

By Senator Cowin

20-287-04

1 A bill to be entitled
2 An act relating to mitigating factors in
3 certain offenses; amending s. 921.0026, F.S.;
4 providing that the fact that a victim was an
5 initiator, willing participant, aggressor, or
6 provoker of an incident, or consented to an
7 incident, is not a mitigating factor to
8 offenses under ch. 794, F.S., or s. 800.04,
9 F.S., under certain circumstances; providing an
10 effective date.

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

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14 Section 1. Section 921.0026, Florida Statutes, is
15 amended to read:16 921.0026 Mitigating circumstances.--This section
17 applies to any felony offense, except any capital felony,
18 committed on or after October 1, 1998.19 (1) A downward departure from the lowest permissible
20 sentence, as calculated according to the total sentence points
21 pursuant to s. 921.0024, is prohibited unless there are
22 circumstances or factors that reasonably justify the downward
23 departure. Mitigating factors to be considered include, but
24 are not limited to, those listed in subsection (2). The
25 imposition of a sentence below the lowest permissible sentence
26 is subject to appellate review under chapter 924, but the
27 extent of downward departure is not subject to appellate
28 review.29 (2) Mitigating circumstances under which a departure
30 from the lowest permissible sentence is reasonably justified
31 include, but are not limited to:

1 (a) The departure results from a legitimate, uncoerced
2 plea bargain.

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

5 (c) The capacity of the defendant to appreciate the
6 criminal nature of the conduct or to conform that conduct to
7 the requirements of law was substantially impaired.

8 (d) The defendant requires specialized treatment for a
9 mental disorder that is unrelated to substance abuse or
10 addiction or for a physical disability, and the defendant is
11 amenable to treatment.

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

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

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

19 (h) Before the identity of the defendant was
20 determined, the victim was substantially compensated.

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

23 (j) The offense was committed in an unsophisticated
24 manner and was an isolated incident for which the defendant
25 has shown remorse.

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

28 (l) The defendant is to be sentenced as a youthful
29 offender.

30 (3) The defendant's substance abuse or addiction,
31 including intoxication at the time of the offense, is not a

1 mitigating factor under subsection (2) and does not, under any
2 circumstances, justify a downward departure from the
3 permissible sentencing range.

4 (4) In cases in which the victim is younger than 14
5 years of age, the fact that the victim was an initiator,
6 willing participant, aggressor, or provoker of the incident,
7 or consented to the incident, is not a mitigating factor to
8 any offense contained in chapter 794 or s. 800.04 in which
9 consent is not a defense if the offender was more than 10
10 years older than the victim at the time of the offense. Such
11 fact, under the circumstances provided in this subsection, may
12 not be used to justify a downward departure from the
13 permissible sentencing range.

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

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18 SENATE SUMMARY

19 Provides that the fact that a victim was an initiator,
20 willing participant, aggressor, or provoker of an
21 incident, or consented to an incident, is not a
22 mitigating factor to specified offenses if the victim is
23 younger than 14 years of age and the offender is more
24 than 10 years older than the victim.
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