



HB 1703

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A bill to be entitled  
 An act relating to mitigating factors in certain offenses;  
 amending s. 921.0026, F.S.; providing that the fact that a  
 victim was an initiator, willing participant, aggressor,  
 or provoker of an incident, or consented to an incident,  
 is not a mitigating factor to offenses under ch. 794,  
 F.S., or s. 800.04, F.S., under certain circumstances;  
 providing that the fact a person committed a felony level  
 offense of driving under the influence under s. 316.193 in  
 an unsophisticated manner is not a mitigating factor for  
 such offense; providing an effective date.

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

Section 1. Section 921.0026, Florida Statutes, is amended  
 to read:

921.0026 Mitigating circumstances.--This section applies  
 to any felony offense, except any capital felony, committed on  
 or after October 1, 1998.

(1) A downward departure from the lowest permissible  
 sentence, as calculated according to the total sentence points  
 pursuant to s. 921.0024, is prohibited unless there are  
 circumstances or factors that reasonably justify the downward  
 departure. Mitigating factors to be considered include, but are  
 not limited to, those listed in subsection (2). The imposition  
 of a sentence below the lowest permissible sentence is subject  
 to appellate review under chapter 924, but the extent of  
 downward departure is not subject to appellate review.



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29 (2) Mitigating circumstances under which a departure from  
30 the lowest permissible sentence is reasonably justified include,  
31 but are not limited to:

32 (a) The departure results from a legitimate, uncoerced  
33 plea bargain.

34 (b) The defendant was an accomplice to the offense and was  
35 a relatively minor participant in the criminal conduct.

36 (c) The capacity of the defendant to appreciate the  
37 criminal nature of the conduct or to conform that conduct to the  
38 requirements of law was substantially impaired.

39 (d) The defendant requires specialized treatment for a  
40 mental disorder that is unrelated to substance abuse or  
41 addiction or for a physical disability, and the defendant is  
42 amenable to treatment.

43 (e) The need for payment of restitution to the victim  
44 outweighs the need for a prison sentence.

45 (f) The victim was an initiator, willing participant,  
46 aggressor, or provoker of the incident, except as provided in  
47 subsection (4).

48 (g) The defendant acted under extreme duress or under the  
49 domination of another person.

50 (h) Before the identity of the defendant was determined,  
51 the victim was substantially compensated.

52 (i) The defendant cooperated with the state to resolve the  
53 current offense or any other offense.

54 (j) The offense was committed in an unsophisticated manner  
55 and was an isolated incident for which the defendant has shown  
56 remorse, except as provided in subsection (5).



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57 (k) At the time of the offense the defendant was too young  
58 to appreciate the consequences of the offense.

59 (1) The defendant is to be sentenced as a youthful  
60 offender.

61 (3) The defendant's substance abuse or addiction,  
62 including intoxication at the time of the offense, is not a  
63 mitigating factor under subsection (2) and does not, under any  
64 circumstances, justify a downward departure from the permissible  
65 sentencing range.

66 (4) The fact that the victim was an initiator, willing  
67 participant, aggressor, or provoker of the incident, or  
68 consented to the incident, is not a mitigating factor to any  
69 offense contained in chapter 794 or s. 800.04 in which consent  
70 is not a defense if the offender was more than 3 years older  
71 than the victim at the time of the offense. Such fact, under the  
72 circumstances provided in this subsection, shall not justify a  
73 downward departure from the permissible sentencing range.

74 (5) The fact that the defendant committed the crime in an  
75 unsophisticated manner and the commission of the crime was an  
76 isolated incident for which the defendant has shown remorse is  
77 not a mitigating factor to an offense under s. 316.193(2)(b)1.,  
78 (2)(b)3., (3)(c)2., or (3)(c)3. Such fact does not, under any  
79 circumstances, justify a downward departure from the permissible  
80 sentencing range.

81 Section 2. This act shall take effect upon becoming a law.