state's argument that provisional credits or administrative gain-time was not a technical part of an inmate's sentence because they were administratively imposed mechanisms utilized purely to control the prison system's population for overcrowding. The Court was equally unpersuaded that Inmate Lynce was not entitled to relief because his provisional credits were awarded pursuant to statutes that were enacted after the date of the inmate's offense.

The Court found, however, that even though the overcrowding statute in effect at the time of Lynce's crime (basic gain-time and emergency release credits) was slightly modified over time, the basic elements of the overcrowding statute stayed the same and, therefore, the changes did not affect Lynce's *ex post facto* claim. Therefore, even though the Legislature continued to modify, abolish, and create statutes since 1983 that were designed to help deal with prison overcrowding, the Court determined that *the consequences* of the retroactive cancellation should be the main focus of an *ex post facto* determination. The Court held that the subjective intent of the Legislature in dealing with prison overcrowding by creating these early release mechanisms did not matter because the cancellation of the credits had the effect of "lengthening an inmate's incarcerative sentence."

The Number of Inmates Affected by the *Gwong* Decision

According to the Department of Corrections, the holding in *Gwong* affected approximately 22,000 inmates in the prison system who will now not be limited in their incentive gain-time earning by the Department's administrative rule to cap their eligibility. However, those inmates are still subject to statutory eligibilities and limitations relating to gain-time allowances.

According to the Department, there are approximately 2,000 inmates in the prison system who were convicted of serious, violent crimes who will have to be released at an accelerated rate through next August due to the ruling in *Gwong*. Of those 2,000 inmates, the Department stated that 446 inmates were released "early" from prison on November 26, 1996, because of the ruling in the *Gwong* case. Approximately 96 inmates were released on November 27, 1996. To follow the Florida Supreme Court's directive in *Gwong*, approximately 700 more inmates were required to be released from prison by December 8, 1996.

As of November 27, 1996, approximately 50% of the inmates who were released because of the *Gwong* ruling were being released with some type of community supervision by the Department's correctional probation officers. The Department of Corrections expects that this trend of supervision will continue for the remaining inmates who will be released at an

accelerated pace due to *Gwong*. Of this 50% being supervised upon "accelerated" release, approximately 15% will be on conditional release supervision and approximately 85% will be on probation or community control supervision as a result of a court-imposed split sentence. In addition to the 50% of the releasees being on some form of community supervision, another 10% are going to other jurisdictions. Specifically, 10% of the accelerated releasees have INS "detainers" for deportation proceedings or are being released to other law enforcement agencies.

The Number of Inmates Affected by the *Lynce* Decision

According to the Department of Corrections, the *Lynce* decision affected approximately 2,700 inmates to allow them to be release early from prison. As a result of that decision, the Department of Corrections was forced to release inmates who had previously received provisional release credits or administrative gain-time and had those credits or gain-time retroactively taken away from them to remain incarcerated in prison or rearrested and returned to prison. The offenders who were required by the Court to be released are very serious offenders, including those convicted of murder, battery on law enforcement officers, armed robbery, and many other second degree felons.

Pursuant to *Lynce*, the Department of Corrections had to release 283 inmates on March 11, 1997, with an additional 3 inmates released on March 14, 1997. On March 17, 1997, there will be an additional 196 inmates that will be released because of this U.S. Supreme Court decision. Of these 482 offenders being released so quickly, almost 30% of them will be on some form of supervision upon their release from the prison system. Specifically, according to the Department of Corrections, 59 inmates will be subject to mandatory conditional release supervision. Another 20 inmates will be placed on some other form of community supervision, such as probation. At least 57 more inmates have INS detainers on them and will be released to the federal INS authorities for deportation proceedings or are being released to other law enforcement agencies.

The remaining 2,200 inmates who will be released as a result of the *Lynce* decision will be released at a rate of an approximate *average* of 8 to 10 inmates per month over the next 10 to 20 years. There are a few inmates who will actually be trickling out of the system beyond the 20 years to as long as 40 years from the present. Of these 2,200 inmates that remain to be released over time, the Department estimates that approximately 728 inmates will be required to be supervised on mandatory conditional release supervision. Another 780 inmates will have some other community supervision to follow their release, such as probation. An additional 189 inmates or so apparently have INS detainers on them, so those offenders will be released to the federal INS authorities for deportation proceedings or are being released to other law enforcement agencies upon release from our system because of *Lynce*.

