

By Senator Saunders

25-185-00

1                                   A bill to be entitled  
2           An act relating to sentencing; amending s.  
3           775.021, F.S.; deleting the exceptions to a  
4           rule of construction which requires that  
5           separate sentences be imposed for separate  
6           criminal offenses; amending s. 874.04, F.S.;  
7           providing for enhanced penalties for the  
8           commission of a felony or misdemeanor, or a  
9           delinquent act or violation of law that would  
10          be a felony or misdemeanor if committed by an  
11          adult, under specified circumstances when the  
12          defendant committed the charged offense for the  
13          purpose of benefiting, promoting, or furthering  
14          the interest of a criminal street gang;  
15          amending s. 921.0022, F.S., relating to the  
16          offense severity ranking chart of the Criminal  
17          Punishment Code; ranking the offense of  
18          knowingly transmitting or disseminating by  
19          computer any notice or advertisement for the  
20          purpose of facilitating, encouraging, offering,  
21          or soliciting sexual conduct of or with a  
22          minor, or visually depicting such conduct;  
23          amending s. 921.0024, F.S., relating to the  
24          Criminal Punishment Code worksheet computations  
25          and scoresheets; revising guidelines for  
26          applying a specified sentence multiplier for  
27          offenses committed for the purpose of  
28          benefiting, promoting, or furthering the  
29          interests of a criminal street gang; providing  
30          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 that ~~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 benefiting, promoting, or furthering the interests ~~is a member~~  
2 of a criminal street gang, the penalty for any felony or  
3 misdemeanor, or any delinquent act or violation of law which  
4 would be a felony or misdemeanor if committed by an adult, may  
5 be enhanced ~~if the offender was a member of a criminal street~~  
6 ~~gang at the time of the commission of such offense.~~ Each of  
7 the findings required as a basis for such sentence must ~~shall~~  
8 be found by a preponderance of the evidence. The enhancement  
9 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, is amended to read:

3           921.0022 Criminal Punishment Code; offense severity  
4 ranking chart.--

5           (3) OFFENSE SEVERITY RANKING CHART

6	7 Florida	8 Felony	
9	10 Statute	11 Degree	12 Description
13			(f) LEVEL 6
14	316.027(1)(b)	2nd	Accident involving death, failure 15 to stop; leaving scene.
16	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent 17 conviction.
18	775.0875(1)	3rd	Taking firearm from law 19 enforcement officer.
20	775.21(10)	3rd	Sexual predators; failure to 21 register; failure to renew 22 driver's license or 23 identification card.
24	784.021(1)(a)	3rd	Aggravated assault; deadly weapon 25 without intent to kill.
26	784.021(1)(b)	3rd	Aggravated assault; intent to 27 commit felony.
28	784.041	3rd	Felony battery.
29	784.048(3)	3rd	Aggravated stalking; credible 30 threat.
31	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	800.04(5)(d)	3rd	Lewd or lascivious molestation;
2			victim 12 years of age or older
3			but less than 16 years; offender
4			less than 18 years.
5	800.04(6)(b)	2nd	Lewd or lascivious conduct;
6			offender 18 years of age or
7			older.
8	806.031(2)	2nd	Arson resulting in great bodily
9			harm to firefighter or any other
10			person.
11	810.02(3)(c)	2nd	Burglary of occupied structure;
12			unarmed; no assault or battery.
13	812.014(2)(b)	2nd	Property stolen \$20,000 or more,
14			but less than \$100,000, grand
15			theft in 2nd degree.
16	812.13(2)(c)	2nd	Robbery, no firearm or other
17			weapon (strong-arm robbery).
18	817.034(4)(a)1.	1st	Communications fraud, value
19			greater than \$50,000.
20	817.4821(5)	2nd	Possess cloning paraphernalia
21			with intent to create cloned
22			cellular telephones.
23	825.102(1)	3rd	Abuse of an elderly person or
24			disabled adult.
25	825.102(3)(c)	3rd	Neglect of an elderly person or
26			disabled adult.
27	825.1025(3)	3rd	Lewd or lascivious molestation of
28			an elderly person or disabled
29			adult.
30			
31			

