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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 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.

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



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29 (a) The departure results from a legitimate, uncoerced
30 plea bargain.

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

33 (c) The capacity of the defendant to appreciate the
34 criminal nature of the conduct or to conform that conduct to the
35 requirements of law was substantially impaired.

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

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

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

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

47 (h) Before the identity of the defendant was determined,
48 the victim was substantially compensated.

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

51 (j) The offense was committed in an unsophisticated manner
52 and was an isolated incident for which the defendant has shown
53 remorse.

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

56 (l) The defendant is to be sentenced as a youthful
57 offender.



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

63 (4) In cases in which the victim is under 16 years of age,
64 the fact that the victim was an initiator, willing participant,
65 aggressor, or provoker of the incident, or consented to the
66 incident, is not a mitigating factor to any offense contained in
67 chapter 794 or s. 800.04 in which consent is not a defense if
68 the offender was more than 4 years older than the victim at the
69 time of the offense. Such fact, under the circumstances provided
70 in this subsection, shall not justify a downward departure from
71 the permissible sentencing range.

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