

By Senator Saunders

25-1158-99

See HB

1 A bill to be entitled
2 An act relating to sentencing; amending s.
3 775.021, F.S., relating to rules of
4 construction; providing that certain provisions
5 requiring strict construction or construction
6 most favorably to the accused do not apply to
7 sentencing proceedings after a court has
8 accepted a plea of guilty or nolo contendere or
9 the accused has been found guilty; removing
10 exceptions to certain construction guidelines
11 which provide that the legislative intent is to
12 convict and sentence for each criminal offense
13 in the course of one criminal episode or
14 transaction and not to allow the principle of
15 lenity determine legislative intent; amending
16 s. 874.04, F.S.; providing for enhanced
17 penalties for commission of a felony or
18 misdemeanor, or a delinquent act or violation
19 of law that would be a felony or misdemeanor if
20 committed by an adult, under specified
21 circumstances when the defendant committed the
22 charged offense for the purpose of furthering,
23 benefiting, or promoting a criminal street gang
24 or the defendant's status in the criminal
25 street gang; amending s. 921.0024, F.S.,
26 relating to the Criminal Punishment Code
27 worksheet computations and scoresheets;
28 providing for assessment of certain additional
29 sentence points for conviction of committing or
30 attempting to commit a felony while possessing
31 a firearm, semiautomatic firearm, or machine

1 gun, regardless of when obtained; revising
2 guidelines for application of a specified
3 sentence multiplier for offenses related to
4 criminal street gangs; conforming terminology;
5 amending s. 921.16, F.S., relating to the
6 guidelines for concurrent or consecutive
7 sentencing; providing for the applicability of
8 certain guidelines to all sentences, regardless
9 of whether the offenses occur in single or
10 multiple criminal episodes; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 775.021, Florida Statutes, is
16 amended to read:

17 775.021 Rules of construction.--

18 (1) The provisions of this code and offenses defined
19 by other statutes shall be strictly construed; when the
20 language is susceptible of differing constructions, it shall
21 be construed most favorably to the accused. However, this
22 rule of construction does not apply to sentencing proceedings
23 after a court has accepted a plea of guilty or nolo contendere
24 or the accused has been found guilty.

25 (2) The provisions of this chapter are applicable to
26 offenses defined by other statutes, unless the code otherwise
27 provides.

28 (3) This section does not affect the power of a court
29 to punish for contempt or to employ any sanction authorized by
30 law for the enforcement of an order or a civil judgment or
31 decree.

1 (4)(a) Whoever, in the course of one criminal
2 transaction or episode, commits an act or acts which
3 constitute one or more separate criminal offenses, upon
4 conviction and adjudication of guilt, shall be sentenced
5 separately for each criminal offense; and the sentencing judge
6 may order the sentences to be served concurrently or
7 consecutively. For the purposes of this subsection, offenses
8 are separate if each offense requires proof of an element that
9 the other does not, without regard to the accusatory pleading
10 or the proof adduced at trial.

11 (b) The intent of the Legislature is to convict and
12 sentence for each criminal offense committed in the course of
13 one criminal episode or transaction and not to allow the
14 principle of lenity as set forth in subsection (1) to
15 determine legislative intent. ~~Exceptions to this rule of~~
16 ~~construction are:~~

17 1. ~~Offenses which require identical elements of proof.~~

18 2. ~~Offenses which are degrees of the same offense as~~
19 ~~provided by statute.~~

20 3. ~~Offenses which are lesser offenses the statutory~~
21 ~~elements of which are subsumed by the greater offense.~~

22 Section 2. Section 874.04, Florida Statutes, is
23 amended to read.

24 874.04 Criminal street gang activity; enhanced
25 penalties.--Upon a finding by the court at sentencing that the
26 defendant committed the charged offense for the purpose of
27 furthering, benefiting, or promoting a criminal street gang or
28 the defendant's status in a criminal street gang ~~is a member~~
29 ~~of a criminal street gang~~, the penalty for any felony or
30 misdemeanor, or any delinquent act or violation of law which
31 would be a felony or misdemeanor if committed by an adult, may

1 ~~be enhanced if the offender was a member of a criminal street~~
2 ~~gang at the time of the commission of such offense.~~ Each of
3 the findings required as a basis for such sentence shall be
4 found by a preponderance of the evidence. The enhancement will
5 be as follows:

6 (1)(a) A misdemeanor of the second degree may be
7 punished as if it were a misdemeanor of the first degree.