1	825.103(2)(c)	3rd	Exploiting an elderly person or
2			disabled adult and property is
3			valued at less than \$20,000.
4	827.03(1)	3rd	Abuse of a child.
5	827.03(3)(c)	3rd	Neglect of a child.
6	827.071(2)&(3)	2nd	Use or induce a child in a sexual
7			performance, or promote or direct
8			such performance.
9	836.05	2nd	Threats; extortion.
10	836.10	2nd	Written threats to kill or do
11			bodily injury.
12	843.12	3rd	Aids or assists person to escape.
13	<u>847.0135(2)</u>	<u>3rd</u>	<u>Use of computer to facilitate or</u>
14			<u>solicit sexual conduct of or with</u>
15			<u>a minor.</u>
16	847.0135(3)	3rd	Solicitation of a child, via a
17			computer service, to commit an
18			unlawful sex act.
19	914.23	2nd	Retaliation against a witness,
20			victim, or informant, with bodily
21			injury.
22	943.0435(9)	3rd	Sex offenders; failure to comply
23			with reporting requirements.
24	944.35(3)(a)2.	3rd	Committing malicious battery upon
25			or inflicting cruel or inhuman
26			treatment on an inmate or
27			offender on community
28			supervision, resulting in great
29			bodily harm.
30	944.40	2nd	Escapes.
31			

1 944.46 3rd Harboring, concealing, aiding  
 2 escaped prisoners.  
 3 944.47(1)(a)5. 2nd Introduction of contraband  
 4 (firearm, weapon, or explosive)  
 5 into correctional facility.  
 6 951.22(1) 3rd Intoxicating drug, firearm, or  
 7 weapon introduced into county  
 8 facility.

9 Section 4. Subsection (1) of section 921.0024, Florida  
10 Statutes, is amended to read:

11 921.0024 Criminal Punishment Code; worksheet  
12 computations; scoresheets.--

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

15

16 FLORIDA CRIMINAL PUNISHMENT CODE

17 WORKSHEET

18

19 OFFENSE SCORE

20

21 Primary Offense

22 Level	Sentence Points		Total
23 .....			.....
24 10	116	=	.....
25 9	92	=	.....
26 8	74	=	.....
27 7	56	=	.....
28 6	36	=	.....
29 5	28	=	.....
30 4	22	=	.....
31 3	16	=	.....



1	2	10	=	....
2	1	4	=	....
3				
4	.....			
5				<u>Total</u>

Additional Offenses				
Level	Sentence Points		Counts	Total
10	10	58	x	.... = ....
11	9	46	x	.... = ....
12	8	37	x	.... = ....
13	7	28	x	.... = ....
14	6	18	x	.... = ....
15	5	5.4	x	.... = ....
16	4	3.6	x	.... = ....
17	3	2.4	x	.... = ....
18	2	1.2	x	.... = ....
19	1	0.7	x	.... = ....
20	M	0.2	x	.... = ....
21				
22	.....			
23				<u>Total</u>

Victim Injury				
Level	Sentence Points		Number	Total
28	2nd degree			
29	murder-			
30	death	240	x	.... = ....
31	Death	120	x	.... = ....

1	Severe	40	x	....	=	....
2	Moderate	18	x	....	=	....
3	Slight	4	x	....	=	....
4	Sexual					
5	penetration	80	x	....	=	....
6	Sexual					
7	contact	40	x	....	=	....
8						
9	.....					
10						<u>Total</u>
11						
12	Primary Offense + Additional Offenses + Victim Injury =					
13	TOTAL OFFENSE SCORE					
14						
15	PRIOR RECORD SCORE					
16						
17	Prior Record					
18	Level	Sentence Points		Number		Total
19	.....					
20	10	29	x	....	=	....
21	9	23	x	....	=	....
22	8	19	x	....	=	....
23	7	14	x	....	=	....
24	6	9	x	....	=	....
25	5	3.6	x	....	=	....
26	4	2.4	x	....	=	....
27	3	1.6	x	....	=	....
28	2	0.8	x	....	=	....
29	1	0.5	x	....	=	....
30	M	0.2	x	....	=	....
31						

1  
2 .....  
3 Total  
4  
5 TOTAL OFFENSE SCORE.....  
6 TOTAL PRIOR RECORD SCORE.....  
7  
8 LEGAL STATUS.....  
9 COMMUNITY SANCTION VIOLATION.....  
10 PRIOR SERIOUS FELONY.....  
11 PRIOR CAPITAL FELONY.....  
12 FIREARM OR SEMIAUTOMATIC WEAPON.....  
13 SUBTOTAL.....  
14  
15 PRISON RELEASEE REOFFENDER (no)(yes).....  
16 VIOLENT CAREER CRIMINAL (no)(yes).....  
17 HABITUAL VIOLENT OFFENDER (no)(yes).....  
18 HABITUAL OFFENDER (no)(yes).....  
19 DRUG TRAFFICKER (no)(yes) (x multiplier).....  
20 LAW ENF. PROTECT. (no)(yes) (x multiplier).....  
21 MOTOR VEHICLE THEFT (no)(yes) (x multiplier).....  
22 CRIMINAL STREET GANG OFFENSE MEMBER (no)(yes) (x  
23 multiplier).....  
24 DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD  
25 (no)(yes) (x multiplier).....  
26 .....  
27 TOTAL SENTENCE POINTS.....  
28

