

By the Committee on Criminal Justice and Senator Saunders

307-1875A-99

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; removing exceptions to a
5 construction rule regarding sentencing for
6 criminal offenses; amending s. 874.04, F.S.;
7 providing for enhanced penalties for commission
8 of a felony or misdemeanor, or a delinquent act
9 or violation of law that would be a felony or
10 misdemeanor if committed by an adult, under
11 specified circumstances when the defendant
12 committed the charged offense for the purpose
13 of furthering, benefiting, or promoting a
14 criminal street gang; amending s. 921.0022,
15 F.S., relating to the offense severity ranking
16 chart of the Criminal Punishment Code; ranking
17 the offense of knowingly transmitting or
18 disseminating by computer any notice or
19 advertisement for the purpose of facilitating,
20 encouraging, offering, or soliciting sexual
21 conduct of or with a minor, or visually
22 depicting such conduct; amending s. 921.0024,
23 F.S., relating to the Criminal Punishment Code
24 worksheet computations and scoresheets;
25 revising guidelines for application of a
26 specified sentence multiplier for offenses
27 related to criminal street gangs; conforming
28 terminology; providing an effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
31

1 Section 1. Subsection (4) of section 775.021, Florida
2 Statutes, is amended to read:

3 775.021 Rules of construction.--

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

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

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

21 2. ~~Offenses which are degrees of the same offense as~~
22 ~~provided by statute.~~

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

25 Section 2. Section 874.04, Florida Statutes, is
26 amended to read:

27 874.04 Criminal street gang activity; enhanced
28 penalties.--Upon a finding by the court at sentencing that the
29 defendant committed the charged offense for the purpose of
30 furthering, benefiting, or promoting a criminal street gang ~~is~~
31 ~~a member of a criminal street gang~~, the penalty for any felony

1 or misdemeanor, or any delinquent act or violation of law
2 which would be a felony or misdemeanor if committed by an
3 adult, may be enhanced ~~if the offender was a member of a~~
4 ~~criminal street gang at the time of the commission of such~~
5 ~~offense~~. Each of the findings required as a basis for such
6 sentence shall be found by a preponderance of the evidence.
7 The enhancement will be as follows:

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

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

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

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

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

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

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1 Section 3. Paragraph (f) of subsection (3) of section
2 921.0022, Florida Statutes, 1998 Supplement, is amended to
3 read:

4 921.0022 Criminal Punishment Code; offense severity
5 ranking chart.--

6 (3) OFFENSE SEVERITY RANKING CHART

7	8 Florida	9 Felony	
10	11 Statute	12 Degree	13 Description
14			(f) LEVEL 6
15	316.027(1)(b)	2nd	Accident involving death, failure to stop; leaving scene.
16	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
17	775.0875(1)	3rd	Taking firearm from law enforcement officer.
18	775.21(9)	3rd	Sexual predators; failure to register; failure to renew driver's license or identification card.
19	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
20	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
21	784.041	3rd	Felony battery.
22	784.048(3)	3rd	Aggravated stalking; credible threat.
23	784.048(5)	3rd	Aggravated stalking of person under 16.

1	784.07(2)(c)	2nd	Aggravated assault on law
2			enforcement officer.
3	784.08(2)(b)	2nd	Aggravated assault on a person 65
4			years of age or older.
5	784.081(2)	2nd	Aggravated assault on specified
6			official or employee.
7	784.082(2)	2nd	Aggravated assault by detained
8			person on visitor or other
9			detainee.
10	784.083(2)	2nd	Aggravated assault on code
11			inspector.
12	787.02(2)	3rd	False imprisonment; restraining
13			with purpose other than those in
14			s. 787.01.
15	790.115(2)(d)	2nd	Discharging firearm or weapon on
16			school property.
17	790.161(2)	2nd	Make, possess, or throw
18			destructive device with intent to
19			do bodily harm or damage
20			property.
21	790.164(1)	2nd	False report of deadly explosive
22			or act of arson or violence to
23			state property.
24	790.19	2nd	Shooting or throwing deadly
25			missiles into dwellings, vessels,
26			or vehicles.
27	794.011(8)(a)	3rd	Solicitation of minor to
28			participate in sexual activity by
29			custodial adult.
30	794.05(1)	2nd	Unlawful sexual activity with
31			specified minor.

1	806.031(2)	2nd	Arson resulting in great bodily
2			harm to firefighter or any other
3			person.
4	810.02(3)(c)	2nd	Burglary of occupied structure;
5			unarmed; no assault or battery.
6	812.014(2)(b)	2nd	Property stolen \$20,000 or more,
7			but less than \$100,000, grand
8			theft in 2nd degree.
9	812.13(2)(c)	2nd	Robbery, no firearm or other
10			weapon (strong-arm robbery).
11	817.034(4)(a)1.	1st	Communications fraud, value
12			greater than \$50,000.
13	817.4821(5)	2nd	Possess cloning paraphernalia
14			with intent to create cloned
15			cellular telephones.
16	825.102(1)	3rd	Abuse of an elderly person or
17			disabled adult.
18	825.102(3)(c)	3rd	Neglect of an elderly person or
19			disabled adult.
20	825.1025(3)	3rd	Lewd or lascivious molestation of
21			an elderly person or disabled
22			adult.
23	825.103(2)(c)	3rd	Exploiting an elderly person or
24			disabled adult and property is
25			valued at less than \$20,000.
26	827.03(1)	3rd	Abuse of a child.
27	827.03(3)(c)	3rd	Neglect of a child.
28	827.071(2)&(3)	2nd	Use or induce a child in a sexual
29			performance, or promote or direct
30			such performance.
31	836.05	2nd	Threats; extortion.

