IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. 1999-27
	)	Lt. Case No. 98-3949
STANLEY V. HUGGINS,	)	
	)	
Respondent.	)	
	)	

RESPONDENT'S ANSWER BRIEF ON THE MERITS

RICHARD JORANDBY
Public Defender

Karen E. Ehrlich
Assistant Public Defender
15th Judicial Circuit of Florida
Criminal Justice Building
421 Third Street/6th Floor
West Palm Beach, Florida 33401
(561) 355-7600

Attorney for Stanley V. Huggins

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, was the prosecution in the trial court and Appellant in the Fourth District Court of Appeal. Petitioner will be referred to herein as "the Petitioner" or the state". Respondent, Stanley V. Huggins, was the defendant in the trial court and Appellee in the Fourth District Court of Appeal. He will be referred to as "the Respondent".

CERTIFICATE OF FONT SIZE

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2(d), Rules of the United States Court of Appeals for the Eleventh Circuit, counsel petitioner hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

STATEMENT OF THE CASE AND FACTS

The Respondent will rely on the statements as stated in the Statement of the Case and Facts contained in the Petitioner's initial brief on the merits.

SUMMARY OF THE ARGUMENT

This case involves interpretation of the Prison Releasee Reoffender Act (PRR). The plain language of PRR does not include burglary of an unoccupied dwelling as an enumerated felony for which a defendant can be sentenced pursuant to PRR. If any ambiguity exists, the rules of statutory construction require that the statute be strictly construed in favor of the defendant. The district court opinion under review strictly construed the statute and concluded PRR does not include burglary of an unoccupied dwelling.

Petitioner's argument is based in large part on construction of the burglary statute rather than the statute under review. Petitioner's analysis is inapplicable because the burglary and PRR statutes are written differently. Additionally, Petitioner has relied on an obsolete version of the burglary statute that has no application to the case at bar.

This Court should affirm Respondent's sentence. However, if this court were to reverse, Respondent should be permitted to withdraw his plea.

ARGUMENT

POINT ON APPEAL

THE PRISON RELEASEE REOFFENDER ACT PLAINLY PROVIDES IT APPLIES TO BURGLARIES OF OCCUPIED STRUCTURES OR DWELLINGS. ASSUMING ARGUENDO THERE IS ANY QUESTION WHETHER "OCCUPIED" MODIFIES BOTH STRUCTURE AND DWELLING, AND WHETHER UNOCCUPIED DWELLINGS ARE ALSO INCLUDED IN THE STATUTE, THE RULE OF LENITY REQUIRES THE QUESTION BE RESOLVED IN THE DEFENDANT'S FAVOR.

A. This case involves interpretation of the Prison Releasee Reoffender Act (PRR). Section 775.082(8) (a)1.q, Florida Statutes (1997) defines a prison releasee reoffender as one who commits or attempts to commit "Burglary of an occupied structure or dwelling".

The question before the court at bar is whether this statute applies to one who commits a burglary of an unoccupied dwelling.

At bar, employing the usual rules of statutory construction, the lower court determined that the phrase "occupied structure or dwelling" must be strictly construed in favor of the defense. Hence, it concluded, the state must charge and prove that the defendant burglarized an occupied dwelling before it can have him sentenced under the PRR. State v. Huggins, 744 So.2d 1215 (Fla. 4th DCA 1999)(en banc).

The rules of statutory construction require penal statutes to be strictly construed. State v. Camp, 596 So.2d 1055 (Fla. 1992);

Perkins v. State, 576 So. 2d 1310 (Fla. 1991). When a statute is susceptible to more than one meaning, the statute must be construed in favor of the accused. Scates v. State, 603 So. 2d 504 (Fla. 1992). This principle has been codified in Section 775.021(1), Florida Statute (1995), which provides, "[t]he provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused." In State v. Wershow, 343 So. 2d 605 (Fla. 1977), this Court addressed construction of a penal statute and wrote:

> Discussing generally the construction to be given penal statutes, this court, in Ex parte Amos, 93 Fla. 5, 112 So. 289 (1927), explicated:
>
> > The statute being a criminal statute, the rule that it must be construed strictly applies. Nothing is to be regarded as included within it that is not within its letter as well as its spirit; nothing that is not clearly and intelligently described in its very words, as well as manifestly intended by the Legislature, is to be considered as included within its terms; and where there is such an ambiguity as to leave reasonable doubt of its meaning, where it admits of two constructions, that which operates in favor of liberty is to be taken. See Ex parte Bailey, supra [39 Fla. 734, 23 So. 552].