(b) WORKSHEET KEY:

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

5  
6 Community sanction violation points are assessed when a  
7 community sanction violation is before the court for  
8 sentencing. Six (6) sentence points are assessed for each  
9 community sanction violation, and each successive community  
10 sanction violation; however, if the community sanction  
11 violation includes a new felony conviction before the  
12 sentencing court, twelve (12) community sanction violation  
13 points are assessed for such violation, and for each  
14 successive community sanction violation involving a new felony  
15 conviction. Multiple counts of community sanction violations  
16 before the sentencing court shall not be a basis for  
17 multiplying the assessment of community sanction violation  
18 points.

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

1  
2 Prior capital felony points: If the offender has one or more  
3 prior capital felonies in the offender's criminal record,  
4 points shall be added to the subtotal sentence points of the  
5 offender equal to twice the number of points the offender  
6 receives for the primary offense and any additional offense.  
7 A prior capital felony in the offender's criminal record is a  
8 previous capital felony offense for which the offender has  
9 entered a plea of nolo contendere or guilty or has been found  
10 guilty; or a felony in another jurisdiction which is a capital  
11 felony in that jurisdiction, or would be a capital felony if  
12 the offense were committed in this state.

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

25  
26 Sentencing multipliers:

27  
28 Drug trafficking: If the primary offense is drug trafficking  
29 under s. 893.135, the subtotal sentence points are multiplied,  
30 at the discretion of the court, for a level 7 or level 8  
31 offense, by 1.5. The state attorney may move the sentencing

1 court to reduce or suspend the sentence of a person convicted  
2 of a level 7 or level 8 offense, if the offender provides  
3 substantial assistance as described in s. 893.135(4).

4

5 Law enforcement protection: If the primary offense is a  
6 violation of the Law Enforcement Protection Act under s.  
7 775.0823(2), the subtotal sentence points are multiplied by  
8 2.5. If the primary offense is a violation of s. 775.0823(3),  
9 (4), (5), (6), (7), or (8), the subtotal sentence points are  
10 multiplied by 2.0. If the primary offense is a violation of s.  
11 784.07(3) or s. 775.0875(1), or of the Law Enforcement  
12 Protection Act under s. 775.0823(9) or (10), the subtotal  
13 sentence points are multiplied by 1.5.

14

15 Grand theft of a motor vehicle: If the primary offense is  
16 grand theft of the third degree involving a motor vehicle and  
17 in the offender's prior record, there are three or more grand  
18 thefts of the third degree involving a motor vehicle, the  
19 subtotal sentence points are multiplied by 1.5.

20

21 Offense related to a criminal street gang member: If the  
22 offender is convicted of the primary offense and committed  
23 that offense for the purpose of benefiting, promoting, or  
24 furthering the interests of a criminal street gang as  
25 prohibited under ~~is found to have been a member of a criminal~~  
26 ~~street gang at the time of the commission of the primary~~  
27 ~~offense pursuant to~~ s. 874.04, the subtotal sentence points  
28 are multiplied by 1.5.

29

30 Domestic violence in the presence of a child: If the offender  
31 is convicted of the primary offense and the primary offense is

1 a crime of domestic violence, as defined in s. 741.28, which  
2 was committed in the presence of a child under 16 years of age  
3 who is a family household member as defined in s. 741.28(2)  
4 with the victim or perpetrator, the subtotal sentence points  
5 are multiplied by 1.5.

6 Section 5. This act shall take effect July 1, 2000.

7

8 \*\*\*\*\*

9 SENATE SUMMARY

10 Removes exceptions to certain construction guidelines to  
11 provide that the legislative intent is to convict and  
12 sentence a defendant for each criminal offense in the  
13 course of one criminal episode or transaction and not to  
14 allow the principle of lenity to determine legislative  
15 intent. Provides for enhanced penalties for the  
16 commission of a felony or misdemeanor, or a delinquent  
17 act or violation of law that would be a felony or  
18 misdemeanor if committed by an adult, under specified  
19 circumstances when the defendant committed the charged  
20 offense for the purpose of benefiting, promoting, or  
21 furthering the interests of a criminal street gang. Ranks  
22 under the Criminal Punishment Code the offense of using a  
23 computer to facilitate or solicit sexual conduct of or  
24 with a minor. Revises guidelines for applying a specified  
25 sentence multiplier for offenses committed for the  
26 purpose of benefiting, promoting, or furthering the  
27 interests of a criminal street gang. (See bill for  
28 details.)  
29  
30  
31