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CLERK, SUPREME COURT

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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

DENO S. GREEN, )  
)  
Petitioner, )  
)  
vs. )  
)  
STATE OF FLORIDA, )  
)  
Respondent. )

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CASE NO. 90,696

ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S MERIT BRIEF

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

DEE BALL  
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IN THE SUPREME COURT OF FLORIDA

DENO S. GREEN, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )

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CASE NO. 90,696

STATEMENT OF CASE AND FACTS

On September 20, 1994, Deno Green (petitioner) shared a house with his cousin, Ryan Moffett. R. 137, 264. Around 9:30 that evening, petitioner came home and found his cousin on the telephone. R. 138, Petitioner wanted to use the telephone, and an argument ensued. R. 140, 276. Petitioner was armed with a handgun; Moffett was armed with an axe handle. R. 144. During the argument Moffett was shot in the top left back, lower middle back, leg, and thigh. R. 112. The State charged petitioner with attempted first degree murder with a firearm. R. 28. The matter was tried to a jury, and petitioner was convicted of attempted voluntary manslaughter with a firearm, a third degree felony. R. 118-19, 398. Petitioner scored 93.8 points for a recommended sentence of 65.8 months and a discretionary range of 49.35 to 82.25 months. The trial court sentenced petitioner to 72 months with credit for time served. R. 132.

Petitioner appealed his judgment and sentence to the Fifth District Court of Appeal. R. 143. On appeal he argued that the statutory maximum sentence for a third-degree felony is 60 months and that where the recommended range encompasses the statutory maximum, 60 months is the maximum allowable sentence. The State argued that where the recommended sentence exceeds the statutory maximum, the sentence under the guidelines must be imposed. The district court acknowledged that the recommended sentence is 65.8 months, but found that a sentence of 72 months is not a departure from the recommended range. The court concluded that a departure occurs when the imposed sentence varies by more than 25 percent from a specific number calculated by subtracting 28 from the total sentence points. A sentence that deviates from this specific number by less than 25 percent is a permissible variation, not a departure. To support its conclusion, the district court suggested that from a grammatical standpoint, the articles in section 921.001(5) are misplaced and rewrote the statute as follows: If the recommended sentence under the guidelines exceeds the maximum sentence otherwise authorized by s. 775.082, a sentence under the guidelines must be imposed, absent a departure.

Petitioner moved for rehearing, rehearing en **banc**, and/or certification on the ground that the district court overlooked the rule of statutory construction that requires penal statutes to be strictly construed, and where susceptible to more than one meaning, construed in favor of the accused. Petitioner suggested that the decision of the district court effectively renders section 775,082 meaningless and/or repealed by implication. The district court denied the motion, and petitioner filed a notice to invoke discretionary jurisdiction in this court. Subsequent to the notice to invoke, the Fourth District Court of Appeal certified conflict with

the decision of the Fifth District. Mvers v. State, 22 Fla. L. Weekly D1515 (Fla. 4th DCA  
June 25, 1997).

## SUMMARY OF ARGUMENT

Although section 921.001(5) does not expressly amend section 775.082, it does so by implication and creates a situation where the two statutes cannot operate without conflicting. Section 775.082 establishes a maximum penalty of 60 months for a third degree felony; section 921.001(5) expressly authorizes a sentence that exceeds the statutory **maximum** established in section 775.082. Amendment by implication is not favored and will not be upheld in doubtful cases.

Assuming arguendo that chapter 921 creates an additional maximum penalty, it violates the due process protection afforded by the state and federal constitutions. Under section 921.001(5), the trial court may impose (1) the recommended sentence, (2) a sentence within 25 percent of the recommended sentence, or (3) a sentence that exceeds the statutory maximum established in section 775.082. Section 921.001(5) creates a limitless upward departure if supported by written reasons. Where the trial court is not limited in an upward departure, the notice afforded by chapter 921 is, in effect, no notice.

The Fourth District Court of Appeal defines the recommended sentence as the sentence derived by subtracting 28 from the total sentence points. The Fifth and Third Districts **define** the recommended sentence as the total points minus 28 plus or minus 25 percent. Under either definition, the result is unreasonable when applied to the facts of this case.



## ARGUMENT

### SECTION 921.001(5) AMENDS SECTION 775.082 BY IMPLICATION IN VIOLATION OF ARTICLE III, SECTION 6 OF THE FLORIDA CONSTITUTION.