Wershow, 343 So. 2d at 608.

The rule of lenity applies "not only to interpretations of the substantive ambit of criminal prohibitions, but also to the penalties they impose." Bifulco v. United States, 447 U.S. 381, 100 S.Ct. 2247, 65 L.Ed.2d 205 (1980); Trotter v. State, 576 So. 2d 691, 694 (Fla. 1990); Logan v. State, 666 So. 2d 260 (Fla. 4th DCA 1996).

This principle of strict construction is not merely a maxim of statutory interpretation: it is rooted in fundamental principles of due process. Dunn v. United States, 442 U.S. 100, 112, 99 S.Ct. 2190, 60 L.Ed.2d 743 (1979) (rule "is rooted in fundamental principles of due process which mandate that no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited. [Cit.] Thus, to ensure that a legislature speaks with special clarity when marking the boundaries of criminal conduct, courts must decline to impose punishment for actions that are not '"plainly and unmistakably"' proscribed. [Cit.]").

In the case under review, State v. Huggins, 744 So. 2d 1215, the district court applied the rule of lenity in its well reasoned opinion, and concluded the Prison Releasee Reoffender Act (PRR), Section 775.082(8)(a)1, Florida Statutes (1997), did not apply to burglary of an unoccupied dwelling. The statute provides in

pertinent part:

> 1. Prison releasee reoffender" means any defendant who commits, or attempts to commit:
>
> a. Treason;
> b. Murder;
> c. Manslaughter;
> d. Sexual battery;
> e. Carjacking;
> f. Home-invasion robbery;
> g. Robbery;
> h. Arson;
> i. Kidnapping;
> j. Aggravated assault;
> k. Aggravated battery;
> l. Aggravated stalking;
> m. Aircraft piracy;
> n. Unlawful throwing, placing, or discharging of a destructive device or bomb;
> o. Any felony that involves the use or threat or physical force or violence against an individual;
> p. Armed burglary;
> q. Burglary of an occupied structure or dwelling;
> r. Any felony violation of s.790.07, s.800.04, s.827.03, or s. 827.071;
>
> within 3 years of being released from a state correctional facility operated by the Department of Corrections or a private vendor.

Section 775.082(8)(a)1., Fla. Stat. (1997) (emphasis added). The fourth district concluded the word "occupied" found in section 775.082(8)(a)(1)(q) modifies both structure and dwelling. Huggins, 744 So. 2d at 1217.

The conclusion in Huggins is consistent with the rest of the section 775.082(8)(a)1, the preamble to the act, and legislative

intent. "It is axiomatic that all parts of a statute must be read together to achieve a consistent whole." Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So.2d 452, 455 (Fla. 1992). "Where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another." Id. Further, "statutory phrases are not to be read in isolation, but rather within the context of the entire section." Acosta v. Richter, 671 So.2d 149, 154 (Fla.1996). See also State v. Riley, 638 So.2d 507, 508 (Fla.1994) (reading subsections of same statute in pari materia).

In the preamble to the PRR act the legislature stated, "...the people of this state ... deserve public safety and protection from ***violent*** felony offenders.... [emphasis added]" Ch. 97-239 (preamble), at 2796, Laws of Fla.. Consistent with that goal each qualifying offense involves risk of harm to persons.[1] However,

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[1] In Perkins v. State, 576 So. 2d 1310 (Fla. 1991), this Court construed the meaning of "forceable felony" as contained in section 776.08. The state unsuccessfully argued that because treason and burglary could be accomplished without the use or threat of force or violence, and because those offenses were included along with numerous other offenses that did involve the use or threat of force or violence, the statute should be construed to include another offense that did not necessarily include the use or threat of force or violence. This Court rejected the state's argument, characterized it as dependent upon a "minor ambiguity", and construed the statute in the manner most favorable to the accused.

burglary of an unoccupied dwelling by definition does not involve another person. Thus, reading the subsections of the statute in pari materia, burglary of an unoccupied dwelling would be excluded.

