

By the Committee on Crime & Punishment and Representatives
Crist, Ball, Futch, Arnall, Bainter, Wiles, Valdes, Fuller,
Fasano and Casey

1 A bill to be entitled
2 An act relating to sentencing; amending s.
3 921.001, F.S.; authorizing the court to
4 sentence a defendant to a specified term of
5 incarceration if the defendant is convicted of
6 a felony committed on or after a certain date,
7 the defendant has previously been convicted of
8 a felony, and the defendant has a lesser
9 recommended sentence under the sentencing
10 guidelines; providing that a determination of
11 guilt is a conviction for purposes of imposing
12 such sentence, regardless of whether
13 adjudication is withheld; providing that the
14 sentence may not be appealed except upon
15 grounds of illegality; reenacting s. 948.034(1)
16 and (2), F.S., relating to terms and conditions
17 of probation and residential drug punishment
18 centers, to incorporate said amendment in
19 references; amending s. 921.0016, F.S.,
20 relating to recommended sentences and departure
21 sentences; revising aggravating circumstances
22 under which a departure sentence is justified
23 to include certain circumstances when the
24 defendant has committed an offense within 6
25 months after release from county jail, private
26 correctional facility, Department of
27 Corrections work camp, road prison, or other
28 incarceration; reenacting s. 921.001(6), F.S.,
29 relating to Sentencing Commission and
30 sentencing guidelines, generally, to
31

1 incorporate said amendment in a reference;
2 providing an effective date.

3

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

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6 Section 1. Subsection (5) of section 921.001, Florida
7 Statutes, is amended to read:

8 921.001 Sentencing Commission and sentencing
9 guidelines generally.--

10 (5)(a) Except as provided in paragraph (b), sentences
11 imposed by trial court judges under the 1994 revised
12 sentencing guidelines on or after January 1, 1994, must be
13 within the 1994 guidelines unless there is a departure
14 sentence with written findings. If a recommended sentence
15 under the guidelines exceeds the maximum sentence otherwise
16 authorized by s. 775.082, the sentence under the guidelines
17 must be imposed, absent a departure. If a departure sentence,
18 with written findings, is imposed, such sentence must be
19 within any relevant maximum sentence limitations provided in
20 s. 775.082. The failure of a trial court to impose a sentence
21 within the sentencing guidelines is subject to appellate
22 review pursuant to chapter 924. However, the extent of a
23 departure from a guidelines sentence is not subject to
24 appellate review.

25 (b) If a defendant who is convicted of a felony
26 committed on or after July 1, 1997, has prior to that
27 conviction been convicted of a felony and has a maximum
28 recommended sentence under the guidelines which is less than
29 22 months, the court may sentence the defendant to a term of
30 incarceration not to exceed 22 months. As used in this
31 paragraph, the term "convicted" means a determination of guilt

1 which is the result of a plea or a trial, regardless of
2 whether adjudication is withheld. A sentence imposed under
3 this paragraph is not subject to appeal by the defendant,
4 except as provided in s. 924.06(1)(d).

5 Section 2. For the purpose of incorporating the
6 amendment to s. 921.001, Florida Statutes, in references
7 thereto, subsections (1) and (2) of section 948.034, Florida
8 Statutes, are reenacted to read:

9 948.034 Terms and conditions of probation; community
10 residential drug punishment centers.--

11 (1) On or after October 1, 1993, any person who
12 violates s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or
13 (5)(a) may, in the discretion of the trial court, be required
14 to successfully complete a term of probation in lieu of
15 serving a term of imprisonment as required or authorized by s.
16 775.084 or s. 921.001, as follows:

17 (a) If the person has not previously been convicted of
18 violating s. 893.13(1)(a)1., (1)(c)2., (1)(d)2., (2)(a)1., or
19 (5)(a), adjudication may be withheld and the offender may be
20 placed on probation for not less than 18 months, as a
21 condition of which the court shall require the offender to
22 reside at a community residential drug punishment center for
23 90 days. The offender must comply with all rules and
24 regulations of the center and must pay a fee for the costs of
25 room and board and residential supervision. Placement of an
26 offender into a community residential drug punishment center
27 is subject to budgetary considerations and availability of bed
28 space. If the court requires the offender to reside at a
29 community residential drug punishment center, the court shall
30 also require the offender to comply with one or more of the
31 other following terms and conditions:

- 1 1. Pay a fine of not less than \$500 nor more than
2 \$10,000 pursuant to s. 775.083(1)(c).
- 3 2. Enter, regularly attend, and successfully complete
4 a substance abuse education program of at least 40 hours or a
5 prescribed substance abuse treatment program provided by a
6 treatment resource licensed pursuant to chapter 396 or chapter
7 397 or by a hospital licensed pursuant to chapter 395, as
8 specified by the court. In addition, the court may refer the
9 offender to a licensed agency for substance abuse evaluation
10 and, if appropriate, substance abuse treatment subject to the
11 ability of the offender to pay for such evaluation and
12 treatment. If such referral is made, the offender must comply
13 and must pay for the reasonable cost of the evaluation and
14 treatment.
- 15 3. Perform at least 100 hours of public service.
- 16 4. Submit to routine and random drug testing which may
17 be conducted during the probationary period, with the
18 reasonable costs thereof borne by the offender.
- 19 5. Participate, at his own expense, in an appropriate
20 self-help group, such as Narcotics Anonymous, Alcoholics
21 Anonymous, or Cocaine Anonymous, if available.
- 22 (b) If the person has been previously convicted of one
23 felony violation of s. 893.13(1)(a)1., (1)(c)2., (1)(d)2.,
24 (2)(a)1., or (5)(a), adjudication may not be withheld and the
25 offender may be placed on probation for not less than 24
26 months, as a condition of which the court shall require the
27 offender to reside at a community residential drug punishment
28 center for 180 days. The offender must comply with all rules
29 and regulations of the center and must pay a fee for the costs
30 of room and board and residential supervision. Placement of an
31 offender into a community residential drug punishment center

1 is subject to budgetary considerations and availability of bed
2 space. If the court requires the offender to reside at a
3 community residential drug punishment center, the court shall
4 also require the offender to comply with one or more of the
5 other following terms and conditions:

6 1. Pay a fine of not less than \$1,000 nor more than
7 \$10,000 pursuant to s. 775.083(1)(c).

8 2. Enter, regularly attend, and successfully complete
9 a substance abuse education program of at least 40 hours or a
10 prescribed substance abuse treatment program provided by a
11 treatment resource licensed pursuant to chapter 396 or chapter
12 397 or by a hospital licensed pursuant to chapter 395, as
13 specified by the court. In addition, the court may refer the
14 offender to a licensed agency for substance abuse evaluation
15 and, if appropriate, substance abuse treatment subject to the
16 ability of the offender to pay for such evaluation and
17 treatment. If such referral is made, the offender must comply
18 and must pay for the reasonable cost of the evaluation and
19 treatment.

20 3. Perform at least 200 hours of public service.

21 4. Submit to routine and random drug testing which may
22 be conducted during the probationary period, with the
23 reasonable costs thereof borne by the offender.

24 5. Participate, at his own expense, in an appropriate
25 self-help group, such as Narcotics Anonymous, Alcoholics
26 Anonymous, or Cocaine Anonymous, if available.

27 (c) If the person has been previously convicted of two
28 felony violations of s. 893.13(1)(a)1., (1)(c)2., (1)(d)2.,
29 (2)(a)1., or (5)(a), adjudication may not be withheld and the
30 offender may be placed on probation for not less than 36
31 months, as a condition of which the court shall require the

1 offender to reside at a community residential drug punishment
2 center for 360 days. The offender must comply with all rules
3 and regulations of the center and must pay a fee for the costs
4 of room and board and residential supervision. Placement of an
5 offender into a community residential drug punishment center
6 is subject to budgetary considerations and availability of bed
7 space. If the court requires the offender to reside at a
8 community residential drug punishment center, the court shall
9 also require the offender to comply with one or more of the
10 other following terms and conditions:

11 1. Pay a fine of not less than \$1,500 nor more than
12 \$10,000 pursuant to s. 775.083(1)(c).

