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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to sentencing; amending s. 921.002, F.S.; specifying requirements for sentencing and appeals of sentences for offenses committed on or after a certain date; authorizing upward departures of sentences under certain circumstances; amending s. 921.0024, F.S.; providing applicability; creating requirements for permissible sentences for nonstate prison sanctions and state prison sanctions; authorizing a judge to depart from the guidelines under certain circumstances; prohibiting departure sentences under certain circumstances; creating s. 921.00261, F.S.; providing applicability; defining the term "upward departure sentence"; specifying requirements for imposing an upward departure sentence; providing a circumstance under which a sentence is subject to appellate review; providing aggravating circumstances under which an upward departure sentence is reasonably justified; amending s. 924.06, F.S.; authorizing a defendant to appeal a sentence outside a specified range; amending s. 924.07, F.S.; authorizing the state to appeal a sentence outside a specified range; creating s. 950.021, F.S.; authorizing a court to sentence certain offenders to a term in county jail for up to 24 months if the offender meets specified criteria and if the county has a contract with the Department of



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28 Corrections; providing contractual requirements;
29 requiring specific appropriations; providing for such
30 appropriations; requiring validation of per diem
31 rates; reenacting s. 958.04(3), F.S., relating to
32 judicial disposition of youthful offenders, to
33 incorporate the amendments made to ss. 924.06 and
34 924.07, F.S., in references thereto; providing an
35 appropriation; providing an effective date.

36
37 Be It Enacted by the Legislature of the State of Florida:

38
39 Section 1. Present paragraphs (g), (h), and (i) of
40 subsection (1) of section 921.002, Florida Statutes, are
41 redesignated as paragraphs (h), (i), and (k), respectively, new
42 paragraphs (g) and (j) are added to that subsection, present
43 paragraphs (g) and (h) of that subsection are amended, present
44 subsection (4) of that section is redesignated as subsection
45 (5), and a new subsection (4) is added to that section, to read:

46 921.002 The Criminal Punishment Code.—The Criminal
47 Punishment Code shall apply to all felony offenses, except
48 capital felonies, committed on or after October 1, 1998.

49 (1) The provision of criminal penalties and of limitations
50 upon the application of such penalties is a matter of
51 predominantly substantive law and, as such, is a matter properly
52 addressed by the Legislature. The Legislature, in the exercise
53 of its authority and responsibility to establish sentencing
54 criteria, to provide for the imposition of criminal penalties,
55 and to make the best use of state prisons so that violent
56 criminal offenders are appropriately incarcerated, has



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57 determined that it is in the best interest of the state to
58 develop, implement, and revise a sentencing policy. The Criminal
59 Punishment Code embodies the principles that:

60 (g) An upward departure sentence, as defined in s.
61 921.00261, must be articulated in writing by the trial court
62 judge and made only when circumstances or factors reasonably
63 justify such sentence. The level of proof necessary to establish
64 facts that support an upward departure sentence is a
65 preponderance of the evidence.

66 (h)~~(g)~~ Except as provided in s. 921.0024(3), the trial
67 court judge may impose a sentence up to and including the
68 statutory maximum for any offense, including an offense that is
69 before the court due to a violation of probation or community
70 control.

71 (i)~~(h)~~ A sentence for an offense committed on or after
72 October 1, 1998, but before October 1, 2017, may be appealed on
73 the basis that it departs from the Criminal Punishment Code only
74 if the sentence is below the lowest permissible sentence or as
75 enumerated in s. 924.06(1).

76 (j) A sentence for an offense committed on or after October
77 1, 2017, may be appealed on the basis that it departs from the
78 Criminal Punishment Code if the sentence is below the lowest
79 permissible sentence provided in s. 921.0024(3); is outside the
80 range authorized by s. 921.0024(3); or is as enumerated in s.
81 924.06(1).

82 (4) As provided in s. 921.00261, a court may impose an
83 upward departure sentence based upon circumstances or factors
84 that reasonably justify the aggravation of the sentence. The
85 level of proof necessary to establish facts supporting an upward



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86 departure sentence is a preponderance of the evidence. When
87 multiple reasons exist to support an upward departure sentence,
88 such sentence shall be upheld when at least one circumstance or
89 factor justifies such sentence regardless of the presence of
90 other circumstances or factors found not to justify such
91 sentence. Any upward departure sentence must be explained in
92 writing by the trial court judge.

93 Section 2. Present subsections (3) through (7) of section
94 921.0024, Florida Statutes, are redesignated as subsections (4)
95 through (8), respectively, and a new subsection (3) is added to
96 that section, to read:

97 921.0024 Criminal Punishment Code; worksheet computations;
98 scoresheets.-

99 (3) (a) This subsection applies to any felony offense,
100 except a capital felony, committed on or after October 1, 2017.