Legislative intent consistent with appellant's position is apparent in the legislative history. The House of Representatives Committee on Crime and Punishment report, As Revised by the Committee on Criminal Justice Appropriations, Bill Research and Economic Impact Statement, CS/CS/HB 1371, April 2, 1997, contained a proposed amendment that shows the legislature made a distinction between an unoccupied and an occupied dwelling, and excluded an unoccupied dwelling from the statute. The amendment not adopted by the legislature provided, "[a]ny burglary if the person has two prior felony convictions." (Appendix p. 11-12). At the very least this language shows the legislature made the distinction Petitioner claims is nonexistent.

The distinction between burglary of an occupied and an unoccupied dwelling was made in C.R.C. v. Portesy, 731 So. 2d 770 (Fla. 2nd DCA 1999), where the court held it was error to score points on the Risk Assessment Instrument for "burglary of an occupied residential structure" where the dwelling was unoccupied. The court wrote, "[t]his distinction is justified because burglary of an occupied dwelling is a more serious crime than burglary of an

unoccupied dwelling, even though both crimes are second-degree felonies." C.R.C., at 772. Similarly, the severe mandatory penalties associated with the PRR statute are justified for the more serious offense that puts persons at the risk of physical harm.

Petitioner's argument before this Court is based on the sparse and incorrect analysis contained in Scott v. State, 721 So. 2d 1245 (Fla. 4th DCA 1998)[2]. Petitioner's main point, that the burglary statute makes no distinction between burglary of an unoccupied and occupied dwelling, is incorrect. (Petitioner's Initial Brief at p.8). The source of this inaccuracy is Howard v. State, 642 So. 2d 77, 78 (Fla. 3rd DCA 1994). Petitioner has failed to recognize that since Howard, the burglary statute has been amended. See Ch. 95-184, Sec. 9, at 1345, Laws of Fla.. Petitioner had relied on the former inapplicable statute. The current burglary statute, section 810.02(3), has separate subsections for burglary of an unoccupied and burglary of an occupied dwelling, though both are characterized as second degree felonies. If anything, the fact

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[2] Petitioner also relies on Wallace v. State, 738 So. 2d 972 (Fla. 4th DCA 1999), State v. Litton, 736 So. 2d 91 (Fla. 4th DCA 1999), and White v. State, 736 So. 2d 1231 (Fla. 2nd DCA 1999). All three cases followed Scott, with no further analysis. When the fourth district receded from Scott in the instant case, conflict with White resulted.

that the statute has been amended reflects the legislature's recognition that there may be a difference between the offenses, or the legislature's intent to treat them differently elsewhere in the statutes.

At pages 9-10, Petitioner's initial brief notes that the word "or" has a disjunctive meaning and indicates alternatives. This is true as far as it goes. However, Petitioner has misidentified the alternatives. The statutory alternative is between "structure" and "dwelling". This does not resolve the question of whether the adjective "occupied" applies to both of those nouns. The applicable rule of construction is strict construction. See Perkins, 576 So. 2d at 1314 (reliance on common law rules of construction such as ejusdem generis must yield to the rule of strict construction). Strict construction of the statute requires that it does apply to both nouns.

Had the legislature intended the word "occupied" to modify only structure and not dwelling, there were numerous ways it could have achieved that result. The legislature could have adopted the amendment contained in the House of Representatives Staff Analysis. Or, as the fourth district noted in Huggins, the legislature could have written:

Burglary of a dwelling or occupied structure.

Or, the legislature could have written:

> Burglary of an occupied structure, or burglary of a dwelling.
>
> Or
>
> Burglary of an occupied structure, or burglary of a dwelling whether occupied or unoccupied.

Or, the legislature could have followed the burglary statute and written:

> Burglary of a dwelling, and there is another person in the dwelling at the time the offender enters or remains.
>
> Burglary of a dwelling, and there is not another person in the dwelling at the time the offender enters of remains.

Had the legislature wished to include burglary of an unoccupied dwelling it could have easily and clearly done so.

Respondent maintains the language of the statute is clear, and there is no basis to conclude burglary of an unoccupied dwelling was included in the section. However, if there is any ambiguity, section 775.021 and the Due Process Clause require this Court to resolve the ambiguity in favor of the defendant and affirm the opinion of the district court of appeal.