8 (b) A misdemeanor of the first degree may be punished
9 as if it were a felony of the third degree. For purposes of
10 sentencing under chapter 921 and determining incentive
11 gain-time eligibility under chapter 944, such offense is
12 ranked in level 1 of the offense severity ranking chart. The
13 criminal street gang multiplier in s. 921.0024 does not apply
14 to misdemeanors enhanced under this paragraph.

15 (2)(a) A felony of the third degree may be punished as
16 if it were a felony of the second degree.

17 (b) A felony of the second degree may be punished as
18 if it were a felony of the first degree.

19 (c) A felony of the first degree may be punished as if
20 it were a life felony.

21
22 For purposes of sentencing under chapter 921 and determining
23 incentive gain-time eligibility under chapter 944, such felony
24 offense is ranked as provided in s. 921.0022 or s. 921.0023,
25 and without regard to the penalty enhancement in this
26 subsection. For purposes of this section, penalty enhancement
27 affects the applicable statutory maximum penalty only.

28 Section 3. Subsection (1) of section 921.0024, Florida
29 Statutes, 1998 Supplement, is amended to read:

30 921.0024 Criminal Punishment Code; worksheet
31 computations; scoresheets.--

1 (1)(a) The Criminal Punishment Code worksheet is used
 2 to compute the subtotal and total sentence points as follows:

3
 4 FLORIDA CRIMINAL PUNISHMENT CODE
 5 WORKSHEET

6
 7 OFFENSE SCORE

8
 9 Primary Offense

10 Level	Sentence Points		Total
11			
12 10	116	=	....
13 9	92	=	....
14 8	74	=	....
15 7	56	=	....
16 6	36	=	....
17 5	28	=	....
18 4	22	=	....
19 3	16	=	....
20 2	10	=	....
21 1	4	=	....

22
 23

24 Total

25
 26 Additional Offenses

27 Level	Sentence Points	Counts	Total
28			
29 10	58	x	=
30 9	46	x	=
31 8	37	x	=

1	7	28	x	....	=	....
2	6	18	x	....	=	....
3	5	5.4	x	....	=	....
4	4	3.6	x	....	=	....
5	3	2.4	x	....	=	....
6	2	1.2	x	....	=	....
7	1	0.7	x	....	=	....
8	M	0.2	x	....	=	....

9
10
11 Total

13 Victim Injury

14 Level	Sentence Points		Number	Total
15	.....		
16	2nd degree			
17	murder-			
18	death	240	x =
19	Death	120	x =
20	Severe	40	x =
21	Moderate	18	x =
22	Slight	4	x =
23	Sexual			
24	penetration	80	x =
25	Sexual			
26	contact	40	x =

27
28
29 Total

31 Primary Offense + Additional Offenses + Victim Injury =

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1	TOTAL OFFENSE SCORE			
2				
3	PRIOR RECORD SCORE			
4				
5	Prior Record			
6	Level	Sentence Points	Number	Total
7	.....		
8	10	29	x =
9	9	23	x =
10	8	19	x =
11	7	14	x =
12	6	9	x =
13	5	3.6	x =
14	4	2.4	x =
15	3	1.6	x =
16	2	0.8	x =
17	1	0.5	x =
18	M	0.2	x =
19				
20	.....		
21				<u>Total</u>
22				
23	TOTAL OFFENSE SCORE.....			
24	TOTAL PRIOR RECORD SCORE.....			
25				
26	LEGAL STATUS.....			
27	COMMUNITY SANCTION VIOLATION.....			
28	PRIOR SERIOUS FELONY.....			
29	PRIOR CAPITAL FELONY.....			
30	FIREARM OR SEMIAUTOMATIC WEAPON.....			
31				SUBTOTAL.....

1
2 PRISON RELEASEE REOFFENDER (no)(yes).....
3 VIOLENT CAREER CRIMINAL (no)(yes).....
4 HABITUAL VIOLENT OFFENDER (no)(yes).....
5 HABITUAL OFFENDER (no)(yes).....
6 DRUG TRAFFICKER (no)(yes) (x multiplier).....
7 LAW ENF. PROTECT. (no)(yes) (x multiplier).....
8 MOTOR VEHICLE THEFT (no)(yes) (x multiplier).....
9 CRIMINAL STREET GANG OFFENSE ~~MEMBER~~ (no)(yes) (x
10 multiplier).....
11 DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD
12 (no)(yes) (x multiplier).....
13
14 TOTAL SENTENCE POINTS.....

