

By the Committee on Criminal Justice and Senator Mitchell

307-1656B-99

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A bill to be entitled
An act relating to offenses committed against
or in the presence of minors; amending s.
921.0024, F.S., requiring a sentencing
multiplier to be applied when domestic violence
is committed in the presence of a minor child;
amending s. 901.15, F.S.; providing a preferred
arrest policy in the criminal investigation of
child abuse; providing immunity for law
enforcement for such arrests; providing an
effective date.

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

Section 1. Paragraph (b) in subsection (1) of s.
921.0024, Florida Statutes, 1998 Supplement, is amended to
read:

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

(1)

(b) WORKSHEET KEY:

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

Community sanction violation points are assessed when a
community sanction violation is before the court for
sentencing. Six (6) sentence points are assessed for each
community sanction violation, and each successive community

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

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

23

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

1 guilty; or a felony in another jurisdiction which is a capital
2 felony in that jurisdiction, or would be a capital felony if
3 the offense were committed in this state.

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

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17 Sentencing multipliers:

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

26

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

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

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

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12 Criminal street gang member: If the offender is convicted of
13 the primary offense and is found to have been a member of a
14 criminal street gang at the time of the commission of the
15 primary offense pursuant to s. 874.04, the subtotal sentence
16 points 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.

25 Section 2. Subsection (7) of section 901.15, Florida
26 Statutes, 1998 Supplement, is amended and subsections (8) and
27 (9) are added to that section to read:

28 901.15 When arrest by officer without warrant is
29 lawful.--A law enforcement officer may arrest a person without
30 a warrant when:

31

1 (7) There is probable cause to believe that the person
2 has committed+

3 ~~(a) an act of domestic violence, as defined in s.~~
4 ~~741.28.~~

5 ~~(b) Child abuse, as defined in s. 827.04(2) and (3).~~

6 ~~(c) Any battery upon another person, as defined in s.~~
7 ~~784.03.~~

8 ~~(d) An act of criminal mischief or a graffiti-related~~
9 ~~offense as described in s. 806.13.~~

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11 ~~With respect to an arrest for an act of domestic violence, The~~
12 decision to arrest shall not require consent of the victim or
13 consideration of the relationship of the parties. It is the
14 public policy of this state to strongly discourage arrest and
15 charges of both parties for domestic violence on each other
16 and to encourage training of law enforcement and prosecutors
17 in this area. A law enforcement officer who acts in good faith
18 and exercises due care in making an arrest under this
19 subsection, under s. 741.31(4) or s. 784.047, or pursuant to a
20 foreign order of protection accorded full faith and credit
21 pursuant to s. 741.315, is immune from civil liability that
22 otherwise might result by reason of his or her action.

23 (8) There is probable cause to believe that the person
24 has committed child abuse, as defined in s. 827.03. The
25 decision to arrest shall not require consent of the victim or
26 consideration of the relationship of the parties. It is the
27 public policy of this state to protect abused children by
28 strongly encouraging the arrest and prosecution of persons who
29 commit child abuse. A law enforcement officer who acts in good
30 faith and exercises due care in making an arrest under this

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1 subsection is immune from civil liability that otherwise might
2 result by reason of his or her action.

3 (9) There is probable cause to believe that the person
4 has committed:

5 (a) Any battery upon another person, as defined in s.
6 784.03.

7 (b) An act of criminal mischief or a graffiti-related
8 offense as described in s. 806.13.

9 Section 3. This act shall take effect October 1, 1999.

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11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
12 COMMITTEE SUBSTITUTE FOR
13 Senate Bill 246

- 14 1. The CS deletes the provision in the bill that expands
15 child abuse to include acts of domestic violence which
16 are committed by a caregiver in the presence of a child.
17 2. The CS deletes the requirement in the bill that a
18 parent, guardian, or caregiver be sentenced to death or
19 life imprisonment for committing an act of physical
20 abuse against a child which results in that child's
21 death.
22 3. The CS requires, rather than allows, the court to apply
23 the current sentencing enhancer under the Criminal
24 Punishment Code when the primary offense is an act of
25 domestic violence committed in the presence of a child
26 under 16 years of age by a family member.
27 4. The CS provides a statutorily authorized preferred
28 arrest policy statement in the criminal investigation of
29 child abuse cases, similar to domestic violence cases,
30 by amending the warrantless arrest statute (s. 901.15,
31 F.S.).