B. In the event this Court reverses the district court Respondent should be offered the opportunity to withdraw his plea. When an agreement cannot be honored, the trial court must

affirmatively offer the defendant the opportunity to withdraw the plea. See Goins v. State, 672 So.2d 30, 32 (Fla. 1996). Where a mutual mistake of the defendant and the court results in a sentence that exceeded the maximum guideline sentence the cause should be remanded for the defendant to agree to the departure sentence or be permitted to withdraw his plea. Williams v. State, 618 So. 2d 773 (Fla. 5th DCA 1993). Where the defendant entered a plea, over the state's objection, in exchange for a sentence less than the mandatory minimum, the cause should be remanded to permit the defendant to withdraw the plea. State v. Efford, 596 So. 2d 788 (Fla. 3rd DCA 1992).

CONCLUSION

Appellant's sentence should be affirmed. If reversed, respondent should be permitted to withdraw his plea.

Respectfully submitted,

RICHARD JORANDBY
Public Defender
15th Judicial Circuit of Florida
Criminal Justice Building
421 Third Street/6th Floor
West Palm Beach, Florida 33401
(561) 355-7600

Karen E. Ehrlich
Assistant Public Defender
Florida Bar No. 724221

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Daniel P. Hyndman, Assistant Attorney General, 1655 Palm Beach Lakes Blvd., Third Floor, West Palm Beach, Florida 33401 by courier this 1st day of February, 2000.

Karen E. Ehrlich
Attorney for Stanley v. Huggins

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	)	
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	)	
Respondent.	)	
	)	

APPENDIX

STORAGE NAME: h1371s2c.cj
DATE: April 2, 1997

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/CS/HB 1371

RELATING TO: Prison Release

SPONSOR(S): Committee on Crime and Punishment, Representative Putnam and Representative Crist

STATUTE(S) AFFECTED: s. 775.082, F.S., s. 944.705, F.S., s. 947.141, F.S., s. 948.06, F.S.

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) CRIME AND PUNISHMENT 8 YEAS 1 NAY
(2) CRIMINAL JUSTICE APPROPRIATIONS YEAS 6 NAYS 2
(3)
(4)
(5)

I. SUMMARY:

Under this bill, an offender who commits a qualifying offense within three years from being released from prison is subject to minimum mandatory penalties upon a proper showing by the state attorney. Offenders who are sentenced under this bill must be sentenced to the maximum periods of incarceration for the applicable felony offense as provided under s. 775.082, F.S., as minimum mandatory sentences. Persons sentenced under the bill must serve 100% of the court-imposed sentence.

This bill requires the Department of Corrections to warn released inmates of the penalties provided herein.

This bill also imposes a mandatory forfeiture of gain time credits whenever an offender on supervision violates the terms of the supervision. Current law makes such gain time forfeitures discretionary.

The bill amends current law to allow law enforcement officers to arrest, without a warrant, probation and community control violators to the same extent probation officers can under existing law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

1. Creation and Repeal of Early Release Statutes

From 1987 to 1990, the legislature enacted a series of early release statutes:

- Administrative gain-time (s. 944.276, F.S.)
- Provisional release credits (s. 944.277, F.S.)
- Control release (s. 947.146, F.S.)

authorizing the Department of Corrections or the Parole Commission to award early release credits or gain-time to state inmates when the population of the state prison system exceeded predetermined levels. Inmates who were statutorily eligible to receive administrative gain-time or provisional release credits automatically received them and did not need to work or earn the early release credits. The early release statutes were designed to alleviate prison overcrowding and to maintain the prison population within its lawfully prescribed level established in the federal court settlement agreement under Costello and Celestineo v. Wainwright.

From 1987 to 1993, the early release statutes were repeatedly activated and resulted in the early release of over 200,000 inmates which reduced the average time served to about one-third of the court imposed sentence. The use of early release mechanisms generated public safety concerns. The Legislature later repealed administrative gain-time and provisional release credits (Chapters 88-122 and 93-406, Laws of Florida), and created s. 944.278, F.S., which retroactively canceled those awards for all inmates serving a sentence in the custody of the Department of Corrections.

Control release, although inactive since December of 1994, is the sole early release mechanism which is statutorily authorized when the state prison system exceeds 99 percent of total capacity. In 1996, the legislature amended the control release statute and voided all control release dates established prior to July 1, 1996. This amendment in 1996 substantially postponed the date of release for several thousand inmates.

2. Keeping Prison Populations Below Thresholds for Early Release

To halt the early release of inmates, the Legislature began in 1988, and continued over the next eight years, an aggressive prison expansion program of appropriating and constructing over 49,000 prison beds. However, it was not until December of 1994, that the new prison beds coupled with the decline in prison admissions permitted the Legislature to stop the early release of inmates.