13 2. Enter, regularly attend, and successfully complete
14 a substance abuse education program of at least 40 hours or a
15 prescribed substance abuse treatment program provided by a
16 treatment resource licensed pursuant to chapter 396 or chapter
17 397 or by a hospital licensed pursuant to chapter 395, as
18 specified by the court. In addition, the court may refer the
19 offender to a licensed agency for substance abuse evaluation
20 and, if appropriate, substance abuse treatment subject to the
21 ability of the offender to pay for such evaluation and
22 treatment. If such referral is made, the offender must comply
23 and must pay for the reasonable cost of the evaluation and
24 treatment.

25 3. Perform at least 300 hours of public service.

26 4. Submit to routine and random drug testing which may
27 be conducted during the probationary period, with the
28 reasonable costs thereof borne by the offender.

29 5. Participate, at his own expense, in an appropriate
30 self-help group, such as Narcotics Anonymous, Alcoholics
31 Anonymous, or Cocaine Anonymous, if available.

1 (d) An offender who violates probation imposed
2 pursuant to this section shall be sentenced in accordance with
3 s. 921.001.

4 (2) On or after October 1, 1993, any person who
5 violates s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a) may,
6 in the discretion of the trial court, be required to
7 successfully complete a term of probation in lieu of serving a
8 term of imprisonment as required or authorized by s. 775.084
9 or s. 921.001, as follows:

10 (a) If the person has not previously been convicted of
11 violating s. 893.13(1)(a)2., (2)(a)2., (5)(b), or (6)(a),
12 adjudication may be withheld and the offender shall be placed
13 on probation for not less than 12 months, as a condition of
14 which the court may require the offender to comply with one or
15 more of the following terms and conditions:

16 1. Pay a fine of not less than \$250 nor more than
17 \$5,000 pursuant to s. 775.083(1)(c).

18 2. Enter, regularly attend, and successfully complete
19 a substance abuse education program of at least 40 hours or a
20 prescribed substance abuse treatment program provided by a
21 treatment resource licensed pursuant to chapter 396 or chapter
22 397 or by a hospital licensed pursuant to chapter 395, as
23 specified by the court. In addition, the court may refer the
24 offender to a licensed agency for substance abuse evaluation
25 and, if appropriate, substance abuse treatment subject to the
26 ability of the offender to pay for such evaluation and
27 treatment. If such referral is made, the offender must comply
28 and must pay for the reasonable cost of the evaluation and
29 treatment.

30 3. Perform at least 50 hours of public service.
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1 4. Submit to routine and random drug testing which may
2 be conducted during the probationary period, with the
3 reasonable costs thereof borne by the offender.

4 5. Participate, at his own expense, in an appropriate
5 self-help group, such as Narcotics Anonymous, Alcoholics
6 Anonymous, or Cocaine Anonymous, if available.

7 (b) If the person has been previously convicted of one
8 felony violation of s. 893.13(1)(a)2., (2)(a)2., (5)(b), or
9 (6)(a), adjudication may not be withheld and the offender may
10 be placed on probation for not less than 18 months, as a
11 condition of which the court shall require the offender to
12 reside at a community residential drug punishment center for
13 90 days. The offender must comply with all rules and
14 regulations of the center and must pay a fee for the costs of
15 room and board and residential supervision. Placement of an
16 offender into a community residential drug punishment center
17 is subject to budgetary considerations and availability of bed
18 space. If the court requires the offender to reside at a
19 community residential drug punishment center, the court shall
20 also require the offender to comply with one or more of the
21 other following terms and conditions:

22 1. Pay a fine of not less than \$500 nor more than
23 \$5,000 pursuant to s. 775.083(1)(c).