101 (b) The lowest permissible sentence is the minimum sentence
102 that may be imposed by the trial court, absent a valid reason
103 for departure.

104 (c) The lowest permissible sentence is any nonstate prison
105 sanction in which the total sentence points equal or are less
106 than 44 points. The trial court may increase the total sentence
107 points by up to, and including, 25 percent. If the total
108 sentence points exceed 44 points as a result of this increase,
109 the court may not impose a state prison sentence that is longer
110 than the lowest permissible sentence in prison months calculated
111 pursuant to paragraph (d).

112 (d) If the total sentence points exceed 44 points, the
113 lowest permissible sentence in prison months shall be calculated
114 by subtracting 28 points from the total sentence points and



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115 decreasing the remaining total by 25 percent. The total sentence
116 points shall be calculated only as a means of determining the
117 lowest permissible sentence. The trial court may impose
118 sentences under this subsection or s. 921.00261 concurrently or
119 consecutively. However, any sentence to state prison must exceed
120 1 year. If the lowest permissible sentence in prison months
121 exceeds the statutory maximum sentence as provided in s.
122 775.082, the lowest permissible sentence in prison months must
123 be imposed. If the total sentence points are greater than or
124 equal to 363, the court may sentence the offender to life
125 imprisonment. An offender sentenced to life imprisonment under
126 this subsection is not eligible for any form of discretionary
127 early release, except executive clemency or conditional medical
128 release under s. 947.149. This subsection does not supersede any
129 requirement in subsection (1) to impose a statutory maximum
130 sentence.

131 (e) The trial court may impose a state prison sentence that
132 does not vary upward by more than 25 percent from the lowest
133 permissible sentence in prison months calculated pursuant to
134 paragraph (d). However, no sentence imposed pursuant to this
135 paragraph may exceed the statutory maximum sentence as provided
136 in s. 775.082.

137 (f) Except as provided in s. 921.00261, the trial court may
138 not impose a sentence that varies upward by more than 25 percent
139 from the lowest permissible sentence in prison months calculated
140 pursuant to paragraph (d). The permissible range for sentencing
141 for an upward departure sentence imposed by the court pursuant
142 to s. 921.00261 is the lowest permissible sentence up to and
143 including the statutory maximum, as provided in s. 775.082, for



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144 the primary offense and any additional offense before the court
145 for sentencing.

146 Section 3. Section 921.00261, Florida Statutes, is created
147 to read:

148 921.00261 Upward departure sentence; aggravating
149 circumstances.—

150 (1) (a) This section applies to any felony offense, except a
151 capital felony, committed on or after October 1, 2017.

152 (b) The sentence imposed pursuant to s. 921.0024(3) (d) or
153 (3) (e) is assumed to be appropriate for the offender. A sentence
154 that the trial court is authorized to impose pursuant to s.
155 921.0024(3) is not an upward departure sentence. As used in this
156 section, the term "upward departure sentence" means a state
157 prison sentence that varies upward by more than 25 percent from
158 the lowest permissible sentence in prison months calculated
159 pursuant to s. 921.0024(3) (d).

160 (c) The trial court may impose an upward departure sentence
161 only if the sentence is accompanied by a written statement from
162 the court specifying the reasons for the departure, filed within
163 7 days after the date of sentencing. A written transcription of
164 orally stated reasons for this departure is permissible if it is
165 filed by the court within 7 days after the date of sentencing.

166 (d) The imposition of a split sentence of incarceration
167 followed by community control or probation does not by itself
168 constitute an upward departure. For the purpose of determining
169 the maximum sentence authorized by law, any community control
170 portion of a split sentence does not constitute a term of
171 imprisonment.

172 (e) An upward departure sentence must be within any



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173 relevant maximum sentence limitations provided by s. 775.082.

174 (2) An upward departure sentence is discouraged unless
175 there are circumstances or factors that reasonably justify the
176 departure. Aggravating circumstances to be considered include,
177 but are not limited to, those listed in subsection (3). The
178 failure of the trial court to impose a sentence within the range
179 authorized by s. 921.0024(3) is subject to appellate review
180 under chapter 924, but the extent of the departure from such
181 range is not subject to appellate review.

182 (3) Aggravating circumstances under which an upward
183 departure sentence is reasonably justified include, but are not
184 limited to:

185 (a) The departure results from a legitimate, uncoerced plea
186 bargain.

187 (b) The offense was one of violence and was committed in a
188 manner that was especially heinous, atrocious, or cruel.

189 (c) The offenses before the court for sentencing arose out
190 of separate episodes, the primary offense is scored at offense
191 level 4 or higher, and the defendant has committed five or more
192 offenses within a 180-day period which have resulted in
193 convictions.