With the elimination of early release in December of 1994, inmates immediately began serving a substantially larger percentage of their sentence. Inmates released from prison in June of 1989, for example, served an average of only 34 percent of their sentence, whereas inmates today serve an average of 64 percent of their sentence.

3. The Cancellation of Administrative Gain-time and Provisional Release Credits

In 1989, the Legislature amended the provisional credits statute to render those convicted of certain murder and attempted murder offenses, ineligible for provisional credits. An opinion by the Attorney General concluded that amendments to the provisional release credit law applied retroactively. 92-96, Op. Fla. Att'y Gen. (1992). As a result, in 1992, the Department of Corrections retroactively cancelled provisional release credits for certain classes of inmates. Approximately 2,800 inmates had provisional release credits cancelled and arrest warrants were issued for 164 offenders who had been released early.

The following year, the Legislature created s. 944.278, F.S., which retroactively cancelled all administrative gain-time and provisional release credits substantially postponing the date of release for several thousand inmates.

On February, 19, 1997, the U.S. Supreme Court held in Lynce v. Mathis that Florida's 1992 and 1993 statutes canceling administrative gain-time and provisional release credits violated the Ex Post Facto Clause finding that it disadvantaged the affected inmates by increasing their punishment. Lynce v. Mathis, 65 U.S.L.W. 4131 (U.S. Feb. 19, 1997), (No. 95-7452).

As a result of Lynce, approximately 2,700 inmates will have their sentence reduced from 30 days up to 7 years. Of those affected, approximately 500 either have been or will be immediately released during the first two weeks of March, 1997. The remaining inmates will be released on an average of 10 to 12 inmates per month for several years to come. Of those 2,700 inmates, the Department of Corrections estimates that 1,800 or almost 68% will be under some type of supervision or placed under the custody of another law enforcement agency.

In adhering to the Lynce decision, the Department of Corrections has identified two unique classes of inmates who will not have administrative gain-time or provisional release credits restored: inmates sentenced to offenses committed before June 15, 1983, when an emergency release statutes was not in existence, and those inmates serving an offense during portions of 1986 and 1987 when the threshold for the early release mechanisms were never triggered.

4. Gain Time

Gain-time is a behavioral management tool used by prison officials to encourage satisfactory behavior while inmates are serving their sentences.

Section 944.275, F.S., provides for four types of gain-time to encourage satisfactory behavior and provide incentives for inmates to work and use their time constructively: basic gain-time, incentive gain-time, educational gain-time and meritorious gain-time.

This section was amended in 1993 and 1995 to repeal basic gain-time and reduce the amount of incentive gain-time the Department of Corrections is authorized to award. Specifically, the 1995 Legislature prospectively reduced the amount of incentive gain-time an inmate may earn from up to 20 days per month, to a maximum of 10 days per month. It also required all inmates sentenced to state prison for crimes committed on or after October 1, 1995, to serve no less than 85 percent of their sentence.

Based on an Attorney General opinion issued March 20, 1996, the Department of Corrections amended Rule 33-11.0065 of the Florida Administrative Code, and denied future incentive gain-time awards to inmates who had 85% or less of any sentence remaining to be served. The rule was effective April 21, 1996. The amended rule affected over 18,000 inmates and was projected on average to lengthen the time served in prison by several years. A small number of inmates (153) were projected to serve more than 20 years longer as a result of the amended rule.

On October 10, 1996, the Florida Supreme Court ruled in Gwong v. Singletary that the department could not change the manner in which incentive gain time was previously awarded, and that such a retrospective change violated the ex post facto clause of the U.S. Constitution. The Court further stated that the department cannot do by rule what the Legislature cannot do by law. Gwong v. Singletary, 683 So. 2d 109 (Fla. 1996), reh'g denied, No. 87,824, 1996 WL 673978 (Nov. 22, 1996), *cert denied*, 65 U.S.L.W. 3564 (U.S. Fla., Feb. 18, 1997) (No. 96-958).

As a result of Gwong, approximately 500 inmates were immediately released in November and December of 1996. By August 1997, about 1,800 additional inmates are projected to be released. Inmates affected by Gwong, mostly convicted of murder and sexual battery, were scheduled to be released by these dates prior to the department's adoption of the amended rule and the Florida Supreme Court decision.

