

By Senator Burt

16-146-01

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 that  
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; amending s. 921.0024, F.S., relating to  
12          the Criminal Punishment Code worksheet  
13          computations and scoresheets; revising  
14          guidelines for applying a specified sentence  
15          multiplier for offenses committed for the  
16          purpose of benefiting, promoting, or furthering  
17          the interests of a criminal street gang;  
18          providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

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22           Section 1. Section 874.04, Florida Statutes, is  
23 amended to read:

24           874.04 Criminal street gang activity; enhanced  
25 penalties.--Upon a finding by the court at sentencing that the  
26 defendant committed the charged offense for the purpose of  
27 benefiting, promoting, or furthering the interests ~~is a member~~  
28 of a criminal street gang, the penalty for any felony or  
29 misdemeanor, or any delinquent act or violation of law which  
30 would be a felony or misdemeanor if committed by an adult, may  
31 be enhanced ~~if the offender was a member of a criminal street~~

1 ~~gang at the time of the commission of such offense.~~ Each of  
2 the findings required as a basis for such sentence shall be  
3 found by a preponderance of the evidence. The enhancement will  
4 be as follows:

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

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

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

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

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

20  
21 For purposes of sentencing under chapter 921 and determining  
22 incentive gain-time eligibility under chapter 944, such felony  
23 offense is ranked as provided in s. 921.0022 or s. 921.0023,  
24 and without regard to the penalty enhancement in this  
25 subsection. For purposes of this section, penalty enhancement  
26 affects the applicable statutory maximum penalty only.

27 Section 2. Subsection (1) of section 921.0024, Florida  
28 Statutes, is amended to read:

29 921.0024 Criminal Punishment Code; worksheet  
30 computations; scoresheets.--

31

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

3  
4 FLORIDA CRIMINAL PUNISHMENT CODE  
5 WORKSHEET

6  
7 OFFENSE SCORE

8  
9 Primary Offense

10 Level	Sentence Points		Total
11 .....			
12 10	116	=	.....
13 9	92	=	.....
14 8	74	=	.....
15 7	56	=	.....
16 6	36	=	.....
17 5	28	=	.....
18 4	22	=	.....
19 3	16	=	.....
20 2	10	=	.....
21 1	4	=	.....

22  
23 .....

24 Total

25  
26 Additional Offenses

27 Level	Sentence Points	Counts	Total
28 .....			
29 10	58	x .....	= .....
30 9	46	x .....	= .....
31 8	37	x .....	= .....

1	7	28	x	....	=	....
2	6	18	x	....	=	....
3	5	5.4	x	....	=	....
4	4	3.6	x	....	=	....
5	3	2.4	x	....	=	....
6	2	1.2	x	....	=	....
7	1	0.7	x	....	=	....
8	M	0.2	x	....	=	....
9						
10	.....					
11						<u>Total</u>
12						
13	Victim Injury					
14	Level	Sentence Points		Number		Total
15	.....					
16	2nd degree					
17	murder-					
18	death	240	x	....	=	....
19	Death	120	x	....	=	....
20	Severe	40	x	....	=	....
21	Moderate	18	x	....	=	....
22	Slight	4	x	....	=	....
23	Sexual					
24	penetration	80	x	....	=	....
25	Sexual					
26	contact	40	x	....	=	....
27						
28	.....					
29						<u>Total</u>
30						
31	Primary Offense + Additional Offenses + Victim Injury =					

1	TOTAL OFFENSE SCORE					
2						
3	PRIOR RECORD SCORE					
4						
5	Prior Record					
6	Level	Sentence Points		Number		Total
7	.....					
8	10	29	x	....	=	....
9	9	23	x	....	=	....
10	8	19	x	....	=	....
11	7	14	x	....	=	....
12	6	9	x	....	=	....
13	5	3.6	x	....	=	....
14	4	2.4	x	....	=	....
15	3	1.6	x	....	=	....
16	2	0.8	x	....	=	....
17	1	0.5	x	....	=	....
18	M	0.2	x	....	=	....
19						
20	.....					
21						<u>Total</u>
22						
23	TOTAL OFFENSE SCORE.....					
24	TOTAL PRIOR RECORD SCORE.....					
25						
26	LEGAL STATUS.....					
27	COMMUNITY SANCTION VIOLATION.....					
28	PRIOR SERIOUS FELONY.....					
29	PRIOR CAPITAL FELONY.....					
30	FIREARM OR SEMIAUTOMATIC WEAPON.....					
31						SUBTOTAL.....