15
16 (b) WORKSHEET KEY:

17
18 Legal status points are assessed when any form of legal status
19 existed at the time the offender committed an offense before
20 the court for sentencing. Four (4) sentence points are
21 assessed for an offender's legal status.

22
23 Community sanction violation points are assessed when a
24 community sanction violation is before the court for
25 sentencing. Six (6) sentence points are assessed for each
26 community sanction violation, and each successive community
27 sanction violation; however, if the community sanction
28 violation includes a new felony conviction before the
29 sentencing court, twelve (12) community sanction violation
30 points are assessed for such violation, and for each
31 successive community sanction violation involving a new felony

1 conviction. Multiple counts of community sanction violations
2 before the sentencing court shall not be a basis for
3 multiplying the assessment of community sanction violation
4 points.

5
6 Prior serious felony points: If the offender has a primary
7 offense or any additional offense ranked in level 8, level 9,
8 or level 10, and one or more prior serious felonies, a single
9 assessment of 30 points shall be added. For purposes of this
10 section, a prior serious felony is an offense in the
11 offender's prior record that is ranked in level 8, level 9, or
12 level 10 under s. 921.0022 or s. 921.0023 and for which the
13 offender is serving a sentence of confinement, supervision, or
14 other sanction or for which the offender's date of release
15 from confinement, supervision, or other sanction, whichever is
16 later, is within 3 years before the date the primary offense
17 or any additional offense was committed.

18
19 Prior capital felony points: If the offender has one or more
20 prior capital felonies in the offender's criminal record,
21 points shall be added to the subtotal sentence points of the
22 offender equal to twice the number of points the offender
23 receives for the primary offense and any additional offense.
24 A prior capital felony in the offender's criminal record is a
25 previous capital felony offense for which the offender has
26 entered a plea of nolo contendere or guilty or has been found
27 guilty; or a felony in another jurisdiction which is a capital
28 felony in that jurisdiction, or would be a capital felony if
29 the offense were committed in this state.

30
31

1 Possession of a firearm, semiautomatic firearm, or machine
2 gun: If the offender is convicted of committing or attempting
3 to commit any felony other than those enumerated in s.
4 775.087(2) while having in his possession: a firearm as
5 defined in s. 790.001(6), an additional 18 sentence points are
6 assessed; or if the offender is convicted of committing or
7 attempting to commit any felony other than those enumerated in
8 s. 775.087(3) while having in his possession a semiautomatic
9 firearm as defined in s. 775.087(3) or a machine gun as
10 defined in s. 790.001(9), an additional 25 sentence points are
11 assessed. Points shall be assessed regardless of whether the
12 firearm, semiautomatic firearm, or machine gun was obtained
13 before or during the commission or attempted commission of a
14 felony.

15
16 Sentencing multipliers:

17
18 Drug trafficking: If the primary offense is drug trafficking
19 under s. 893.135, the subtotal sentence points are multiplied,
20 at the discretion of the court, for a level 7 or level 8
21 offense, by 1.5. The state attorney may move the sentencing
22 court to reduce or suspend the sentence of a person convicted
23 of a level 7 or level 8 offense, if the offender provides
24 substantial assistance as described in s. 893.135(4).

25
26 Law enforcement protection: If the primary offense is a
27 violation of the Law Enforcement Protection Act under s.
28 775.0823(2), the subtotal sentence points are multiplied by
29 2.5. If the primary offense is a violation of s. 775.0823(3),
30 (4), (5), (6), (7), or (8), the subtotal sentence points are
31 multiplied by 2.0. If the primary offense is a violation of s.

1 784.07(3) or s. 775.0875(1), or of the Law Enforcement
2 Protection Act under s. 775.0823(9) or (10), the subtotal
3 sentence points are multiplied by 1.5.

4
5 Grand theft of a motor vehicle: If the primary offense is
6 grand theft of the third degree involving a motor vehicle and
7 in the offender's prior record, there are three or more grand
8 thefts of the third degree involving a motor vehicle, the
9 subtotal sentence points are multiplied by 1.5.

10
11 Offense related to criminal street gang member: If the
12 offender is convicted of the primary offense and committed
13 that offense for the purpose of furthering, benefiting, or
14 promoting a criminal street gang or the defendant's status in
15 a criminal street gang is found to have been a member of a
16 criminal street gang at the time of the commission of the
17 primary offense pursuant to s. 874.04, the subtotal sentence
18 points shall be ~~are~~ multiplied by 1.5.

