

By the Committee on Criminal Justice and Senators Saunders and Klein

307-610A-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 ranking the offense involving a fourth or

24 subsequent conviction for boating under the

25 influence; amending s. 921.0024, F.S., relating

26 to the Criminal Punishment Code worksheet

27 computations and scoresheets; revising

28 guidelines for applying a specified sentence

29 multiplier for offenses committed for the

30 purpose of benefiting, promoting, or furthering

31

1 the interests of a criminal street gang;
2 providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Subsection (4) of section 775.021, Florida
7 Statutes, is amended to read:

8 775.021 Rules of construction.--

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

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

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

26 ~~2. Offenses which are degrees of the same offense as~~
27 ~~provided by statute.~~

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

30 Section 2. Section 874.04, Florida Statutes, is
31 amended to read:

1 874.04 Criminal street gang activity; enhanced
2 penalties.--Upon a finding by the court at sentencing that the
3 defendant committed the charged offense for the purpose of
4 benefiting, promoting, or furthering the interests ~~is a member~~
5 of a criminal street gang, the penalty for any felony or
6 misdemeanor, or any delinquent act or violation of law which
7 would be a felony or misdemeanor if committed by an adult, may
8 be enhanced ~~if the offender was a member of a criminal street~~
9 ~~gang at the time of the commission of such offense~~. Each of
10 the findings required as a basis for such sentence shall be
11 found by a preponderance of the evidence. The enhancement will
12 be as follows:

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

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

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

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

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

28
29 For purposes of sentencing under chapter 921 and determining
30 incentive gain-time eligibility under chapter 944, such felony
31 offense is ranked as provided in s. 921.0022 or s. 921.0023,

1 and without regard to the penalty enhancement in this
2 subsection. For purposes of this section, penalty enhancement
3 affects the applicable statutory maximum penalty only.

4 Section 3. Paragraph (f) of subsection (3) of section
5 921.0022, Florida Statutes, is amended to read:

6 921.0022 Criminal Punishment Code; offense severity
7 ranking chart.--

8 (3) OFFENSE SEVERITY RANKING CHART

9

10 Florida Statute	Felony Degree	Description
		(f) LEVEL 6
15 316.027(1)(b)	2nd	Accident involving death, failure to stop; leaving scene.
17 316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
19 <u>327.35(2)(b)</u>	<u>3rd</u>	<u>Felony BUI, 4th or subsequent conviction.</u>
21 775.0875(1)	3rd	Taking firearm from law enforcement officer.
23 775.21(10)	3rd	Sexual predators; failure to register; failure to renew driver's license or identification card.
27 784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
29 784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
31 784.041	3rd	Felony battery.

1	784.048(3)	3rd	Aggravated stalking; credible
2			threat.
3	784.048(5)	3rd	Aggravated stalking of person
4			under 16.
5	784.07(2)(c)	2nd	Aggravated assault on law
6			enforcement officer.
7	784.08(2)(b)	2nd	Aggravated assault on a person 65
8			years of age or older.
9	784.081(2)	2nd	Aggravated assault on specified
10			official or employee.
11	784.082(2)	2nd	Aggravated assault by detained
12			person on visitor or other
13			detainee.
14	784.083(2)	2nd	Aggravated assault on code
15			inspector.
16	787.02(2)	3rd	False imprisonment; restraining
17			with purpose other than those in
18			s. 787.01.
19	790.115(2)(d)	2nd	Discharging firearm or weapon on
20			school property.
21	790.161(2)	2nd	Make, possess, or throw
22			destructive device with intent to
23			do bodily harm or damage
24			property.
25	790.164(1)	2nd	False report of deadly explosive
26			or act of arson or violence to
27			state property.
28	790.19	2nd	Shooting or throwing deadly
29			missiles into dwellings, vessels,
30			or vehicles.
31			