1  
2 PRISON RELEASEE REOFFENDER (no)(yes).....  
3 VIOLENT CAREER CRIMINAL (no)(yes).....  
4 HABITUAL VIOLENT OFFENDER (no)(yes).....  
5 HABITUAL OFFENDER (no)(yes).....  
6 DRUG TRAFFICKER (no)(yes) (x multiplier).....  
7 LAW ENF. PROTECT. (no)(yes) (x multiplier).....  
8 MOTOR VEHICLE THEFT (no)(yes) (x multiplier).....  
9 CRIMINAL STREET GANG OFFENSE ~~MEMBER~~ (no)(yes) (x  
10 multiplier).....  
11 DOMESTIC VIOLENCE IN THE PRESENCE OF RELATED CHILD  
12 (no)(yes) (x multiplier).....  
13 .....  
14 TOTAL SENTENCE POINTS.....

(b) WORKSHEET KEY:

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

23 Community sanction violation points are assessed when a  
24 community sanction violation is before the court for  
25 sentencing. Six (6) sentence points are assessed for each  
26 community sanction violation, and each successive community  
27 sanction violation; however, if the community sanction  
28 violation includes a new felony conviction before the  
29 sentencing court, twelve (12) community sanction violation  
30 points are assessed for such violation, and for each  
31 successive community sanction violation involving a new felony

1 conviction. Multiple counts of community sanction violations  
2 before the sentencing court shall not be a basis for  
3 multiplying the assessment of community sanction violation  
4 points.

5  
6 Prior serious felony points: If the offender has a primary  
7 offense or any additional offense ranked in level 8, level 9,  
8 or level 10, and one or more prior serious felonies, a single  
9 assessment of 30 points shall be added. For purposes of this  
10 section, a prior serious felony is an offense in the  
11 offender's prior record that is ranked in level 8, level 9, or  
12 level 10 under s. 921.0022 or s. 921.0023 and for which the  
13 offender is serving a sentence of confinement, supervision, or  
14 other sanction or for which the offender's date of release  
15 from confinement, supervision, or other sanction, whichever is  
16 later, is within 3 years before the date the primary offense  
17 or any additional offense was committed.

18  
19 Prior capital felony points: If the offender has one or more  
20 prior capital felonies in the offender's criminal record,  
21 points shall be added to the subtotal sentence points of the  
22 offender equal to twice the number of points the offender  
23 receives for the primary offense and any additional offense.  
24 A prior capital felony in the offender's criminal record is a  
25 previous capital felony offense for which the offender has  
26 entered a plea of nolo contendere or guilty or has been found  
27 guilty; or a felony in another jurisdiction which is a capital  
28 felony in that jurisdiction, or would be a capital felony if  
29 the offense were committed in this state.

30  
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1 Possession of a firearm, semiautomatic firearm, or machine  
2 gun: If the offender is convicted of committing or attempting  
3 to commit any felony other than those enumerated in s.  
4 775.087(2) while having in his or her possession: a firearm as  
5 defined in s. 790.001(6), an additional 18 sentence points are  
6 assessed; or if the offender is convicted of committing or  
7 attempting to commit any felony other than those enumerated in  
8 s. 775.087(3) while having in his or her possession a  
9 semiautomatic firearm as defined in s. 775.087(3) or a machine  
10 gun as defined in s. 790.001(9), an additional 25 sentence  
11 points are assessed.

12

13 Sentencing multipliers:

14

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

22

23 Law enforcement protection: If the primary offense is a  
24 violation of the Law Enforcement Protection Act under s.  
25 775.0823(2), the subtotal sentence points are multiplied by  
26 2.5. If the primary offense is a violation of s. 775.0823(3),  
27 (4), (5), (6), (7), or (8), the subtotal sentence points are  
28 multiplied by 2.0. If the primary offense is a violation of s.  
29 784.07(3) or s. 775.0875(1), or of the Law Enforcement  
30 Protection Act under s. 775.0823(9) or (10), the subtotal  
31 sentence points are multiplied by 1.5.



1  
2 Grand theft of a motor vehicle: If the primary offense is  
3 grand theft of the third degree involving a motor vehicle and  
4 in the offender's prior record, there are three or more grand  
5 thefts of the third degree involving a motor vehicle, the  
6 subtotal sentence points are multiplied by 1.5.

7  
8 Offense related to a criminal street gang member: If the  
9 offender is convicted of the primary offense and committed  
10 that offense for the purpose of benefiting, promoting, or  
11 furthering the interests of a criminal street gang as  
12 prohibited under ~~is found to have been a member of a criminal~~  
13 ~~street gang at the time of the commission of the primary~~  
14 ~~offense pursuant to s. 874.04~~, the subtotal sentence points  
15 are multiplied by 1.5.

16  
17 Domestic violence in the presence of a child: If the offender  
18 is convicted of the primary offense and the primary offense is  
19 a crime of domestic violence, as defined in s. 741.28, which  
20 was committed in the presence of a child under 16 years of age  
21 who is a family household member as defined in s. 741.28(2)  
22 with the victim or perpetrator, the subtotal sentence points  
23 are multiplied by 1.5.

24 Section 3. This act shall take effect July 1, 2001.

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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 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 benefiting, promoting, or furthering the interests of a criminal street gang. 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.)