



925088

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
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The Committee on Criminal Justice (Bracy) recommended the following:

Senate Amendment (with title amendment)

Between lines 76 and 77

insert:

Section 2. Present paragraphs (g), (h), and (i) of subsection (1) of section 921.002, Florida Statutes, are redesignated as paragraphs (h), (i), and (k), respectively, new paragraphs (g) and (j) are added to that subsection, present paragraphs (g) and (h) of that subsection are amended, present subsection (4) of that section is redesignated as subsection



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11 (5), and a new subsection (4) is added to that section, to read:
12 921.002 The Criminal Punishment Code.—The Criminal
13 Punishment Code shall apply to all felony offenses, except
14 capital felonies, committed on or after October 1, 1998.

15 (1) The provision of criminal penalties and of limitations
16 upon the application of such penalties is a matter of
17 predominantly substantive law and, as such, is a matter properly
18 addressed by the Legislature. The Legislature, in the exercise
19 of its authority and responsibility to establish sentencing
20 criteria, to provide for the imposition of criminal penalties,
21 and to make the best use of state prisons so that violent
22 criminal offenders are appropriately incarcerated, has
23 determined that it is in the best interest of the state to
24 develop, implement, and revise a sentencing policy. The Criminal
25 Punishment Code embodies the principles that:

26 (g) An upward departure sentence, as defined in s.
27 921.00261, must be articulated in writing by the trial court
28 judge and made only when circumstances or factors reasonably
29 justify such sentence. The level of proof necessary to establish
30 facts that support an upward departure sentence is a
31 preponderance of the evidence.

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

37 (i) ~~(h)~~ A sentence for an offense committed on or after
38 October 1, 1998, but before October 1, 2017, may be appealed on
39 the basis that it departs from the Criminal Punishment Code only



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40 if the sentence is below the lowest permissible sentence or as
41 enumerated in s. 924.06(1).

42 (j) A sentence for an offense committed on or after October
43 1, 2017, may be appealed on the basis that it departs from the
44 Criminal Punishment Code if the sentence is below the lowest
45 permissible sentence provided in s. 921.0024(3); is outside the
46 range authorized by s. 921.0024(3); or is as enumerated in s.
47 924.06(1).

48 (4) As provided in s. 921.00261, a court may impose an
49 upward departure sentence based upon circumstances or factors
50 that reasonably justify the aggravation of the sentence. The
51 level of proof necessary to establish facts supporting an upward
52 departure sentence is a preponderance of the evidence. When
53 multiple reasons exist to support an upward departure sentence,
54 such sentence shall be upheld when at least one circumstance or
55 factor justifies such sentence regardless of the presence of
56 other circumstances or factors found not to justify such
57 sentence. Any upward departure sentence must be explained in
58 writing by the trial court judge.

59 Section 3. Present subsections (3) through (7) of section
60 921.0024, Florida Statutes, are redesignated as subsections (4)
61 through (8), respectively, and a new subsection (3) is added to
62 that section, to read:

63 921.0024 Criminal Punishment Code; worksheet computations;
64 scoresheets.-

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

67 (b) The lowest permissible sentence is the minimum sentence
68 that may be imposed by the trial court, absent a valid reason



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69 for departure.

70 (c) The lowest permissible sentence is any nonstate prison
71 sanction in which the total sentence points equal or are less
72 than 44 points. The trial court may increase the total sentence
73 points by up to, and including, 25 percent. If the total
74 sentence points exceed 44 points as a result of this increase,
75 the court may not impose a state prison sentence that is longer
76 than the lowest permissible sentence in prison months calculated
77 pursuant to paragraph (d).

78 (d) If the total sentence points exceed 44 points, the
79 lowest permissible sentence in prison months shall be calculated
80 by subtracting 28 points from the total sentence points and
81 decreasing the remaining total by 25 percent. The total sentence
82 points shall be calculated only as a means of determining the
83 lowest permissible sentence. The trial court may impose
84 sentences under this subsection or s. 921.00261 concurrently or
85 consecutively. However, any sentence to state prison must exceed
86 1 year. If the lowest permissible sentence in prison months
87 exceeds the statutory maximum sentence as provided in s.
88 775.082, the lowest permissible sentence in prison months must
89 be imposed. If the total sentence points are greater than or
90 equal to 363, the court may sentence the offender to life
91 imprisonment. An offender sentenced to life imprisonment under
92 this subsection is not eligible for any form of discretionary
93 early release, except executive clemency or conditional medical
94 release under s. 947.149. This subsection does not supersede any
95 requirement in subsection (1) to impose a statutory maximum
96 sentence.