What the Legislature Has Recently Done to Ensure Future Safety and Make the Criminal Justice System More Effective to Avoid Future Early Prison Releases and Lengthen Prison Sentences

Over the last several years, Florida has been on an aggressive prison construction campaign to greatly expand the prison system. Currently, Florida's prison system has approximately 76,013 beds available to take prisoners if it is operating at its maximum allowable capacity, which is 150% of the system's design capacity. The prison population was 63,894 as of March 7, 1997, resulting in over 12,000 prison beds yet available to take prisoners. Prison beds are still under construction from previous appropriations to be added to the system's capacity. Upon completion of construction from previous legislative appropriations, there will be over 83,000 prison beds in the state system if it is operating at 150% of its design capacity. According to the most recent Criminal Justice Estimating Conference held on March 7, 1997, the state prison system is not projected to fill up all previously funded prison beds until at least June 30, 2002. If sentencing practices remain essentially the same and this, or future legislatures fund construction and operation of additional beds, the amount of time that the prison system would have "available" prison beds, and not be in an overcrowding mode, would logically be extended to a date beyond June 30, 2002.

Another very important change that the 1995 Legislature made to focus on truth-in-sentencing and making inmates serve more time in prison is the passage of the Stop Turning Out Prisoners Act of 1995. Any criminal offender, regardless of the felony crime he has committed, will be required to serve at least 85% of his court-imposed sentence for crimes committed on or after October 1, 1995. Now citizens can count on offenders who are coming into the prison system to serve what the court tells them they are going to serve. Inmates who committed their crime on or after October 1, 1995, will only be allowed to earn *incentive* gain-time for up to 15% of their court-imposed sentence. This is the *only type of gain-time* these offenders will be able to earn when they come into the prison system now. The Legislature has abolished all early release mechanisms and prospectively abolished all other forms of gain-time available to inmates in the state prison system. Furthermore, the S.T.O.P. Act prohibited parole for any person who commits a capital felony and it now requires any offender who is sentenced to a life sentence to stay in prison throughout the rest of his natural life.

The 1995 Legislature also modified the Sentencing Guidelines to restructure the offense severity chart to rank many previously unranked offenses and to rank some offenses higher than under the previous guidelines. Additional point assessments were added for offenders convicted of certain serious felonies with a prior felony conviction. Some multipliers of sentencing points were also added under the 1995 Guidelines. The end result was to enhance sentencing point scores for greater length in sentences for many serious offenders.

The 1995 Legislature also passed the Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995. It defines a violent career criminal as an offender who is sentenced for a forcible felony, aggravated assault, aggravated stalking, aggravated child abuse, lewd/lascivious/indecent conduct, or escape; who has three or more prior convictions for any of these offenses; and who has been incarcerated in a state or federal prison. The primary offense must have been committed within 5 years of the later of: the defendant's last qualifying prior convictions or the defendant's release from a qualifying prior conviction. The Evelyn Gort Career Criminal Act applies to crimes committed on or after October 1, 1995, and provides

minimum mandatory sentences for offenders who qualify under s. 775.084 (1)(c), F.S. Violent career criminals are sentenced in conformity with the procedure delineated in s 775.084(3)(b), F.S. The minimum mandatory sentences are harsh and nearly encompass the statutorily maximum allowable sentences for almost each level of felony crimes. Pursuant to s. 775.084(4)(c), F.S., a violent career criminal will be sentenced as follows: a life sentence in the case of a life felony or a first degree felony; a term of years not to exceed 40 years but a minimum of 30 years for a second degree felony; and a term of years not to exceed 15 but a minimum of 10 years for a third degree felony.

Other measures that allow the sentence of a more serious offender to be enhanced include the habitual felony offender and the habitual violent felony offender statutes under s. 775.084, F.S. These statutes also set broader parameters on allowable sentences beyond guidelines sentences and minimum mandatory sentences for offenders who qualify to be "habitualized" under these statutes.

III. Effect of Proposed Changes:

CS/CS/SB 310 would make the penalty provision of the exploitation statute the same as it was when it was re-written in 1995 by eliminating the first degree misdemeanor penalty for exploiting an elderly person or disabled adult when the property involved in the crime was valued at less than $100. Instead, the CS would make it a third degree felony to exploit an elderly person or disabled adult when the value of the property involved in the crime was less than $20,000. The minimum threshold for the third degree felony classification would no longer be $100; it would include any property valued under $100. Thus, under the CS, rather than being eligible to receive up to a year in jail, an offender could receive a maximum sentence of 13.4 months in prison, absent other factors (prior record, additional offenses) at sentencing.

