

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.; deleting specified exceptions to  
4           a rule of construction; amending s. 874.04,  
5           F.S.; revising enhanced penalties provisions  
6           for certain offenses relating to street gangs;  
7           amending s. 921.0022, F.S.; including within  
8           the Offense Severity Rating Chart a reference  
9           to certain offenses relating to facilitation or  
10          solicitation of sexual conduct with a minor  
11          using a computer; amending s. 921.0024, F.S.;  
12          revising a sentencing multiplier provision  
13          relating to offenses related to criminal street  
14          gangs; providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18           Section 1. Paragraph (b) of subsection (4) of section  
19   775.021, Florida Statutes, is amended to read:

20           775.021 Rules of construction.--

21           (4)

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

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

29           ~~2. Offenses which are degrees of the same offense as~~  
30   ~~provided by statute.~~

31

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

3           Section 2. Section 874.04, Florida Statutes, is  
4 amended to read:

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

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

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

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

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

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

31

1 For purposes of sentencing under chapter 921 and determining  
2 incentive gain-time eligibility under chapter 944, such felony  
3 offense is ranked as provided in s. 921.0022 or s. 921.0023,  
4 and without regard to the penalty enhancement in this  
5 subsection. For purposes of this section, penalty enhancement  
6 affects the applicable statutory maximum penalty only.

7 Section 3. Paragraph (f) of subsection (3) of section  
8 921.0022, Florida Statutes, is amended to read:

9 921.0022 Criminal Punishment Code; offense severity  
10 ranking chart.--

11 (3) OFFENSE SEVERITY RANKING CHART

12

13 Florida Felony

14 Statute

Degree

Description

15

16

17

(f) LEVEL 6

18

316.027(1)(b)

2nd

Accident involving death, failure  
to stop; leaving scene.

19

20

316.193(2)(b)

3rd

Felony DUI, 4th or subsequent  
conviction.

21

22

775.0875(1)

3rd

Taking firearm from law  
enforcement officer.

23

24

775.21(10)

3rd

Sexual predators; failure to  
register; failure to renew  
driver's license or  
identification card.

25

26

27

28

784.021(1)(a)

3rd

Aggravated assault; deadly weapon  
without intent to kill.

29

30

784.021(1)(b)

3rd

Aggravated assault; intent to  
commit felony.

31

1	784.041	3rd	Felony battery.
2	784.048(3)	3rd	Aggravated stalking; credible
3			threat.
4	784.048(5)	3rd	Aggravated stalking of person
5			under 16.
6	784.07(2)(c)	2nd	Aggravated assault on law
7			enforcement officer.
8	784.08(2)(b)	2nd	Aggravated assault on a person 65
9			years of age or older.
10	784.081(2)	2nd	Aggravated assault on specified
11			official or employee.
12	784.082(2)	2nd	Aggravated assault by detained
13			person on visitor or other
14			detainee.
15	784.083(2)	2nd	Aggravated assault on code
16			inspector.
17	787.02(2)	3rd	False imprisonment; restraining
18			with purpose other than those in
19			s. 787.01.
20	790.115(2)(d)	2nd	Discharging firearm or weapon on
21			school property.
22	790.161(2)	2nd	Make, possess, or throw
23			destructive device with intent to
24			do bodily harm or damage
25			property.
26	790.164(1)	2nd	False report of deadly explosive
27			or act of arson or violence to
28			state property.
29	790.19	2nd	Shooting or throwing deadly
30			missiles into dwellings, vessels,
31			or vehicles.

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 a computer to facilitate</u>
17			<u>or solicit sexual conduct of or</u>
18			<u>with 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</u> <del>MEMBER</del> (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 criminal street gangs ~~gang member~~: If the  
27 offender is convicted of any felony ~~the primary~~ offense and  
28 committed that offense for the purpose of furthering,  
29 benefiting, or promoting ~~is found to have been a member of a~~  
30 ~~criminal street gang at the time of the commission of the~~  
31

1 ~~primary offense~~ pursuant to s. 874.04, the subtotal sentence  
2 points 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

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14

HOUSE SUMMARY

15

16

17 Removes exceptions to a rule of construction regarding  
18 sentencing for criminal offenses. Provides for enhanced  
19 penalties for commission of a felony or misdemeanor, or a  
20 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.

21

22 Ranks in the offense severity ranking chart of the  
23 Criminal Punishment Code the offense of knowingly  
24 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.

25

26 Revises guidelines of the Criminal Punishment Code  
27 worksheet computations and scoresheets for application of  
a specified sentence multiplier for offenses related to  
criminal street gangs and conforms terminology.

28

29

30

31