24 2. Enter, regularly attend, and successfully complete
25 a substance abuse intervention program of a least 80 hours
26 provided by a treatment resource licensed pursuant to chapter
27 396 or chapter 397 or by a hospital licensed pursuant to
28 chapter 395, as specified by the court. In addition, the court
29 may refer the offender to a licensed agency for substance
30 abuse evaluation and, if appropriate, substance abuse
31 treatment subject to the ability of the offender to pay for

1 such evaluation and treatment. If such referral is made, the
2 offender must comply and must pay for the reasonable cost of
3 the evaluation and treatment.

4 3. Perform at least 100 hours of public service.

5 4. Submit to routine and random drug testing which may
6 be conducted during the probationary period, with the
7 reasonable costs thereof borne by the offender.

8 5. Participate, at his own expense, in an appropriate
9 self-help group, such as Narcotics Anonymous, Alcoholics
10 Anonymous, or Cocaine Anonymous, if available.

11 (c) If the person has been previously convicted of two
12 felony violations of s. 893.13(1)(a)2., (2)(a)2., (5)(b), or
13 (6)(a), adjudication may not be withheld and the offender may
14 be placed on probation for not less than 24 months, as a
15 condition of which the court shall require the offender to
16 reside at a community residential drug punishment center for
17 120 days. The offender must comply with all rules and
18 regulations of the center and must pay a fee for the costs of
19 room and board and residential supervision. Placement of an
20 offender into a community residential drug punishment center
21 is subject to budgetary considerations and availability of bed
22 space. If the court requires the offender to reside at a
23 community residential drug punishment center, the court shall
24 also require the offender to comply with one or more of the
25 other following terms and conditions:

26 1. Pay a fine of not less than \$1,000 nor more than
27 \$5,000 pursuant to s. 775.083(1)(c).

28 2. Enter, regularly attend, and successfully complete
29 a prescribed substance abuse treatment program provided by a
30 treatment resource licensed pursuant to chapter 396 or chapter
31 397 or by a hospital licensed pursuant to chapter 395, as

1 specified by the court. In addition, the court may refer the
2 offender to a licensed agency for substance abuse evaluation
3 and, if appropriate, substance abuse treatment subject to the
4 ability of the offender to pay for such evaluation and
5 treatment. If such referral is made, the offender must comply
6 and must pay for the reasonable cost of the evaluation and
7 treatment.

8 3. Perform at least 150 hours of public service.

9 4. Submit to routine and random drug testing which may
10 be conducted during the probationary period, with the
11 reasonable costs thereof borne by the offender.

12 5. Participate, at his own expense, in an appropriate
13 self-help group, such as Narcotics Anonymous, Alcoholics
14 Anonymous, or Cocaine Anonymous, if available.

15 (d) If the person has been previously convicted of
16 three felony violations of s. 893.13(1)(a)2., (2)(a)2.,
17 (5)(b), or (6)(a), adjudication may not be withheld and the
18 offender may be placed on probation for not less than 30
19 months, as a condition of which the court shall require the
20 offender to reside at a community residential drug punishment
21 center for 200 days. The offender must comply with all rules
22 and regulations of the center and must pay a fee for the costs
23 of room and board and residential supervision. Placement of an
24 offender into a community residential drug punishment center
25 is subject to budgetary considerations and availability of bed
26 space. If the court requires the offender to reside at a
27 community residential drug punishment center, the court shall
28 also require the offender to comply with one or more of the
29 other following terms and conditions:

30 1. Pay a fine of not less than \$1,500 nor more than
31 \$5,000 pursuant to s. 775.083(1)(c).

1 2. Enter, regularly attend, and successfully complete
2 a prescribed substance abuse treatment program provided by a
3 treatment resource licensed pursuant to chapter 396 or chapter
4 397 or by a hospital licensed pursuant to chapter 395, as
5 specified by the court. In addition, the court may refer the
6 offender to a licensed agency for substance abuse evaluation
7 and, if appropriate, substance abuse treatment subject to the
8 ability of the offender to pay for such evaluation and
9 treatment. If such referral is made, the offender must comply
10 and must pay for the reasonable cost of the evaluation and
11 treatment.