CS/CS/SB 310 would also expand the list of predicate offenses constituting racketeering activity under the RICO statute to include abuse, neglect, and exploitation of elderly persons or disabled adults. Most of the predicate offenses under the RICO statute are felonies. Similarly, as a result of the CS, all of the offenses against elderly persons or disabled adults that are proscribed in ch. 825, F.S. (Supp. 1996), would be felonies. If a RICO violation involving abuse or exploitation of elderly persons was established, the violator could be subjected to both criminal and civil penalties under the RICO statute, including the forfeiture of real or personal property used or intended for use in the course of, derived from, or realized through racketeering activity.

The bill clarifies that the Legislature intends that offenders subject to post-prison supervision because of the offender's criminal history should not be discharged from further supervision merely because a component of the inmate's sentence expires.

When an offender has been convicted of offenses contained in sentencing guidelines' categories 1 through 4, which are subject to conditional release supervision, and has also been convicted of offenses not contained in categories 1 through 4, but has been sentenced concurrently as to both,

the offender's conditional release status remains as to the noncategory 1 through 4 sentence even though the offender's category 1 through 4 sentence expired.

CS/CS/SB 310 would provide, subject to specific legislative appropriation, a means by which the state could proactively supervise a large amount of the offenders who were released at an accelerated rate as a result of the recent Court rulings in *Lynce v. Mathis* and *Gwong v. Singletary*. Many of the inmates who were released under these decisions will be subject to conditional release or probation supervision upon their release. Therefore, such offenders would be subject to the intensive supervision emphasized by this CS.

There would be legislative recognition that offenders who are released on conditional release supervision, or are offenders who would otherwise qualify for conditional release supervision or are violent career criminals but are placed on probation upon release, pose the greatest threat to public safety of all the offenders who are on community supervision. This CS would require that such offenders should be supervised intensely by the most experienced correctional probation officers.

It would also allow the caseload of correctional probation officers who are supervising such offenders to be limited to a maximum ratio of 40 cases to one officer, subject to specific legislative appropriation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Since the bill does not require the Department of Corrections to limit the caseloads to 40 offenders per officer, but rather allows the department to establish those caseloads subject to specific legislative appropriation, there is no unavoidable fiscal impact. However, the Department of Corrections has submitted an analysis showing the annual fiscal impact would be 125 new positions and $9,091,699 to provide the intensive community supervision of offenders with the caseload ratio no greater than 40 offenders to one officer. The $9 million cost includes $3,744,615 for additional electronic monitoring units, which are not specifically anticipated by the bill. Absent the electronic monitoring costs, the 125 positions would cost $5,347,084 for Fiscal Year 1997-98.

The Criminal Justice Impact Conference of March 17, 1997 estimated that the penalty provisions relating to exploitation of elderly persons/disabled adults would have an insignificant impact on prison beds needed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS for SB 310

The bill clarifies that the Legislature intends that offenders subject to post-prison supervision because of the offender's criminal history should not be discharged from further supervision merely because a component of the inmate's sentence expires. This statutory clarification is in response to the March 13, 1997 decision of the Fourth District Court of Appeal in Cooper v. Florida Parole Commission, Case No. 96-3641(1997).

Provides that the requirement for maximum caseloads of 40:1 for correctional probation officers supervising conditional release offenders is subject to specific legislative appropriation.

Deletes the appropriation to the Department of Corrections of $2,592,798 and 113 positions.

Changes the effective date of the act from July 1, 1997 to upon becoming law.

Committee on Ways and Means

Staff Director _____

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

APPENDIX C 1

By the Committees on Ways and Means, Criminal Justice and Senators Gutman and Crist

