

By the Committee on Crime & Punishment and Representative
Ball

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 certain
5 construction guidelines which provide that the
6 legislative intent is to convict and sentence
7 for each criminal offense in the course of one
8 criminal episode or transaction and not to
9 allow the principle of lenity determine
10 legislative intent; amending s. 874.04, F.S.;
11 providing for enhanced penalties for commission
12 of a felony or misdemeanor, or a delinquent act
13 or violation of law that would be a felony or
14 misdemeanor if committed by an adult, under
15 specified circumstances when the defendant
16 committed the charged offense for the purpose
17 of furthering, benefiting, or promoting a
18 criminal street gang; amending s. 921.0022,
19 F.S., relating to the offense severity ranking
20 chart of the Criminal Punishment Code; ranking
21 the offense of knowingly transmitting or
22 disseminating by computer any notice or
23 advertisement for the purpose of facilitating,
24 encouraging, offering, or soliciting sexual
25 conduct of or with a minor, or visually
26 depicting such conduct; amending s. 921.0024,
27 F.S.; revising guidelines for application of a
28 specified sentence multiplier for offenses
29 related to criminal street gangs; conforming
30 terminology; providing an effective date.
31

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

2

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

5 775.021 Rules of construction.--

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

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

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

23 2. ~~Offenses which are degrees of the same offense as~~
24 ~~provided by statute.~~

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

27 Section 2. Section 874.04, Florida Statutes, is
28 amended to read.

29 874.04 Criminal street gang activity; enhanced
30 penalties.--Upon a finding by the court at sentencing that the
31 defendant committed the charged offense for the purpose of

1 furthering, benefiting, or promoting a criminal street gang ~~is~~
2 ~~a member of a criminal street gang~~, the penalty for any felony
3 or misdemeanor, or any delinquent act or violation of law
4 which would be a felony or misdemeanor if committed by an
5 adult, may be enhanced ~~if the offender was a member of a~~
6 ~~criminal street gang at the time of the commission of such~~
7 ~~offense~~. Each of the findings required as a basis for such
8 sentence shall be found by a preponderance of the evidence.
9 The enhancement will be as follows:
10 (1)(a) A misdemeanor of the second degree may be
11 punished as if it were a misdemeanor of the first degree.
12 (b) A misdemeanor of the first degree may be punished
13 as if it were a felony of the third degree. For purposes of
14 sentencing under chapter 921 and determining incentive
15 gain-time eligibility under chapter 944, such offense is
16 ranked in level 1 of the offense severity ranking chart. The
17 criminal street gang multiplier in s. 921.0024 does not apply
18 to misdemeanors enhanced under this paragraph.
19 (2)(a) A felony of the third degree may be punished as
20 if it were a felony of the second degree.
21 (b) A felony of the second degree may be punished as
22 if it were a felony of the first degree.
23 (c) A felony of the first degree may be punished as if
24 it were a life felony.
25
26 For purposes of sentencing under chapter 921 and determining
27 incentive gain-time eligibility under chapter 944, such felony
28 offense is ranked as provided in s. 921.0022 or s. 921.0023,
29 and without regard to the penalty enhancement in this
30 subsection. For purposes of this section, penalty enhancement
31 affects the applicable statutory maximum penalty only.

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
16			to stop; leaving scene.
17	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent
18			conviction.
19	775.0875(1)	3rd	Taking firearm from law
20			enforcement officer.
21	775.21(9)	3rd	Sexual predators; failure to
22			register; failure to renew
23			driver's license or
24			identification card.
25	784.021(1)(a)	3rd	Aggravated assault; deadly weapon
26			without intent to kill.
27	784.021(1)(b)	3rd	Aggravated assault; intent to
28			commit felony.
29	784.041	3rd	Felony battery.
30	784.048(3)	3rd	Aggravated stalking; credible
31			threat.
	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			
5	<u>847.0135(2)</u>	<u>3rd</u>	<u>Use of computer to facilitate or</u>
6			<u>solicit sexual conduct of or with</u>
7			<u>a minor.</u>
8	847.0135(3)	3rd	Solicitation of a child, via a
9			computer service, to commit an
10			unlawful sex act.
11	914.23	2nd	Retaliation against a witness,
12			victim, or informant, with bodily
13			injury.
14	943.0435(6)	3rd	Sex offenders; failure to comply
15			with reporting requirements.
16	944.35(3)(a)2.	3rd	Committing malicious battery upon
17			or inflicting cruel or inhuman
18			treatment on an inmate or
19			offender on community
20			supervision, resulting in great
21			bodily harm.
22	944.40	2nd	Escapes.
23	944.46	3rd	Harboring, concealing, aiding
24			escaped prisoners.
25	944.47(1)(a)5.	2nd	Introduction of contraband
26			(firearm, weapon, or explosive)
27			into correctional facility.
28	951.22(1)	3rd	Intoxicating drug, firearm, or
29			weapon introduced into county
30			facility.
31			

1 Section 4. Subsection (1) of section 921.0024, Florida
2 Statutes, 1998 Supplement, is amended to read:

3 921.0024 Criminal Punishment Code; worksheet
4 computations; scoresheets.--

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

7
8 FLORIDA CRIMINAL PUNISHMENT CODE
9 WORKSHEET

10
11 OFFENSE SCORE

12
13 Primary Offense

14 Level	Sentence Points		Total
15			
16 10	116	=	....
17 9	92	=	....
18 8	74	=	....
19 7	56	=	....
20 6	36	=	....
21 5	28	=	....
22 4	22	=	....
23 3	16	=	....
24 2	10	=	....
25 1	4	=	....
26			
27			
28			<u>Total</u>