12 3. Perform at least 200 hours of public service.

13 4. Submit to routine and random drug testing which may
14 be conducted during the probationary period, with the
15 reasonable costs thereof borne by the offender.

16 5. Participate, at his own expense, in an appropriate
17 self-help group, such as Narcotics Anonymous, Alcoholics
18 Anonymous, or Cocaine Anonymous, if available.

19 (e) If the person has been previously convicted of
20 four felony violations of s. 893.13(1)(a)2., (2)(a)2., (5)(b),
21 or (6)(a), adjudication may not be withheld and the offender
22 may be placed on probation for not less than 36 months, as a
23 condition of which the court shall require the offender to
24 reside at a community residential drug punishment center for
25 360 days. The offender must comply with all rules and
26 regulations of the center and must pay a fee for the costs of
27 room and board and residential supervision. Placement of an
28 offender into a community residential drug punishment center
29 is subject to budgetary considerations and availability of bed
30 space. If the court requires the offender to reside at a
31 community residential drug punishment center, the court shall

1 also require the offender to comply with one or more of the
2 other following terms and conditions:

3 1. Pay a fine of not less than \$2,000 nor more than
4 \$5,000 pursuant to s. 775.083(1)(c).

5 2. Enter, regularly attend, and successfully complete
6 a prescribed substance abuse treatment program provided by a
7 treatment resource licensed pursuant to chapter 396 or chapter
8 397 or by a hospital licensed pursuant to chapter 395, as
9 specified by the court. In addition, the court may refer the
10 offender to a licensed agency for substance abuse evaluation
11 and, if appropriate, substance abuse treatment subject to the
12 ability of the offender to pay for such evaluation and
13 treatment. If such referral is made, the offender must comply
14 and must pay for the reasonable cost of the evaluation and
15 treatment.

16 3. Perform at least 250 hours of public service.

17 4. Submit to routine and random drug testing which may
18 be conducted during the probationary period, with the
19 reasonable costs thereof borne by the offender.

20 5. Participate, at his own expense, in an appropriate
21 self-help group, such as Narcotics Anonymous, Alcoholics
22 Anonymous, or Cocaine Anonymous, if available.

23 (f) An offender who violates probation imposed
24 pursuant to this section shall be sentenced in accordance with
25 s. 921.001.

26 Section 3. Paragraph (e) of subsection (3) of section
27 921.0016, Florida Statutes, 1996 Supplement, is amended to
28 read:

29 921.0016 Recommended sentences; departure sentences;
30 aggravating and mitigating circumstances.--

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1 (3) Aggravating circumstances under which a departure
2 from the sentencing guidelines is reasonably justified
3 include, but are not limited to:

4 (e) The offense before the court for disposition was
5 committed within 6 months after the defendant was discharged
6 from a release program, as defined in s. 921.0011(6), or
7 released from state prison, county jail, private correctional
8 facility, Department of Corrections work camp, road prison, or
9 any other incarceration, whichever is later.

10 Section 4. For the purpose of incorporating the
11 amendment to s. 921.0016, Florida Statutes, 1996 Supplement,
12 in a reference thereto, subsection (6) of section 921.001,
13 Florida Statutes, is reenacted to read:

14 921.001 Sentencing Commission and sentencing
15 guidelines generally.--

16 (6) A court may impose a departure sentence outside
17 the sentencing guidelines based upon circumstances or factors
18 which reasonably justify the aggravation or mitigation of the
19 sentence in accordance with s. 921.0016. The level of proof
20 necessary to establish facts supporting a departure from a
21 sentence under the guidelines is a preponderance of the
22 evidence. When multiple reasons exist to support a departure
23 from a guidelines sentence, the departure shall be upheld when
24 at least one circumstance or factor justifies the departure
25 regardless of the presence of other circumstances or factors
26 found not to justify departure. Any sentence imposed outside
27 the range recommended by the guidelines must be explained in
28 writing by the trial court judge.

29 Section 5. This act shall take effect July 1, 1997.
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