301-1700-97

A bill to be entitled

An act relating to criminal punishment; amending s. 825.103, F.S.; imposing a more severe penalty for the offense of exploiting an elderly person or disabled adult if the value of the property involved is less than a specified amount; amending s. 895.02, F.S.; redefining the term "racketeering activity" for purposes of the the Florida RICO Act to include the offense of abuse, neglect, or exploitation of an elderly person or disabled adult; reenacting ss. 16.56(1)(a), 27.34(1), 655.50(3)(g), 896.101(1)(g), 905.34, F.S., relating to the Office of Statewide Prosecution, salaries and other costs of state attorneys, unlawful financial transactions, and statewide grand juries, to incorporate the amendment to s. 895.02, F.S., in references thereto; amending s. 921.0012, F.S., relating to the sentencing guidelines; revising a penalty to conform to changes made by the act; amending s. 947.1405, F.S.; clarifying legislative intent regarding sentences which are eligible for conditional release supervision; providing a legislative finding concerning offenders released from prison who meet conditional release criteria; requiring the Department of Corrections to provide intensive supervision; restricting caseloads of supervising officers; creating s. 948.12, F.S.; providing a legislative finding concerning

offenders who are released from prison and who meet the enumerated criteria and have a term of probation to follow incarceration; requiring such offenders to be intensively supervised; restricting caseloads of supervising officers; providing an effective date.

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

Section 1. Section 825.103, Florida Statutes, 1996 Supplement, is amended to read:

825.103 Exploitation of an elderly person or disabled adult; penalties.--

(1) "Exploitation of an elderly person or disabled adult" means:

(a) Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

1. Stands in a position of trust and confidence with the elderly person or disabled adult; or

2. Has a business relationship with the elderly person or disabled adult; or

(b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of

the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

(2)(a) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at $100,000 or more, the offender commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at $20,000 or more, but less than $100,000, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at ~~$100 or more,~~ but less than $20,000, the offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

~~(d) If the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at less than $100, the offender commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 2. Paragraph (a) of subsection (1) of section 895.02, Florida Statutes, 1996 Supplement, is amended to read:

895.02 Definitions.--As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 403.727(3)(b), relating to environmental control.

3. Section 414.39, relating to public assistance fraud.

4. Section 409.920, relating to Medicaid provider fraud.

5. Section 440.105 or s. 440.106, relating to workers' compensation.

6. Part IV of chapter 501, relating to telemarketing.

7. Chapter 517, relating to sale of securities and investor protection.

8. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.

9. Chapter 550, relating to jai alai frontons.

10. Chapter 552, relating to the manufacture, distribution, and use of explosives.

11. Chapter 562, relating to beverage law enforcement.

12. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

13. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

14. Chapter 687, relating to interest and usurious practices.

15. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

16. Chapter 782, relating to homicide.

17. Chapter 784, relating to assault and battery.

18. Chapter 787, relating to kidnapping.

19. Chapter 790, relating to weapons and firearms.

20. Section 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

21. Chapter 806, relating to arson.

22. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.

23. Chapter 812, relating to theft, robbery, and related crimes.

24. Chapter 815, relating to computer-related crimes.

25. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

26. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

27.~~26.~~ Section 827.071, relating to commercial sexual exploitation of children.

28.~~27.~~ Chapter 831, relating to forgery and counterfeiting.

29.~~28.~~ Chapter 832, relating to issuance of worthless checks and drafts.

30.~~29.~~ Section 836.05, relating to extortion.

31.~~30.~~ Chapter 837, relating to perjury.

32.~~31.~~ Chapter 838, relating to bribery and misuse of public office.

33.~~32.~~ Chapter 843, relating to obstruction of justice.

34.~~33.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

35.~~34.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

36.~~35.~~ Chapter 874, relating to criminal street gangs.

37.~~36.~~ Chapter 893, relating to drug abuse prevention and control.

38.~~37.~~ Chapter 896, relating to offenses related to financial transactions.

39.~~38.~~ Sections 914.22 and 914.23, relating to tampering with a witness, victim, or informant, and retaliation against a witness, victim, or informant.

40.~~39.~~ Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 3. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, 1996 Supplement, in a reference thereto, paragraph (a) of subsection (1) of section 16.56, Florida Statutes, 1996 Supplement, is reenacted to read:

16.56 Office of Statewide Prosecution.--

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, and home-invasion robbery;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

4. Any violation of the provisions of the Florida Anti-Fencing Act;

5. Any violation of the provisions of the Florida Antitrust Act of 1980, as amended;

6. Any crime involving, or resulting in, fraud or deceit upon any person; or

7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135,

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits.