Petitioner was convicted of a third degree felony. Under section 775.082, the maximum sentence for a third degree felony is 60 months; however, section 921.001(5) provides:

Sentences imposed by trial court judges under the 1994 revised sentencing guidelines on or after January 1, 1994, must be within the 1994 guidelines unless there is a departure sentence with written findings. If a recommended sentence under the guidelines exceeds the maximum sentence otherwise authorized by s. 775.082, the sentence under the guidelines must be imposed, absent a departure. If a departure sentence, with written findings, is imposed, such sentence must be within any relevant maximum sentence limitations provided in s. 775.082. The failure of a trial court to impose a sentence within the sentencing guidelines is subject to appellate review pursuant to chapter 924. However, the extent of a departure from a guidelines sentence is not subject to appellate review.

Petitioner contends that section 921.001(5) impliedly amends section 775.082 by expressly authorizing a sentence that exceeds the statutory maximum.

The initial inquiry is whether section 921.001(5) amends section 775.082 or whether it merely refers to and incorporates section 775.082. If section 921.001(5) is a reference statute, the two statutes exist as separate, distinct legislative enactments and each has its appointed sphere of action. The alteration, change, or repeal of one does not operate upon or affect the other. See, State v. J.R.M., 388 So. 2d 1227 (Fla. 1980) and cases cited therein.

Article III, section 6 of the Florida constitution provides:

No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection.

Although section **921.001(5)** does not expressly amend section 775.082, it does so by implication. Amendment by implication occurs when the latter statute (section **921.001(5)**) is intended to revise the subject matter of the former statute (section 775.082) or when there is an irreconcilable repugnancy between the two so that the former statute cannot operate without conflicting with the latter. It is well established that amendment by implication is not favored and will not be upheld in doubtful cases. State v. J.R.M., *supra*, at 1229.

To determine if the two statutes can co-exist, it is necessary to construe the original and the amendment and to measure the extent of the repugnancy and inconsistency. Cf., Wilson v. Crews, 160 Fla. 169, 34 So. 2d 114 (Fla. 1948). Sections 775.082 and **921.001(5)** are clearly inconsistent. Section 775.082 establishes a maximum penalty of 60 months for a third degree felony and cannot operate without conflicting with section **921.001(5)**, which states that if a recommended sentence under the guidelines exceeds the maximum sentence authorized by section 775.082, the sentence under the guidelines must be imposed absent a departure. In Wilson this court found that where there is no express repeal or modification of existing provisions, the old and new provisions should stand and operate together if it can be done without contravening the intent of the legislature. If section **921.001(5)** creates an additional statutory maximum penalty, as discussed *infra*, such a construction violates the due process protection afforded by the state and federal constitutions.

**POINT. IX**

THE AMENDMENT OF SECTION 775.082 BY SECTION  
92 1.00 1(5) VIOLATES THE NOTICE REQUIREMENT OF  
THE DUE PROCESS PROTECTION AFFORDED BY THE  
STATE AND FEDERAL CONSTITUTIONS.

Section 921.001(5) states, in part:

If a recommended sentence under the guidelines exceeds the maximum sentence otherwise authorized by s. 775.082, the sentence under the guidelines must be imposed, absent a departure.

This provision violates the notice requirement of the due process protection afforded by the state and federal constitutions.

Petitioner acknowledges that the Fifth District Court of Appeal has held that section 921.001(5) does not violate due process. Gardner v. State, 661 So. 2d 1274 (5th DCA 1995). In Gardner, the court concluded that an accused can assess a potential sentence by preparing a guidelines scoresheet in accordance with the provisions of sections 921.0012 and 921.0014. Petitioner respectfully suggests that the district court overlooked the requirement that a criminal statute must clearly set forth the activity which constitutes the crime and the punishment authorized.

Under the plain language of section 921.001(5), a criminal defendant receives notice that a trial court may impose (1) a recommended sentence, (2) a sentence within 25 percent of the recommended sentence, or (3) a sentence that departs from the guidelines and exceeds the statutory maximum established in section 775.082. While the defendant may be able to perform the necessary mathematical calculations under chapter 921, without section 775.082 his maximum sentence is open ended and subject to the discretion of the trial judge. Using the

facts of this case as an example and applying a literal interpretation of section 921.001(5), the trial court could have imposed a sentence of 65.8 months (the recommended sentence), a sentence between 49.35 and 82.25 (the discretionary 25 percent range), or a limitless downward or an upward departure supported by written reasons.<sup>1</sup> Petitioner submits that where the trial court is not limited by a maximum penalty in an upward departure the notice afforded by section 921.001(5) is, in effect, no notice.

