

By Senator Fasano

11-449-05

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 any case in which the victim is younger than 16  
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 4 years  
10 older than the victim at the time of the offense. Such fact,  
11 under the circumstances provided in this subsection, may not  
12 be used to justify a downward departure from the permissible  
13 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 16 years of age and the offender is more  
24 than 4 years older than the victim.  
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