194 (d) The primary offense is scored at offense level 3, and
195 the defendant has committed eight or more offenses within a 180-
196 day period which have resulted in convictions.

197 (e) The offense before the court for disposition was
198 committed within 6 months after the defendant was discharged
199 from probation, community control, or pretrial intervention or
200 diversion or released from state prison, whichever is later.

201 (f) The defendant occupied a leadership role in a criminal



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202 organization.

203 (g) The offense was committed by a public official under
204 color of office.

205 (h) The defendant knew the victim was a law enforcement
206 officer at the time of the offense, the offense was a violent
207 offense, and that status is not an element of the primary
208 offense.

209 (i) The offense created a substantial risk of death or
210 great bodily harm to many persons or to one or more children.

211 (j) The victim was especially vulnerable due to age or
212 physical or mental disability.

213 (k) The offense was motivated by prejudice based on race,
214 color, ancestry, ethnicity, religion, sexual orientation, or
215 national origin of the victim.

216 (l) The victim suffered extraordinary physical or emotional
217 trauma or permanent physical injury or was treated with
218 particular cruelty.

219 (m) The victim was physically attacked by the defendant in
220 the presence of one or more members of the victim's family.

221 (n) The offense resulted in substantial economic hardship
222 to the victim and consisted of an illegal act or acts committed
223 by means of concealment, guile, or fraud to obtain money or
224 property, to avoid payment or loss of money or property, or to
225 obtain business or professional advantage, when two or more of
226 the following circumstances were present:

227 1. The offense involved multiple victims or multiple
228 incidents per victim;

229 2. The offense involved a high degree of sophistication or
230 planning or occurred over a lengthy period of time;



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231 3. The defendant used position or status to facilitate the
232 commission of the offense, including positions of trust,
233 confidence, or fiduciary relationship; or

234 4. The defendant was in the past involved in other conduct
235 similar to that involved in the current offense.

236 (o) The offense was committed in order to prevent or avoid
237 arrest, to impede or prevent prosecution for the conduct
238 underlying the offense, or to effect an escape from custody.

239 (p) The defendant is not amenable to rehabilitation or
240 supervision, as evidenced by an escalating pattern of criminal
241 conduct, which is a progression from nonviolent to violent
242 crimes, a progression of increasingly violent crimes, or a
243 pattern of increasingly serious criminal activity.

244 (q) The defendant induced a minor to participate in any of
245 the offenses pending before the court for disposition.

246 (r) The primary offense is scored at offense level 7 or
247 higher, and the defendant has been convicted of an additional
248 offense that scored, or would have scored, at an offense level 8
249 or higher.

250 (s) The defendant has an extensive unscorable juvenile
251 record.

252 (t) The defendant committed an offense involving sexual
253 contact or sexual penetration, and, as a direct result of the
254 offense, the victim contracted a sexually transmissible disease.

255 Section 4. Subsection (1) of section 924.06, Florida
256 Statutes, is amended to read:

257 924.06 Appeal by defendant.—

258 (1) A defendant may appeal any of the following ~~from~~:

259 (a) A final judgment of conviction when probation has not



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260 been granted under chapter 948, except as provided in subsection
261 (3).~~†~~

262 (b) An order granting probation under chapter 948.~~†~~

263 (c) An order revoking probation under chapter 948.~~†~~

264 (d) A sentence, on the ground that it is illegal.~~†~~~~or~~

265 (e) A sentence imposed under s. 921.0024 of the Criminal
266 Punishment Code which exceeds the statutory maximum penalty
267 provided in s. 775.082 for an offense at conviction, or the
268 consecutive statutory maximums for offenses at conviction,
269 unless otherwise provided by law.

270 (f) A sentence imposed outside the range authorized by s.
271 921.0024(3).

272 Section 5. Subsection (1) of section 924.07, Florida
273 Statutes, is amended to read:

274 924.07 Appeal by state.—

275 (1) The state may appeal any of the following ~~from~~:

276 (a) An order dismissing an indictment or information or any
277 count thereof or dismissing an affidavit charging the commission
278 of a criminal offense, the violation of probation, the violation
279 of community control, or the violation of any supervised
280 correctional release.

281 (b) An order granting a new trial.

282 (c) An order arresting judgment.

283 (d) A ruling on a question of law when the defendant is
284 convicted and appeals from the judgment. Once the state's cross-
285 appeal is instituted, the appellate court shall review and rule
286 upon the question raised by the state regardless of the
287 disposition of the defendant's appeal.

288 (e) The sentence, on the ground that it is illegal.



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289 (f) A judgment discharging a prisoner on habeas corpus.

290 (g) An order adjudicating a defendant insane under the
291 Florida Rules of Criminal Procedure.

292 (h) All other pretrial orders, except that it may not take
293 more than one appeal under this subsection in any case.