Section 4. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, 1996 Supplement, in a reference thereto, subsection

(1) of section 27.34, Florida Statutes, 1996 Supplement, is reenacted to read:

27.34 Salaries and other related costs of state attorneys' offices; limitations.--

(1) No county or municipality shall appropriate or contribute funds to the operation of the various state attorneys, except that a county or municipality may appropriate or contribute funds to pay the salary of one assistant state attorney whose sole function shall be to prosecute violations of special laws or ordinances of the county or municipality and may provide persons employed by the county or municipality to the state attorney to serve as special investigators pursuant to the provisions of s. 27.251. However, any county or municipality may contract with the state attorney of the judicial circuit in which such county or municipality is located for the prosecution of violations of county or municipal ordinances. In addition, a county or municipality may appropriate or contribute funds to pay the salary of one or more assistant state attorneys who are trained in the use of the civil and criminal provisions of the Florida RICO Act, chapter 895, and whose sole function is to investigate and prosecute civil and criminal RICO actions when one or more offenses identified in s. 895.02(1)(a) occur within the boundaries of the municipality or county.

Section 5. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, 1996 Supplement, in a reference thereto, paragraph (g) of subsection (3) of section 655.50, Florida Statutes, 1996 Supplement, is reenacted to read:

655.50 Florida Control of Money Laundering in Financial Institutions Act; reports of transactions involving

currency or monetary instruments; when required; purpose; definitions; penalties.--

(3) As used in this section, the term:

(g) "Specified unlawful activity" means any "racketeering activity" as defined in s. 895.02.

Section 6. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, 1996 Supplement, in a reference thereto, paragraph (g) of subsection (1) of section 896.101, Florida Statutes, 1996 Supplement, is reenacted to read:

896.101 Offense of conduct of financial transaction involving proceeds of unlawful activity; penalties.--

(1) DEFINITIONS.--As used in this section, the term:

(g) "Specified unlawful activity" means any "racketeering activity" as defined in s. 895.02.

Section 7. For the purpose of incorporating the amendment made by this act to section 895.02, Florida Statutes, 1996 Supplement, in a reference thereto, section 905.34, Florida Statutes, 1996 Supplement, is reenacted to read:

905.34 Powers and duties; law applicable.--The jurisdiction of a statewide grand jury impaneled under this chapter shall extend throughout the state. The subject matter jurisdiction of the statewide grand jury shall be limited to the offenses of:

(1) Bribery, burglary, carjacking, home-invasion robbery, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, and robbery;

(2) Crimes involving narcotic or other dangerous drugs;

(3) Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

(4) Any violation of the provisions of the Florida Anti-Fencing Act;

(5) Any violation of the provisions of the Florida Antitrust Act of 1980, as amended;

(6) Any crime involving, or resulting in, fraud or deceit upon any person;

or any attempt, solicitation, or conspiracy to commit any violation of the crimes specifically enumerated above, when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. The statewide grand jury may return indictments and presentments irrespective of the county or judicial circuit where the offense is committed or triable. If an indictment is returned, it shall be certified and transferred for trial to the county where the offense was committed. The powers and duties of, and law applicable to, county grand juries shall apply to a statewide grand jury except when such powers,

duties, and law are inconsistent with the provisions of ss. 905.31-905.40.

Section 8. Paragraph (f) of subsection (3) of section 921.0012, Florida Statutes, 1996 Supplement, is amended to read:

921.0012 Sentencing guidelines offense levels; offense severity ranking chart.--

(3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(f) LEVEL 6
316.027(1)(b)	2nd	Accident involving death, failure to stop; leaving scene.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.

784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report of deadly explosive or act of arson or violence to state property.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
812.014(2)(b)	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.

812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at ~~$100 or more, but~~ less than $20,000.
827.03(1)	3rd	Abuse of a child.
827.03(3)(c)	3rd	Neglect of a child.
827.071(2)&(3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do bodily injury.
843.12	3rd	Aids or assists person to escape.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.

944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

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Section 9. Section 947.1405, Florida Statutes, 1996 Supplement, is amended to read:

947.1405 Conditional release program.--

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

(2) Any inmate who:

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

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

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

shall, upon reaching the tentative release date or provisional release date, whichever is earlier, as established by the Department of Corrections, be released under supervision subject to specified terms and conditions, including payment of the cost of supervision pursuant to s. 948.09. Such supervision shall be applicable to all sentences within the overall term of sentences if the inmate's overall term of sentences includes, at the time of release from incarceration, one or more conditional release eligible sentences as provided herein. Effective July 1, 1994, and applicable for offenses committed on or after that date, the commission may require, as a condition of conditional release, that the releasee make payment of the debt due and owing to a county or municipal detention facility under s. 951.032 for medical care, treatment, hospitalization, or transportation received by the releasee while in that detention facility. The commission, in determining whether to order such repayment and the amount of such repayment, shall consider the amount of the debt, whether there was any fault of the institution for the medical expenses incurred, the financial resources of the releasee, the present and potential future financial needs and earning ability of the releasee, and dependents, and other appropriate factors. If an inmate has received a term of probation or community control supervision to be served after release from incarceration, the period of probation or community control must be substituted for the conditional release supervision. A

panel of no fewer than two commissioners shall establish the terms and conditions of any such release. If the offense was a controlled substance violation, the conditions shall include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of conditional release supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3). The commission shall also determine whether the terms and conditions of such release have been violated and whether such violation warrants revocation of the conditional release.