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<sup>1</sup>Petitioner notes that this court has accepted jurisdiction of State v. McEachern, Supreme Court Case No. 89,859 where the trial court departed downward by imposing a pure suspended sentence,

### POINT III

#### SECTION 921.001(5) CONTAINS INHERENT AMBIGUITIES THAT MUST BE RESOLVED IN FAVOR OF THE ACCUSED.

Petitioner scored 93.8 points for a recommended sentence of 65.8 months and a discretionary sentencing range of 49.35 to 82.25 months. Applying the language of section 921.001(5) to these facts, the Fifth District reasoned that a departure occurs only when the imposed sentence varies more than 25 percent from the recommended sentence. The court concluded that a sentence which deviates from this specific number by less than 25 percent is a permissible variation, not a departure; therefore, a sentence of 72 months need not be supported by written reasons because it is not a departure sentence. The opinion of the Fifth District is in direct conflict with Myers v. State, 22 Fla. L. Weekly D1515 (Fla. 4th DCA June 25, 1997).

In Myers, the Fourth District noted a subtle distinction between sections 921.001(5) and 921.0014. Section 921.001(5) provides:

If a recommended sentence under the guidelines exceeds the maximum sentence otherwise authorized by s. 775.082, the sentence under the guidelines must be imposed, absent a departure,

Section 921.0014 provides:

If a recommended sentence under the guidelines exceeds the maximum sentence otherwise authorized by s. 775.082, the sentence recommended under the guidelines must be imposed absent a departure.

The court concluded that section 921.001(5) refers to the recommended sentence which does not include the discretionary 25 percent range. Contra, Martinez v. State, 692 So. 2d 199 (3d DCA 1997) (recommended sentence includes the 25 percent increase and 25 percent decrease);

Mays v. State, 693 So. 2d 52 (Fla. 5th DCA 1997).<sup>2</sup> The senate staff analysis supports the conclusion of the Fourth District by stating that a state prison sentence that varies upward or downward by more than 25 percent is a departure sentence and must be accompanied by written reasons for the departure. See, Senate Staff Analysis and Economic Impact Statement, Jan, 24, 1995, p. 2 (Appendix A).

Chapter 921 does not define a recommended sentence; however, section **921.014(2)(2)** states:

The recommended sentence length in state prison months may be increased by up to, and including, 25 percent or decreased by up to, and including, 25 percent, at the discretion of the court. The recommended sentence length may not be increased if the total sentence points have been increased for that offense by up to, and including 15 percent. If a recommended sentence under the guidelines exceeds the maximum sentence otherwise authorized by s. 775.082, the sentence recommended under the guidelines must be imposed absent a departure. [Emphasis added. ]

Section **921.016(1)(a)** defines the recommended sentence in terms of the sentence provided by the total sentence points. To support its conclusion that the recommended sentence includes the discretionary range, the Fifth District rewrote the statute: If the recommended sentence under the guidelines exceeds the maximum sentence otherwise authorized by s. 775.082, a sentence under the guidelines must be imposed, absent a departure.

The indefinite article a means any; the definite article the specifies a definite and specific noun. Only by transposing the articles could the Fifth District supports is reasoning. By rewriting the statute, the court violated the time-honored principle of Florida law that it is

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<sup>2</sup>The Myers court distinguished Martinez and Mays on the ground that in neither case did the recommended sentence exceed the statutory maximum.

not the role of a court to rewrite a statute. State v. Globe Communications Corp., 622 So. 2d 1066 (Fla. 4th DCA 1993), aff'd, 648 So. 2d 110 (Fla. 1994); see also, Sarasota Herald-Tribune Co. V. Sarasota County, 632 So. 2d 606 (Fla. 2d DCA 1993) (courts are not authorized to embellish legislative requirements with their own notions of what might be appropriate; if additional requirements are to be imposed, they should be inserted by the legislature)

Rather than rewrite the statute, the Fourth District attempted to harmonize sections 775.082 and 921.001(5). The court found that where the recommended sentence exceeds the statutory maximum, the trial court has two alternatives: (1) impose the recommended sentence (an upward departure) or (2) impose a lesser sentence (a downward departure). Although it recognized some of the anomalies created by the two statutes, the court applied the rule of **lenity**<sup>3</sup> and held that imposition of a recommended sentence that exceeds the statutory maximum is a departure sentence that must be supported by written reasons.

