

By Senator Klein

28-224A-00

1                                   A bill to be entitled  
2           An act relating to sentencing; amending s.  
3           874.04, F.S.; providing for enhanced penalties  
4           for the commission of a felony or misdemeanor,  
5           or a delinquent act or violation of law which  
6           would be a felony or misdemeanor if committed  
7           by an adult, under specified circumstances when  
8           the defendant committed the charged offense for  
9           the purpose of benefiting, promoting, or  
10          furthering the interest of a criminal street  
11          gang and with the specific intent of promoting,  
12          furthering the interests of, or assisting in  
13          criminal conduct by a criminal street gang  
14          member; amending s. 921.0024, F.S., relating to  
15          the Criminal Punishment Code worksheet  
16          computations and scoresheets; revising  
17          guidelines for applying a specified sentence  
18          multiplier for offenses committed for the  
19          purpose of benefiting, promoting, or furthering  
20          the interests of a criminal street gang;  
21          providing an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

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25           Section 1. 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 benefiting, promoting, or furthering the interests ~~is a member~~  
31 of a criminal street gang, and with the specific intent of

1 promoting, furthering the interests of, or assisting in  
2 criminal conduct by a criminal street gang member,the penalty  
3 for any felony or misdemeanor, or any delinquent act or  
4 violation of law which would be a felony or misdemeanor if  
5 committed by an adult, may be enhanced ~~if the offender was a~~  
6 ~~member of a criminal street gang at the time of the commission~~  
7 ~~of such offense~~. Each of the findings required as a basis for  
8 such sentence must ~~shall~~ be found by a preponderance of the  
9 evidence. 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.

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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 2. Subsection (1) of section 921.0024, Florida  
2 Statutes, 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>
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29  
30  
31

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.....

(b) WORKSHEET KEY:

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.

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 or her 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 or her possession a  
15 semiautomatic firearm as defined in s. 775.087(3) or a machine  
16 gun as defined in s. 790.001(9), an additional 25 sentence  
17 points are 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 a criminal street gang member: If the  
15 offender is convicted of the primary offense and committed  
16 that offense for the purpose of benefiting, promoting, or  
17 furthering the interests of a criminal street gang and with  
18 the specific intent of promoting, furthering the interests of,  
19 or assisting in criminal conduct by a criminal street gang  
20 member, as prohibited under ~~is found to have been a member of~~  
21 ~~a criminal street gang at the time of the commission of the~~  
22 ~~primary offense pursuant to s. 874.04,~~ the subtotal sentence  
23 points are multiplied by 1.5.

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

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Section 3. This act shall take effect July 1, 2000.

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SENATE SUMMARY

Provides for enhanced penalties for the commission of a felony or misdemeanor, or a delinquent act or violation of law which 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 benefiting, promoting, or furthering the interests of a criminal street gang and with the specific intent of promoting, furthering the interests of, or assisting in criminal conduct by a criminal street gang member. Revises guidelines for applying a specified sentence multiplier for offenses committed for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang. (See bill for details.)