5. Habitual Offenders and Habitual Violent Offenders

Habitual offender laws allow the court to double the statutory maximum periods of incarceration. To qualify as a "Habitual Felony Offender" under s. 775.084(1)(a), F.S., the defendant must have been previously convicted of two or more felonies (one of which may not be for possession or purchase of a controlled substance), and the current felony for which the defendant is to be sentenced occurred within 5 years of his last conviction or release from prison, whichever is later. (Except that the current felony cannot be for possession or purchase of a controlled substance.) For habitual felony offenders the court may, in its discretion, sentence an offender outside the sentencing guidelines as follows:

- For life felonies and felonies of the first degree - to life.
- For felonies of the second degree - to 30 years. [double the maximum]
- For felonies of the third degree - to 10 years. [double the maximum]

To qualify as a "Habitual Violent Felony Offender" under s. 775.084(1)(b), F.S., the defendant must have been previously convicted of one or more enumerated violent felony offenses, or attempts, or conspiracy to commit such offense, and the current felony for which the defendant is to be sentenced occurred within 5 years of the last enumerated conviction or release from prison, whichever is later. For habitual felony offenders the court may, in its discretion, sentence an offender to the same periods set out above. However, such periods of imprisonment are subject to mandatory minimums of 15 years for a life felony or first degree felony, 10 years for a second degree felony, and 5 years on a third degree felony. (See *Comments* for comparison of Habitual Offender provisions to this bill.)

B. EFFECT OF PROPOSED CHANGES:

1. Qualifying Offenses

Under this Committee Substitute, an offender who commits a qualifying offense within three years from being released from prison is subject to the penalties prescribed in this bill upon a proper showing by the state attorney. Those qualifying offenses which trigger the application of this bill are:

- Treason; murder; manslaughter; sexual battery; car jacking; home-invasion robbery; robbery; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing or discharging of a destructive device or bomb; any felony which involves the use or threat of physical force or violence against an individual; armed burglary; burglary of an occupied structure or dwelling; or any burglary if the person has two prior felony convictions.

- Under s. 790.07, F.S., - any person who while committing, or attempting to commit, any felony or while under indictment, displays, uses or threatens to use a weapon, electric weapon, firearm, concealed weapon, or concealed firearm (excluding some non-violent felonies).

- Under s. 800.04, F.S., - lewd, lascivious, or indecent assault or act upon or in the presence of a child.

- Under s. 827.03, F.S., - Aggravated Child Abuse, Felony Child Abuse, or Felony Neglect of a Child.

- Under s. 827.071, F.S., - Sexual Performance by a Child.

2. State Attorneys Required to Make Proper Showing

The application of the penalties provided by this bill are triggered by a submission of proof by the state attorney to the sentencing court, that a defendant qualifies as a "prison releasee reoffender." Upon the court finding, by a preponderance of the evidence, that the proper showing has been made, the court must impose the prescribed sentence.

3. Penalties

Offenders who fall within the scope of this bill will be sentenced to the maximum periods of incarceration for the applicable felony offense as provided under s. 775.082, F.S., as minimum mandatory sentences. Any first degree felony that is punishable by life, is treated as a life felony. Offenders sentenced under the bill will serve 100% of their sentence with no mechanism for early release, probation, or parole.

This bill also amends s. 947.141, F.S. and s. 948.06, F.S., to provide for mandatory forfeiture of gain time credits whenever an offender on conditional release, probation, community control, or control release has such status revoked due to a violation of the terms of his supervision. The current state of the law makes such forfeitures discretionary.

4. Warrantless Arrest of Probation and Community Control Violators

This CS also expands the warrantless arrest provisions of s. 948.06, F.S., to allow law enforcement officers to arrest probation and community control violators when they have reasonable cause to believe that a violation has occurred. This is the same standard by which probation officers make warrantless arrests under the current law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

A new responsibility will arise for the Department of Corrections and prosecutors to check and obtain inmate release records if the prosecutor chooses to trigger the penalty provisions of this bill.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

   a. Does the bill increase anyone's taxes?

      No.

   b. Does the bill require or authorize an increase in any fees?

      No.

   c. Does the bill reduce total taxes, both rates and revenues?

      No.

   d. Does the bill reduce total fees, both rates and revenues?

      No.

   e. Does the bill authorize any fee or tax increase by any local government?

      No.