Section 921.001(5) creates another anomaly by expressly authorizing the imposition of a sentence that exceeds the statutory maximum and then stating that if a departure sentence is imposed, it must be within the statutory maximum. Applying the facts of this case to these two provisions leads to an unreasonable result. If one assumes that petitioner's recommended sentence is 65.8 months (as held by the Fourth District), the trial court may sentence petitioner to 65.8 months even though it exceeds the **60-month** statutory maximum; however, any sentence above or below 65.8 months is a departure sentence which cannot exceed the **60-**

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<sup>3</sup>Penal statutes must be strictly construed and, where susceptible to more than one meaning, construed in favor of the accused. § 775.021 (1), Fla. Stat. (1993).

month statutory maximum. If one assumes that petitioner's recommended sentence is 49.25 to 82.25 months (as held by the Fifth and Third Districts), then the trial court may impose any sentence within the range even though it exceeds the **60-month** statutory maximum; however, if the court imposes a sentence below 49.25 or above 82.25, the sentence is a departure sentence that must be within the 60-month statutory maximum.. A sentence below 49.25 or above 82.25 is, a fortiori, below or above the statutory maximum established in section 775.082. One is thus forced to conclude that the legislature did not contemplate a situation where the recommended sentence as defined by Myers or as defined by Green itself exceeds the 60-month statutory maximum.

The announced purpose of the sentencing guidelines is to establish a uniform set of standards to guide the sentencing judge in the decision-making process. § 921.001(4), Fla. Stat. Prior to the 1994 amendment, a guidelines sentence could not exceed the statutory maximum. Rule 3.701(c)(10), Florida Rules of Criminal Procedure (1993); § 921.001(5), Fla. Stat. (1991). In reality, section 921.001(5), as amended, defeats the purpose of the guidelines by conferring unfettered discretion upon the trial court and then compounds the situation by precluding appellate review of the extent of the departure. The Fifth District did not address the anomalies created by section 921.001(5). The Fourth District recognized some of the anomalies and invoked the rule of lenity . Although the decision of the Fourth District does not resolve the anomalies and is, at best, an imperfect solution, the analysis of the Fifth District must be rejected in the absence of express legislative authority to impose an enhanced sentence greater than the statutory maximum.



**CONCLUSION**

Based upon the authorities cited and the arguments presented, this court should quash the opinion of the district court and remand for the imposition of a sentence within the statutory maximum established in section 775.082.

Respectfully submitted,

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, FL 32118 via his basket at the Fifth District Court of Appeal and mailed to Mr. Deno S. Green, P.O. Box 279, East Palatka, FL 3213 1, this 6th day of October, 1997.

  
\_\_\_\_\_  
DEE BALL  
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

DENO S. GREEN, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )

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CASE NO. 90,696

APPENDIX A

Senate Staff Analysis and Economic Impact Statement  
Jan, 24, 1995, p. 2

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: January 24, 1995      REVISED: \_\_\_\_\_

SUBJECT: Sentencing Guidelines Ranking Chart

	<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1.	Erickson <i>WSE</i>	_____	1. <b>CJ</b>	Favorable/CS
2.	_____	_____	2. <b>WM</b>	_____
3.	_____	_____	3. _____	_____
4.	_____	_____	4. _____	_____

I. SUMMARY :

**CS/SB 172 provides** for additional specified crimes to be included in the offense severity ranking chart of the sentencing guidelines. The CS also revises the sentencing points assessed under the sentencing guidelines worksheet, and provides for certain **prior felony offenses, and prior capital felonies,** to be included in computing an offender's sentence.

**CS/SB 172** substantially amends, creates, or repeals the following sections of the Florida Statutes: 921.0012, 921.0014.

II. PRESENT SITUATION:

**Under** the sentencing guidelines, effective on **January 1, 1994,** many offenses have been ranked according to **their** severity and points assessed for the level in which they appear. There are ten levels.