1	794.011(8)(a)	3rd	Solicitation of minor to
2			participate in sexual activity by
3			custodial adult.
4	794.05(1)	2nd	Unlawful sexual activity with
5			specified minor.
6	800.04(5)(d)	3rd	Lewd or lascivious molestation;
7			victim 12 years of age or older
8			but less than 16 years; offender
9			less than 18 years.
10	800.04(6)(b)	2nd	Lewd or lascivious conduct;
11			offender 18 years of age or
12			older.
13	806.031(2)	2nd	Arson resulting in great bodily
14			harm to firefighter or any other
15			person.
16	810.02(3)(c)	2nd	Burglary of occupied structure;
17			unarmed; no assault or battery.
18	812.014(2)(b)	2nd	Property stolen \$20,000 or more,
19			but less than \$100,000, grand
20			theft in 2nd degree.
21	812.13(2)(c)	2nd	Robbery, no firearm or other
22			weapon (strong-arm robbery).
23	817.034(4)(a)1.	1st	Communications fraud, value
24			greater than \$50,000.
25	817.4821(5)	2nd	Possess cloning paraphernalia
26			with intent to create cloned
27			cellular telephones.
28	825.102(1)	3rd	Abuse of an elderly person or
29			disabled adult.
30	825.102(3)(c)	3rd	Neglect of an elderly person or
31			disabled adult.

1	825.1025(3)	3rd	Lewd or lascivious molestation of
2			an elderly person or disabled
3			adult.
4	825.103(2)(c)	3rd	Exploiting an elderly person or
5			disabled adult and property is
6			valued at less than \$20,000.
7	827.03(1)	3rd	Abuse of a child.
8	827.03(3)(c)	3rd	Neglect of a child.
9	827.071(2)&(3)	2nd	Use or induce a child in a sexual
10			performance, or promote or direct
11			such performance.
12	836.05	2nd	Threats; extortion.
13	836.10	2nd	Written threats to kill or do
14			bodily injury.
15	843.12	3rd	Aids or assists person to escape.
16	<u>847.0135(2)</u>	<u>3rd</u>	<u>Use of computer to facilitate or</u>
17			<u>solicit sexual conduct of or with</u>
18			<u>a minor.</u>
19	847.0135(3)	3rd	Solicitation of a child, via a
20			computer service, to commit an
21			unlawful sex act.
22	914.23	2nd	Retaliation against a witness,
23			victim, or informant, with bodily
24			injury.
25	943.0435(9)	3rd	Sex offenders; failure to comply
26			with reporting requirements.
27			
28			
29			
30			
31			

- 1 944.35(3)(a)2. 3rd Committing malicious battery upon
- 2 or inflicting cruel or inhuman
- 3 treatment on an inmate or
- 4 offender on community
- 5 supervision, resulting in great
- 6 bodily harm.
- 7 944.40 2nd Escapes.
- 8 944.46 3rd Harboring, concealing, aiding
- 9 escaped prisoners.
- 10 944.47(1)(a)5. 2nd Introduction of contraband
- 11 (firearm, weapon, or explosive)
- 12 into correctional facility.
- 13 951.22(1) 3rd Intoxicating drug, firearm, or
- 14 weapon introduced into county
- 15 facility.

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

18 921.0024 Criminal Punishment Code; worksheet
19 computations; scoresheets.--

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

22

23 FLORIDA CRIMINAL PUNISHMENT CODE

24 WORKSHEET

25

26 OFFENSE SCORE

27

28 Primary Offense

29 Level	Sentence Points	Total
30 .....		.....
31 10	116	=

1	9	92	=	....
2	8	74	=	....
3	7	56	=	....
4	6	36	=	....
5	5	28	=	....
6	4	22	=	....
7	3	16	=	....
8	2	10	=	....
9	1	4	=	....
10				
11	.....		
12			<u>Total</u>	
13				
14	Additional Offenses			
15	Level	Sentence Points	Counts	Total
16	.....		
17	10	58	x	=
18	9	46	x	=
19	8	37	x	=
20	7	28	x	=
21	6	18	x	=
22	5	5.4	x	=
23	4	3.6	x	=
24	3	2.4	x	=
25	2	1.2	x	=
26	1	0.7	x	=
27	M	0.2	x	=
28				
29	.....		
30			<u>Total</u>	
31				

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	....	=	....
Sexual						
contact	40	x	....	=	....
.....						
					<u>Total</u>	
Primary Offense + Additional Offenses + Victim Injury =						
TOTAL OFFENSE SCORE						
PRIOR RECORD SCORE						
Prior Record						
Level	Sentence Points		Number		Total	
.....						
10	29	x	....	=	....
9	23	x	....	=	....
8	19	x	....	=	....
7	14	x	....	=	....
6	9	x	....	=	....