Additional Offenses						
Level	Sentence Points		Counts		Total	
10	58	x	....	=	....
9	46	x	....	=	....
8	37	x	....	=	....
7	28	x	....	=	....
6	18	x	....	=	....
5	5.4	x	....	=	....
4	3.6	x	....	=	....
3	2.4	x	....	=	....
2	1.2	x	....	=	....
1	0.7	x	....	=	....
M	0.2	x	....	=	....
					<u>Total</u>	
Victim Injury						
Level	Sentence Points		Number		Total	
2nd degree						
murder-						
death	240	x	....	=	....
Death	120	x	....	=	....
Severe	40	x	....	=	....
Moderate	18	x	....	=	....
Slight	4	x	....	=	....
Sexual						
penetration	80	x	....	=	....

1	Sexual					
2	contact	40	x	....	=	....
3						
4	.....				
5					<u>Total</u>	
6						
7	Primary Offense + Additional Offenses + Victim Injury =					
8	TOTAL OFFENSE SCORE					
9						
10	PRIOR RECORD SCORE					
11						
12	Prior Record					
13	Level	Sentence Points		Number		Total
14	.....				
15	10	29	x	....	=	....
16	9	23	x	....	=	....
17	8	19	x	....	=	....
18	7	14	x	....	=	....
19	6	9	x	....	=	....
20	5	3.6	x	....	=	....
21	4	2.4	x	....	=	....
22	3	1.6	x	....	=	....
23	2	0.8	x	....	=	....
24	1	0.5	x	....	=	....
25	M	0.2	x	....	=	....
26						
27	.....				
28					<u>Total</u>	
29						
30	TOTAL OFFENSE SCORE.....					
31	TOTAL PRIOR RECORD SCORE.....					

1
2 LEGAL STATUS.....
3 COMMUNITY SANCTION VIOLATION.....
4 PRIOR SERIOUS FELONY.....
5 PRIOR CAPITAL FELONY.....
6 FIREARM OR SEMIAUTOMATIC WEAPON.....
7 SUBTOTAL.....
8
9 PRISON RELEASEE REOFFENDER (no)(yes).....
10 VIOLENT CAREER CRIMINAL (no)(yes).....
11 HABITUAL VIOLENT OFFENDER (no)(yes).....
12 HABITUAL OFFENDER (no)(yes).....
13 DRUG TRAFFICKER (no)(yes) (x multiplier).....
14 LAW ENF. PROTECT. (no)(yes) (x multiplier).....
15 MOTOR VEHICLE THEFT (no)(yes) (x multiplier).....
16 CRIMINAL STREET GANG OFFENSE MEMBER (no)(yes) (x
17 multiplier).....
18 DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD
19 (no)(yes) (x multiplier).....
20
21 TOTAL SENTENCE POINTS.....
22

23 (b) WORKSHEET KEY:

24
25 Legal status points are assessed when any form of legal status
26 existed at the time the offender committed an offense before
27 the court for sentencing. Four (4) sentence points are
28 assessed for an offender's legal status.
29

30 Community sanction violation points are assessed when a
31 community sanction violation is before the court for

1 sentencing. Six (6) sentence points are assessed for each
2 community sanction violation, and each successive community
3 sanction violation; however, if the community sanction
4 violation includes a new felony conviction before the
5 sentencing court, twelve (12) community sanction violation
6 points are assessed for such violation, and for each
7 successive community sanction violation involving a new felony
8 conviction. Multiple counts of community sanction violations
9 before the sentencing court shall not be a basis for
10 multiplying the assessment of community sanction violation
11 points.

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

25
26 Prior capital felony points: If the offender has one or more
27 prior capital felonies in the offender's criminal record,
28 points shall be added to the subtotal sentence points of the
29 offender equal to twice the number of points the offender
30 receives for the primary offense and any additional offense.
31 A prior capital felony in the offender's criminal record is a

1 previous capital felony offense for which the offender has
2 entered a plea of nolo contendere or guilty or has been found
3 guilty; or a felony in another jurisdiction which is a capital
4 felony in that jurisdiction, or would be a capital felony if
5 the offense were committed in this state.

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

18
19 Sentencing multipliers:

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

28
29 Law enforcement protection: If the primary offense is a
30 violation of the Law Enforcement Protection Act under s.
31 775.0823(2), the subtotal sentence points are multiplied by

1 2.5. If the primary offense is a violation of s. 775.0823(3),
2 (4), (5), (6), (7), or (8), the subtotal sentence points are
3 multiplied by 2.0. If the primary offense is a violation of s.
4 784.07(3) or s. 775.0875(1), or of the Law Enforcement
5 Protection Act under s. 775.0823(9) or (10), the subtotal
6 sentence points are multiplied by 1.5.

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

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

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

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

31

HOUSE SUMMARY

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. Ranks the offense of knowingly transmitting or disseminating by computer any notice or advertisement for the purpose of facilitating, encouraging, offering, or soliciting sexual conduct of or with a minor, or visually depicting such conduct, on the offense severity ranking chart of the Criminal Punishment Code.