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

(a) The amount of reparation or restitution.

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

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

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

(5) Within 180 days prior to the tentative release date or provisional release date, whichever is earlier, a representative of the commission shall interview the inmate. The commission representative shall review the inmate's program participation, disciplinary record, psychological and medical records, and any other information pertinent to the impending release. A commission representative shall conduct a personal interview with the inmate for the purpose of determining the details of the inmate's release plan, including his planned residence and employment. The results

of the interview must be forwarded to the commission in writing.

(6) Upon receipt of notice as required under s. 947.175, the commission shall conduct a review of the inmate's record for the purpose of establishing the terms and conditions of the conditional release. The commission may impose any special conditions it considers warranted from its review of the record. If the commission determines that the inmate is eligible for release under this section, the commission shall enter an order establishing the length of supervision and the conditions attendant thereto. However, an inmate who has been convicted of a violation of chapter 794 or found by the court to be a sexual predator is subject to the maximum level of supervision provided, with the mandatory conditions as required in subsection (7), and that supervision shall continue through the end of the releasee's original court-imposed sentence. The length of supervision must not exceed the maximum penalty imposed by the court.

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

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

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

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

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

(e) If the victim was under the age of 18, a prohibition, until successful completion of a sex offender treatment program, on unsupervised contact with a child under the age of 18, unless authorized by the commission without another adult present who is responsible for the child's welfare, has been advised of the crime, and is approved by the commission.

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

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

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

(8) It is the finding of the Legislature that the population of offenders released from state prison into the community who meet the conditional release criteria poses the greatest threat to the public safety of the groups of offenders under community supervision. Therefore, the Department of Corrections is to provide intensive supervision

by experienced correctional probation officers to conditional release offenders. Subject to specific appropriation by the Legislature, caseloads may be restricted to a maximum of 40 conditional release offenders per officer to provide for enhanced public safety and to effectively monitor conditions of electronic monitoring or curfews, if so ordered by the commission.

Section 10. Section 948.12, Florida Statutes, is created to read:

948.12 Intensive supervision for post prison release of violent offenders.--It is the finding of the Legislature that the population of violent offenders released from state prison into the community poses the greatest threat to the public safety of the groups of offenders under community supervision. Therefore, for the purpose of enhanced public safety, any offender released from state prison who:

(1) Was most recently incarcerated for an offense that is or was contained in category 1 (murder, manslaughter), category 2 (sexual offenses), category 3 (robbery), or category 4 (violent personal crimes) of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), and who has served at least one prior felony commitment at a state or federal correctional institution;

(2) Was sentenced as a habitual offender, violent habitual offender, or violent career criminal pursuant to s. 775.084; or

(3) Has been found to be a sexual predator pursuant to s. 775.21,

and who has a term of probation to follow the period of incarceration shall be provided intensive supervision by

experienced correctional probation officers. Subject to specific appropriation by the Legislature, caseloads may be restricted to a maximum of 40 offenders per officer to provide for enhanced public safety as well as to effectively monitor conditions of electronic monitoring or curfews, if such was ordered by the court.

Section 11. This act shall take effect upon becoming a law.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR CS for SB 310

The bill clarifies that the Legislature intends that offenders subject to post-prison supervision because of the offender's criminal history should not be discharged from further supervision merely because a component of the inmate's sentence expires. This statutory clarification is in response to the March 13, 1997 decision of the Fourth District Court of Appeal in Cooper v. Florida Parole Commission, Case No. 96-3641(1997).

Provides that the requirement for maximum caseloads of 40:1 for correctional probation officers supervising conditional release offenders is subject to specific legislative appropriation.

Deletes the appropriation to the Department of Corrections of $2,592,798 and 113 positions.

Changes the effective date of the act from July 1, 1997 to upon becoming law.