1	5	3.6	x	....	=	....
2	4	2.4	x	....	=	....
3	3	1.6	x	....	=	....
4	2	0.8	x	....	=	....
5	1	0.5	x	....	=	....
6	M	0.2	x	....	=	....
7						
8	.....				
9					<u>Total</u>	
10						
11	TOTAL OFFENSE SCORE.....					
12	TOTAL PRIOR RECORD SCORE.....					
13						
14	LEGAL STATUS.....					
15	COMMUNITY SANCTION VIOLATION.....					
16	PRIOR SERIOUS FELONY.....					
17	PRIOR CAPITAL FELONY.....					
18	FIREARM OR SEMIAUTOMATIC WEAPON.....					
19					SUBTOTAL.....	
20						
21	PRISON RELEASEE REOFFENDER (no)(yes).....					
22	VIOLENT CAREER CRIMINAL (no)(yes).....					
23	HABITUAL VIOLENT OFFENDER (no)(yes).....					
24	HABITUAL OFFENDER (no)(yes).....					
25	DRUG TRAFFICKER (no)(yes) (x multiplier).....					
26	LAW ENF. PROTECT. (no)(yes) (x multiplier).....					
27	MOTOR VEHICLE THEFT (no)(yes) (x multiplier).....					
28	CRIMINAL STREET GANG <u>OFFENSE MEMBER</u> (no)(yes) (x					
29	multiplier).....					
30	DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD					
31	(no)(yes) (x multiplier).....					

1
2 TOTAL SENTENCE POINTS.....

3
4 (b) WORKSHEET KEY:

5
6 Legal status points are assessed when any form of legal status
7 existed at the time the offender committed an offense before
8 the court for sentencing. Four (4) sentence points are
9 assessed for an offender's legal status.

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

24
25 Prior serious felony points: If the offender has a primary
26 offense or any additional offense ranked in level 8, level 9,
27 or level 10, and one or more prior serious felonies, a single
28 assessment of 30 points shall be added. For purposes of this
29 section, a prior serious felony is an offense in the
30 offender's prior record that is ranked in level 8, level 9, or
31 level 10 under s. 921.0022 or s. 921.0023 and for which the

1 offender is serving a sentence of confinement, supervision, or
2 other sanction or for which the offender's date of release
3 from confinement, supervision, or other sanction, whichever is
4 later, is within 3 years before the date the primary offense
5 or any additional offense was committed.

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

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

30
31 Sentencing multipliers:

1
2 Drug trafficking: If the primary offense is drug trafficking
3 under s. 893.135, the subtotal sentence points are multiplied,
4 at the discretion of the court, for a level 7 or level 8
5 offense, by 1.5. The state attorney may move the sentencing
6 court to reduce or suspend the sentence of a person convicted
7 of a level 7 or level 8 offense, if the offender provides
8 substantial assistance as described in s. 893.135(4).

9
10 Law enforcement protection: If the primary offense is a
11 violation of the Law Enforcement Protection Act under s.
12 775.0823(2), the subtotal sentence points are multiplied by
13 2.5. If the primary offense is a violation of s. 775.0823(3),
14 (4), (5), (6), (7), or (8), the subtotal sentence points are
15 multiplied by 2.0. If the primary offense is a violation of s.
16 784.07(3) or s. 775.0875(1), or of the Law Enforcement
17 Protection Act under s. 775.0823(9) or (10), the subtotal
18 sentence points are multiplied by 1.5.

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

25
26 Offense related to a criminal street gang member: If the
27 offender is convicted of the primary offense and committed
28 that offense for the purpose of benefiting, promoting, or
29 furthering the interests of a criminal street gang as
30 prohibited under ~~is found to have been a member of a criminal~~
31 ~~street gang at the time of the commission of the primary~~

1 ~~offense pursuant to~~ s. 874.04, the subtotal sentence points
2 are multiplied by 1.5.

3
4 Domestic violence in the presence of a child: If the offender
5 is convicted of the primary offense and the primary offense is
6 a crime of domestic violence, as defined in s. 741.28, which
7 was committed in the presence of a child under 16 years of age
8 who is a family household member as defined in s. 741.28(2)
9 with the victim or perpetrator, the subtotal sentence points
10 are multiplied by 1.5.

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

12

13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
14 COMMITTEE SUBSTITUTE FOR
15 Senate Bill's 276 and 394

16

16 Ranks in level 6 of the Criminal Punishment Code Offense
17 Severity Ranking Chart the felony offense under section
18 327.35(2)(b), F.S. (fourth or subsequent BUI conviction).

18

19

20

21

22

23

24

25

26

27

28

29

30

31