3. Personal Responsibility:

   a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

      No.

   b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

      Not applicable.

4. Individual Freedom:

   a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

      Not applicable.

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. - Title section.

Section 2. - Amends s. 775.082, F.S., as discussed in section II, B.

Section 3. - Amends s. 944.705, F.S., to create a provision requiring the Department of Corrections to provide notice to all inmates who will qualify for sentencing under the provisions of this bill.

Section 4. - Amends s. 947.141, F.S., as discussed in section II, B.

Section 5. - Amends s. 948.06, F.S., as discussed in section II, B.

Section 6. - Reenacts s. 948.01, F.S., s. 958.14, F.S. for purposes of incorporating the amendment to s. 948.06, F.S.

Section 7. - Provides an effective date upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate, see *Fiscal Comments.*

2. Recurring Effects:

	FY 97-98	FY 98-99	FY 99-00
Department of Corrections	$1,534,314	$8,179,058	$21,877,498

See *Fiscal Comments* for information regarding action by the Criminal Justice Appropriations Committee.

3. Long Run Effects Other Than Normal Growth:

Indeterminate, see *Fiscal Comments.*

4. Total Revenues and Expenditures:

See A.1., 2., and 3. Above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   Indeterminate, see *Fiscal Comments.*

2. Recurring Effects:

   Indeterminate, see *Fiscal Comments.*

3. Long Run Effects Other Than Normal Growth:

   Indeterminate, see *Fiscal Comments.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   Not applicable.

2. Direct Private Sector Benefits:

   Not applicable.

3. Effects on Competition, Private Enterprise and Employment Markets:

   Not applicable.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference (CJEC) addressed CS/HB 1371 on March 21, 1997 to determine the prison bed impact of the bill. The CJEC projected the first two years impact to be 778 additional beds. Assuming the current CJEC forecast holds for the next two years, the current prison bed surplus could absorb the initial impact of the bill. The subsequent years' projections would deplete the surplus by the year 2000. If any other bills with projected bed impact pass this legislative session, the combined impacts could deplete the current surplus prior to 2000 and additional beds would be necessary.

On March 27, 1997, The Criminal Justice Appropriations Committed passed CS/HB 1371 as a committee substitute with one amendment. As of the date of this analysis, the CJEC had not determined the prison bed impact of the Appropriations Committee amendment, but is scheduled to address the impact on April three, 1997. The amendment is expected to change the impact on prison beds, thus changing the fiscal impact.

The long term impacts of this bill are difficult to estimate due to prosecutorial and judicial behavior, but will probably be substantial in both the operating and capital costs.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirement of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

1. CS/HB 1371 Compared to the Habitual Offender Statute

While "habitual offenders" committing new (non-specific) felonies within five years would fall within the scope of the habitual offender statute, this bill is distinguishable from the habitual offender statute in its certainty of punishment, and its mandatory nature. The habitual offender statute basically doubles the statutory maximum periods of incarceration under s. 775.082 as a potential maximum sentence for the offender. On the other hand, the minimum mandatory prison terms are lower under the habitual violent felony offender statute, than those provided under the bill. In addition, a court may decline to impose a habitual offender or habitual violent offender sentence.

2. Prison Management

Because the penalties involved under the bill are minimum mandatory sentences, the Department of Corrections may face some disciplinary problems with those offenders serving sentences with no prospect for gain time awarded for good behavior.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

This second CS has made the following changes to the first CS:

- The penalties provided for under the bill will apply to all inmates who commit a qualifying offense within 3 years of release.
- The qualifying offenses have been expanded to include:
  - Aggravated Stalking
  - Aggravated Assault

- Burglary of an Occupied Structure or Dwelling
- Armed Burglary
- Any Burglary if the person has two prior felony convictions
- Child Abuse
- Any felony which involves the use of threat of physical force or violence against an individual

- Amends s. 948.06, F.S., to allow law enforcement officers to arrest, without a warrant, probation and community control violators to the same extent probation officers can under the current law.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by: David De La Paz

Legislative Research Director: Willis Renuart

AS REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by: Mary Cintron

Legislative Research Director: Mary Cintron

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Daniel P. Hyndman, Assistant Attorney General, 1655 Palm Beach Lakes Blvd., Third Floor, West Palm Beach, Florida 33401 by courier this 1st day of February, 2000.

Attorney for Stanley V. Huggins