An offense severity ranking chart includes many of the guidelines offenses. Since there are hundreds of criminal offenses, the **chart does not** include every criminal offense falling under the guidelines. Accordingly, the Legislature created s. 921.0013, **F.S.,** to rank any unlisted felony offenses. Under this statute, **the** felony degree of the offense determines the ranking it will **receive.** Section 921.0013, P.S., insures that no guidelines offense will go unranked. **However,** the Legislature is not precluded from placing an unlisted offense in the severity ranking **chart** to assign it a higher ranking than it would have received-as an unlisted offense.

Under the 1994 sentencing guidelines, the decision whether to **impose** a state prison sentence upon an offender with a guidelines **offense** is determined by the total sentence **points.** he scores on the sentencing guidelines scoresheet. Points are assessed against an **offender for** his current **offense as well as for other factors** such as additional and prior **offenses; the victim's injury or death;** legal **status** and release program violations; and the possession **of** a firearm, destructive device, or semi-automatic weapon. Sentencing points are also enhanced through multipliers for a primary **offense** of drug trafficking, **or** violation of the Law Enforcement Protection Act.

If **total** sentencing points are greater than 40 **points** but less than or **equal** to 52 points, the court has the **discretion to impose** a **state prison** sentence: **over 52** points, a prison sentence is required. The sentencing court can increase total sentencing

points that are less than or equal to 40 points by up to 15 percent, which may pull an offender into the range where a prison sentence is permissible.

A state prison sentence is calculated by deducting 28 points from total or increased sentencing points. This total may be increased or decreased by the court by up to 25 percent, except where the total sentencing points were less than or equal to but have been increased by the 15 percent multiplier to exceed 40 points. Any state prison sentence must exceed 12 months.

A state prison sentence that varies upward or downward by more than 25 percent is a departure sentence and must be accompanied by written reasons for the departure. Some of the aggravating or mitigating circumstances that may call for a departure are listed in s. 921.0016, F.S.

III. EFFECT OF PROPOSED CHANGES:

CS/SB 172 adds five offenses to the offense severity chart of the sentencing guidelines:

s. 376.302(5)	<u>Level 3</u> 3rd degree felony	Fraudulent representation or submission for reimbursement of cleanup expenses
s. 697.08	3rd degree felony	Equity skimming
s. 790.115(1)	<u>Level 4</u> 3rd degree felony	Exhibiting firearm or weapon within 1,000 feet of a school
s. 316.1935(2) & (3)	<u>Level 5</u> 3rd degree felony	Fleeing or attempting to elude law enforcement officer or aggravated fleeing or eluding while leaving the scene of an accident
s. 784.048(3)	<u>Level 6</u> 3rd degree felony	Aggravated stalking
s. 784.048(4)	<u>Level 7</u> 3rd degree felony	Aggravated stalking after injunction for protection or order of prohibition

The legislation follows the recommendations of the Florida Supreme Court with the exception of s. 784.048(4), F.S., which has been placed in level 7 rather than level 6 as the Court recommended.

CS/SB 172 also significantly amends the sentencing guidelines scoresheet. First, the 91 points assigned to a level 9 primary offense are enhanced by 1 point, and the 42 points assigned to a level 7 primary offense are enhanced to 56 points.

Second, additional offense points currently assigned to levels 6 through 10 offenses are enhanced so that they are equal to 50 percent of the points assigned for a level 6 through 10 primary offense.

Prison  
from  
eased

Additional Offenses

Levels	Points	Presently Assigned	Under CS/SB 172
10	12.0		58.0
9	10.8		46.0
<b>8</b>			
7	9.6	8.4	<b>28.0</b>
6	7.2		18.0

Third, prior offense points currently assigned to levels 6 through 10 offenses are enhanced so that they are equal to 25 percent of the points assigned for a level 6 through 10 primary offense.

Prior offenses

Levels	Points	Presently Assigned	Under CS/SB 172
10		8.0	29.0
9		7.2	23.0
8		6.4	16.5
7		5.6	14.0
6		4.8	9.0

Fourth, enhancers are created for prior serious felonies and prior capital felonies. Thirty points are added to the subtotal sentence points of an offender who has a primary offense in levels 7-10, and one or more prior serious felonies. The legislation defines a prior serious felony as an offense for which the offender has been found **guilty; which** was committed within **3 years** before the date the **primary** offense or any additional offense was committed; and which is ranked in levels 7-10, or would be ranked in these levels **if** the offense were committed in Florida on or after January 1, 1994.