19
20 Domestic violence in the presence of a child: If the offender
21 is convicted of the primary offense and the primary offense is
22 a crime of domestic violence, as defined in s. 741.28, which
23 was committed in the presence of a child under 16 years of age
24 who is a family household member as defined in s. 741.28(2)
25 with the victim or perpetrator, the subtotal sentence points
26 are multiplied, at the discretion of the court, by 1.5.

27 Section 4. Section 921.16, Florida Statutes, is
28 amended to read:

29 921.16 When sentences to be concurrent and when
30 consecutive.--

31

1 (1) A defendant convicted of two or more offenses
2 charged in the same indictment, information, or affidavit or
3 in consolidated indictments, informations, or affidavits shall
4 serve the sentences of imprisonment concurrently unless the
5 court directs that two or more of the sentences be served
6 consecutively. Sentences of imprisonment for offenses not
7 charged in the same indictment, information, or affidavit
8 shall be served consecutively unless the court directs that
9 two or more of the sentences be served concurrently. The
10 provisions of this subsection shall apply to all sentences,
11 including habitual offender sentences, habitual violent felony
12 offender sentences, violent career criminal sentences, prison
13 releasee reoffender sentences, minimum mandatory sentences,
14 and other enhanced sentences, regardless of whether the
15 offenses occur in a single criminal episode or multiple
16 criminal episodes.

17 (2) A county court or circuit court of this state may
18 direct that the sentence imposed by such court be served
19 concurrently with a sentence imposed by a court of another
20 state or of the United States or, for purposes of this
21 section, concurrently with a sentence to be imposed in another
22 jurisdiction. In such case, the Department of Corrections may
23 designate the correctional institution of the other
24 jurisdiction as the place for reception and confinement of
25 such person and may also designate the place in Florida for
26 reception and confinement of such person in the event that
27 confinement in the other jurisdiction terminates before the
28 expiration of the Florida sentence. The sheriff shall forward
29 commitment papers and other documents specified in s. 944.17
30 to the department. Upon imposing such a sentence, the court
31 shall notify the Parole Commission as to the jurisdiction in

1 which the sentence is to be served. Any prisoner so released
2 to another jurisdiction shall be eligible for consideration
3 for parole by the Parole Commission pursuant to the provisions
4 of chapter 947, except that the commission shall determine the
5 presumptive parole release date and the effective parole
6 release date by requesting such person's file from the
7 receiving jurisdiction. Upon receiving such records, the
8 commission shall determine these release dates based on the
9 relevant information in that file and shall give credit toward
10 reduction of the Florida sentence for gain-time granted by the
11 jurisdiction where the inmate is serving the sentence. The
12 Parole Commission may concur with the parole release decision
13 of the jurisdiction granting parole and accepting supervision.

14 (3) In the event the court directs the Florida
15 sentence to be coterminous as well as concurrent with a
16 sentence in another jurisdiction, the department shall notify
17 the other jurisdiction of the department's interest in the
18 offender until the offender has satisfied the commitment in
19 the other jurisdiction, or the Florida sentence has expired,
20 whichever occurs first. This interest does not prevent or
21 interfere with any program participation approved by the other
22 jurisdiction, nor does it prohibit parole or any similar
23 release granted by the other jurisdiction. If the offender is
24 paroled by the other jurisdiction, or the sentence is
25 otherwise interrupted prior to satisfaction, the department
26 shall maintain an interest until supervision is terminated or
27 the sentence has been satisfied.

28 Section 5. This act shall take effect upon becoming a
29 law.

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LEGISLATIVE SUMMARY

Provides that certain provisions requiring strict construction or construction most favorably to the accused do not apply to sentencing proceedings after a court has accepted a plea of guilty or nolo contendere or the accused has been found guilty. Removes exceptions to certain construction guidelines providing that the legislative intent is to convict and sentence for each criminal offense in the course of one criminal episode or transaction and not to allow the principle of lenity determine legislative intent.

Provides for enhanced penalties for commission of a felony or misdemeanor, or a delinquent act or violation of law that would be a felony or misdemeanor if committed by an adult, under specified circumstances when the defendant committed the charged offense for the purpose of furthering, benefiting, or promoting a criminal street gang or the defendant's status in the criminal street gang. Revises guidelines for application of a specified sentence multiplier for offenses related to criminal street gangs.

Provides for the applicability of certain guidelines for concurrent or consecutive sentencing to all sentences, regardless of whether the offenses occur in single or multiple criminal episodes. Provides for assessment of certain additional sentence points for conviction of committing or attempting to commit a felony while possessing certain firearms, regardless of when obtained.