

By Representatives Argenziano and Burroughs

1 A bill to be entitled
2 An act relating to sentencing; amending s.
3 921.0016, F.S.; providing that substance abuse
4 or addiction, including intoxication, shall not
5 be the basis for mitigating a recommended
6 guidelines sentence; providing an effective
7 date.

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9 WHEREAS, in *Barbera v. State*, 505 So.2d 413 (Fla.
10 1987), the Florida Supreme Court held that a trial court may
11 mitigate a recommended guidelines sentence because the
12 defendant was intoxicated or dependent on drugs when the crime
13 was committed, and

14 WHEREAS, the *Barbera* holding was not reached on the
15 basis of the court's interpretation of a statutorily created
16 mitigating factor, but instead was based on a conclusion that
17 such mitigation is analogous to the jury's use of the defense
18 of intoxication to justify convicting a defendant of a lesser
19 offense, and

20 WHEREAS, the Legislature finds that in *Montana v.*
21 *Egelhoff*, 116 S.Ct. 2013 (1996), the United States Supreme
22 Court approved of a state's right to preclude a jury from
23 considering a criminal defendant's intoxication as a defense,
24 and

25 WHEREAS, the Legislature further finds that in *Miller*
26 *v. State*, 672 So.2d 95 (Fla. 3d DCA 1996), the Florida Third
27 District Court held that a defendant's appearance in court
28 under the influence of cocaine can justify a finding of direct
29 criminal contempt, and

30 WHEREAS, the Legislature further finds that this
31 Legislature and other state legislatures have penalized

1 substance abuse or addiction by such means as enacting
2 criminal laws pertaining to driving or boating while under the
3 influence of an intoxicating substance and criminal laws
4 pertaining to possession of a controlled substance, and

5 WHEREAS, the Legislature further finds that drug or
6 alcohol dependency does not provide a basis for mitigation
7 under the United States Sentencing Guidelines, 18 USCS Appx.
8 5H1.4 (1996), and

9 WHEREAS, the Legislature further finds it untenable as
10 a matter of public policy to extend to a criminal defendant
11 the substantial benefit of the mitigation of the defendant's
12 recommended guidelines sentence because the defendant
13 committed a crime while abusing or while addicted to a
14 substance, and

15 WHEREAS, the Legislature further finds that the victim,
16 whose injuries are no less real and painful because the
17 defendant injured the victim while abusing or while addicted
18 to a substance, and who bears no responsibility for the
19 defendant engaging in such irresponsible behavior, has a
20 reasonable interest in the trial court's applying the full
21 measure of the law when the defendant is convicted of a crime
22 against the victim, and

23 WHEREAS, the Legislature further finds that the
24 interests of the victim outweigh any interest a court may
25 determine to be present in mitigating a defendant's
26 recommended guidelines sentence on the basis that the offense
27 was committed while the defendant was abusing or was addicted
28 to a substance, and

29 WHEREAS, it is the intent of the Legislature that
30 substance abuse or addiction, including intoxication at the
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1 time of the offense, may not be the basis for mitigating a
2 recommended guidelines sentence, NOW, THEREFORE,

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

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6 Section 1. Paragraph (d) of subsection (4) of section
7 921.0016, Florida Statutes, 1996 Supplement, is amended, and
8 subsection (5) is added to that section, to read:

9 921.0016 Recommended sentences; departure sentences;
10 aggravating and mitigating circumstances.--

11 (4) Mitigating circumstances under which a departure
12 from the sentencing guidelines is reasonably justified
13 include, but are not limited to:

14 (d) The defendant requires specialized treatment for a
15 ~~addiction, mental disorder, or physical disability~~, and the
16 defendant is amenable to treatment.

17 (5) A defendant's substance abuse or addiction,
18 including intoxication at the time of the offense, is not a
19 mitigating factor under subsection (4) and does not, under any
20 circumstances, justify a downward departure from the
21 recommended guidelines sentence.

22 Section 2. This act shall take effect July 1, 1997.

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25 SENATE SUMMARY

26 Provides that the court may not consider a defendant's
27 substance abuse or addiction, including intoxication at
28 the time of the offense, as a mitigating factor for
29 purposes of imposing a sentence that departs from the
30 sentencing guidelines.

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