1	836.10	2nd	Written threats to kill or do
2			bodily injury.
3	843.12	3rd	Aids or assists person to escape.
4	<u>847.0135(2)</u>	<u>3rd</u>	<u>Use of computer to facilitate or</u>
5			<u>solicit sexual conduct of or with</u>
6			<u>a minor.</u>
7	847.0135(3)	3rd	Solicitation of a child, via a
8			computer service, to commit an
9			unlawful sex act.
10	914.23	2nd	Retaliation against a witness,
11			victim, or informant, with bodily
12			injury.
13	943.0435(6)	3rd	Sex offenders; failure to comply
14			with reporting requirements.
15	944.35(3)(a)2.	3rd	Committing malicious battery upon
16			or inflicting cruel or inhuman
17			treatment on an inmate or
18			offender on community
19			supervision, resulting in great
20			bodily harm.
21	944.40	2nd	Escapes.
22	944.46	3rd	Harboring, concealing, aiding
23			escaped prisoners.
24	944.47(1)(a)5.	2nd	Introduction of contraband
25			(firearm, weapon, or explosive)
26			into correctional facility.
27	951.22(1)	3rd	Intoxicating drug, firearm, or
28			weapon introduced into county
29			facility.
30	Section 4. Subsection (1) of section 921.0024, Florida		
31	Statutes, 1998 Supplement, is amended to read:		

1 921.0024 Criminal Punishment Code; worksheet
2 computations; scoresheets.--
3 (1)(a) The Criminal Punishment Code worksheet is used
4 to compute the subtotal and total sentence points as follows:
5
6 FLORIDA CRIMINAL PUNISHMENT CODE
7 WORKSHEET
8
9 OFFENSE SCORE
10
11 Primary Offense
12 Level Sentence Points Total
13
14 10 116 =
15 9 92 =
16 8 74 =
17 7 56 =
18 6 36 =
19 5 28 =
20 4 22 =
21 3 16 =
22 2 10 =
23 1 4 =
24
25
26 Total
27
28 Additional Offenses
29 Level Sentence Points Counts Total
30
31 10 58 x =

1	9	46	x	....	=	....
2	8	37	x	....	=	....
3	7	28	x	....	=	....
4	6	18	x	....	=	....
5	5	5.4	x	....	=	....
6	4	3.6	x	....	=	....
7	3	2.4	x	....	=	....
8	2	1.2	x	....	=	....
9	1	0.7	x	....	=	....
10	M	0.2	x	....	=	....

11
12
13 Total

15 Victim Injury

16 Level	Sentence Points		Number	Total
17	.....		
18	2nd degree			
19	murder-			
20	death	240	x =
21	Death	120	x =
22	Severe	40	x =
23	Moderate	18	x =
24	Slight	4	x =
25	Sexual			
26	penetration	80	x =
27	Sexual			
28	contact	40	x =
29				
30	.....		
31	<u>Total</u>			

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

1 FIREARM OR SEMIAUTOMATIC WEAPON.....
2 SUBTOTAL.....
3
4 PRISON RELEASEE REOFFENDER (no)(yes).....
5 VIOLENT CAREER CRIMINAL (no)(yes).....
6 HABITUAL VIOLENT OFFENDER (no)(yes).....
7 HABITUAL OFFENDER (no)(yes).....
8 DRUG TRAFFICKER (no)(yes) (x multiplier).....
9 LAW ENF. PROTECT. (no)(yes) (x multiplier).....
10 MOTOR VEHICLE THEFT (no)(yes) (x multiplier).....
11 CRIMINAL STREET GANG OFFENSE MEMBER (no)(yes) (x
12 multiplier).....
13 DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD
14 (no)(yes) (x multiplier).....
15
16 TOTAL SENTENCE POINTS.....

17
18 (b) WORKSHEET KEY:

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

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

1 points are assessed for such violation, and for each
2 successive community sanction violation involving a new felony
3 conviction. Multiple counts of community sanction violations
4 before the sentencing court shall not be a basis for
5 multiplying the assessment of community sanction violation
6 points.

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

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

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

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14 Sentencing multipliers:

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

23

24 Law enforcement protection: If the primary offense is a
25 violation of the Law Enforcement Protection Act under s.
26 775.0823(2), the subtotal sentence points are multiplied by
27 2.5. If the primary offense is a violation of s. 775.0823(3),
28 (4), (5), (6), (7), or (8), the subtotal sentence points are
29 multiplied by 2.0. If the primary offense is a violation of s.
30 784.07(3) or s. 775.0875(1), or of the Law Enforcement

31

1 Protection Act under s. 775.0823(9) or (10), the subtotal
2 sentence points are multiplied by 1.5.

3

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

9

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

17

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

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Section 5. This act shall take effect July 1, 1999.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1496

- Deletes provision of the bill amending the rule of lenity.
- Deletes provision of the bill requiring sentence point enhancements for certain felonies committed or attempted while possessing a firearm.
- Deletes provision of the bill allowing consecutive sentencing of mandatory minimum terms and enhanced sentences.
- Ranks in level 6 of the offense severity ranking chart the offense of use of a computer to facilitate or solicit sexual conduct of or with a minor.