294 (i) A sentence imposed below the lowest permissible
295 sentence established by the Criminal Punishment Code under
296 chapter 921.

297 (j) A ruling granting a motion for judgment of acquittal
298 after a jury verdict.

299 (k) An order denying restitution under s. 775.089.

300 (l) An order or ruling suppressing evidence or evidence in
301 limine at trial.

302 (m) An order withholding adjudication of guilt in violation
303 of s. 775.08435.

304 (n) A sentence imposed outside the range authorized by s.
305 921.0024(3).

306 Section 6. Section 950.021, Florida Statutes, is created to
307 read:

308 950.021 Sentencing of offenders to county jail.-

309 (1) Notwithstanding s. 921.0024 or any other provision of
310 law, and effective for offenses committed on or after July 1,
311 2017, a court may sentence an offender to a term in the county
312 jail in the county where the offense was committed for up to 24
313 months if the offender meets all of the following criteria:

314 (a) The offender's total sentence points score, as provided
315 in s. 921.0024, is more than 44 points but no more than 60
316 points.

317 (b) The offender's primary offense is not a forcible felony



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318 as defined in s. 776.08; however, an offender whose primary
319 offense is a third degree felony under chapter 810 is eligible
320 to be sentenced to a county jail under this paragraph.

321 (c) The offender's primary offense is not punishable by a
322 minimum mandatory sentence of more than 24 months.

323 (2) (a) The court may only sentence an offender to a county
324 jail pursuant to this section if there is a contractual
325 agreement between the chief correctional officer of that county
326 and the Department of Corrections.

327 (b) If the chief correctional officer of a county requests
328 the Department of Corrections to enter into a contract that
329 allows offenders to be sentenced to the county jail pursuant to
330 subsection (1), subject to the restrictions of this paragraph
331 and subsections (3) and (6), the Department of Corrections must
332 enter into such a contract. The contract must specifically
333 establish the maximum number of beds and the validated per diem
334 rate. The contract must provide for per diem reimbursement for
335 occupied inmate days based on the contracting county's most
336 recent annual adult male custody or adult female custody per
337 diem rates, not to exceed \$60 per inmate.

338 (3) A contract under this section is contingent upon a
339 specific appropriation as provided by law. Contracts shall be
340 awarded by the Department of Corrections on a first-come, first-
341 served basis up to the maximum appropriation allowable for this
342 purpose. The maximum appropriation allowable consists of funds
343 appropriated in or transferred to the specific appropriation in
344 the Inmates Sentenced to County Jail appropriation category.
345 Before any transferred appropriation under this section, the
346 Inmates Sentenced to County Jail appropriation category provides



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347 for an estimated incremental appropriation for county jail beds
348 contracted under this section in excess of the Department of
349 Corrections' per diem for adult male and female inmates.

350 (4) The Department of Corrections shall transfer funds
351 pursuant to s. 216.177 from other appropriation categories
352 within the Adult Male Custody Operations or Adult and Youthful
353 Offender Female Custody Operations budget entities to the
354 Inmates Sentenced to County Jail appropriation category in an
355 amount necessary to satisfy the requirements of each executed
356 contract, but not to exceed the Department of Corrections'
357 average total per diem published for the preceding fiscal year
358 for adult male custody or adult and youthful offender female
359 custody inmates for each county jail bed contracted.

360 (5) The Department of Corrections shall assume maximum
361 annual value of each contract when determining the full use of
362 funds appropriated and must ensure that the maximum
363 appropriation allowable is not exceeded.

364 (6) All contractual per diem rates under this section as
365 well as the per diem rates used by the Department of Corrections
366 must be validated by the Auditor General before payments are
367 made.

368 Section 7. For the purpose of incorporating the amendments
369 made by this act to sections 924.06 and 924.07, Florida
370 Statutes, in references thereto, subsection (3) of section
371 958.04, Florida Statutes, is reenacted to read:

372 958.04 Judicial disposition of youthful offenders.—

373 (3) The provisions of this section shall not be used to
374 impose a greater sentence than the permissible sentence range as
375 established by the Criminal Punishment Code pursuant to chapter



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376 921 unless reasons are explained in writing by the trial court
377 judge which reasonably justify departure. A sentence imposed
378 outside of the code is subject to appeal pursuant to s. 924.06
379 or s. 924.07.

380 Section 8. For the 2017-2018 fiscal year, the sum of
381 \$1,609,285 in nonrecurring funds from the General Revenue Fund
382 is appropriated to the Department of Corrections, Inmates
383 Sentenced to County Jail appropriation category in the Executive
384 Direction and Support Services budget entity for the purpose of
385 implementing s. 950.021, Florida Statutes, as created in this
386 act.

387 Section 9. This act shall take effect July 1, 2017.