If the offender has one or more prior capital felonies, points are added to the offender's subtotal sentence points equal to twice the number of Points the offender **receives** for his primary offense and any additional offense. The legislation defines a prior **capital** felony as an offense for which the offender is found **guilty; and** which is a capital felony, or would be a capital felony if the **offense** were committed in Florida.

**Finally,** the bill enhances points currently assigned for the victim's death and certain victim injuries.

Victim Injury

Level	Points	Presently Assigned	Under CS/SB 172
Death		<b>60</b>	80
Sexual Penetration		40	80
Sexual Contact		<b>18</b>	40

In summary, the impact of this legislation on inmate sentencing for guidelines offenses is that **it** will pull many offenders into the discretionary range in which a prison **sentence may** be imposed, and pull many other offenders into the range where a prison sentence is mandatory. It will assign more weight to an offender's prior record and additional offenses, and capture prior capital felonies, which are not scored under the present guidelines scoresheet. It will assign more weight to the victim's death, make injury to the victim through sexual penetration coequal with the victim's death, and assign more weight to the victim's injury through sexual contact. Finally, it will **increase** the prison sentences for many offenders, particularly multiple offenders and recidivists with serious prior violent offenses.

VII.  
VIII.

**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:

Section **921.001(9)(b), F.S., 1994 Supp.**, requires that **any** legislation that creates a felony, enhances a misdemeanor to a felony, upgrades a **lesser** offense severity level in **s. 921.0012, F.S., 1994 Supp.**, or reclassifies **an** existing felony to a **greater** felony classification, must provide that the change result in a net zero sum impact in the overall prison population as determined by the Criminal Justice Estimating Conference, unless the legislation contains a funding source sufficient in its base or rate to **accomodate** the change, **or** a provision to specifically abrogate the application of the law.

The Criminal Justice Estimating Conference (**CJEC**) has temporarily postponed consideration of **CS/SB 172**. However, Economic and Demographic Research (EDR) and the Department of Corrections (**DOC**) have provided preliminary estimates. These estimates are subject to change when **the CJEC** meets to consider **CS/SB 172**.

EDR estimates that **SB 172** will require 24,618 new beds by FY 1999-2000. No cost estimates of these new beds have been provided.

DOC has provided the following estimate of cumulative additional beds required under **CS/SB 172** and expenditures \* required for these additional beds:

June 30	Cumulative Addt' Beds Required Under CS/SB 172	Operat ins	Total F.C.O.	All Funds
1996	5,270	\$ 81,231,517	\$113,526,340	\$194,751,857
1997	9,833	\$151,565,370	\$211,822,486	\$363,387,856
1998	13,140	\$202,539,303	\$283,061,880	\$485,601,183
1999	15,883	\$244,819,768	\$342,151,586	\$586,971,354
2000	18,161	\$279,932,746	\$391,224,262	\$671,157,008

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 172

1. Enhances points **presently** assigned to levels 7 and 9 primary offense in the sentencing **guidelines** scoresheet.
2. Enhances points presently assigned to levels 7, 8, 9 and **10** additional and prior offenses in the sentencing guidelines scoresheet.
3. Enhances points presently assigned in the sentencing guidelines scoresheet to the victim's death, or the victim's injury by sexual penetration of sexual contact.
- 4 . Provides that **30** points shall be added to the subtotal. sentence **points** of an offender who has a primary offense in levels **7, 8, 9** or **10**, and one or more prior serious **felonies**.
5. **Defines prior** serious felony as an offense for which the offender has been found guilty: which was committed within 3 years before the date the primary offense or any additional offense was committed; and which is ranked in levels **7, 8, 9** or **10**, or would be ranked in these levels **if** the offense were **committed** in Florida on or after January **1, 1994**.
6. Deletes from the bill the definition of prior serious felony **as** an offense for which the defendant has been found guilty: which was committed within 3 **years** before the date of the primary offense: and which is ranked in levels **7, 8, 9** or **10**, or would be ranked in those levels on or after January **1, 1994**.
7. Provides that an offender with one or more prior capital felonies shall receive additional points to his subtotal sentencing points. These additional points are equal to twice the number of points the offender receives for his primary offense and any additional offense.
8. Defines a prior capital felony **as** an offense for which the offender is found guilty; and which is a capital felony, or would be a capital felony if the offense were committed in Florida.

Committee on Criminal Justice

  
Staff Director

(FILE TWO COPIES **WITH THE SECRETARY OF THE SENATE**)

OFFENSE SEVERITY Rn.  
Felony  
Description