97 (e) The trial court may impose a state prison sentence that



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98 does not vary upward by more than 25 percent from the lowest
99 permissible sentence in prison months calculated pursuant to
100 paragraph (d). However, no sentence imposed pursuant to this
101 paragraph may exceed the statutory maximum sentence as provided
102 in s. 775.082.

103 (f) Except as provided in s. 921.00261, the trial court may
104 not impose a sentence that varies upward by more than 25 percent
105 from the lowest permissible sentence in prison months calculated
106 pursuant to paragraph (d). The permissible range for sentencing
107 for an upward departure sentence imposed by the court pursuant
108 to s. 921.00261 is the lowest permissible sentence up to and
109 including the statutory maximum, as provided in s. 775.082, for
110 the primary offense and any additional offense before the court
111 for sentencing.

112 Section 4. Section 921.00261, Florida Statutes, is created
113 to read:

114 921.00261 Upward departure sentence; aggravating
115 circumstances.—

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

118 (b) The sentence imposed pursuant to s. 921.0024(3) (d) or
119 (3) (e) is assumed to be appropriate for the offender. A sentence
120 that the trial court is authorized to impose pursuant to s.
121 921.0024(3) is not an upward departure sentence. As used in this
122 section, the term "upward departure sentence" means a state
123 prison sentence that varies upward by more than 25 percent from
124 the lowest permissible sentence in prison months calculated
125 pursuant to s. 921.0024(3) (d).

126 (c) The trial court may impose an upward departure sentence



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127 only if the sentence is accompanied by a written statement from
128 the court specifying the reasons for the departure, filed within
129 7 days after the date of sentencing. A written transcription of
130 orally stated reasons for this departure is permissible if it is
131 filed by the court within 7 days after the date of sentencing.

132 (d) The imposition of a split sentence of incarceration
133 followed by community control or probation does not by itself
134 constitute an upward departure. For the purpose of determining
135 the maximum sentence authorized by law, any community control
136 portion of a split sentence does not constitute a term of
137 imprisonment.

138 (e) An upward departure sentence must be within any
139 relevant maximum sentence limitations provided by s. 775.082.

140 (2) An upward departure sentence is discouraged unless
141 there are circumstances or factors that reasonably justify the
142 departure. Aggravating circumstances to be considered include,
143 but are not limited to, those listed in subsection (3). The
144 failure of the trial court to impose a sentence within the range
145 authorized by s. 921.0024(3) is subject to appellate review
146 under chapter 924, but the extent of the departure from such
147 range is not subject to appellate review.

148 (3) Aggravating circumstances under which an upward
149 departure sentence is reasonably justified include, but are not
150 limited to:

151 (a) The departure results from a legitimate, uncoerced plea
152 bargain.

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

155 (c) The offenses before the court for sentencing arose out



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156 of separate episodes, the primary offense is scored at offense
157 level 4 or higher, and the defendant has committed five or more
158 offenses within a 180-day period which have resulted in
159 convictions.

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

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

167 (f) The defendant occupied a leadership role in a criminal
168 organization.

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

171 (h) The defendant knew the victim was a law enforcement
172 officer at the time of the offense, the offense was a violent
173 offense, and that status is not an element of the primary
174 offense.

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

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

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

182 (l) The victim suffered extraordinary physical or emotional
183 trauma or permanent physical injury or was treated with
184 particular cruelty.



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

187 (n) The offense resulted in substantial economic hardship
188 to the victim and consisted of an illegal act or acts committed
189 by means of concealment, guile, or fraud to obtain money or
190 property, to avoid payment or loss of money or property, or to
191 obtain business or professional advantage, when two or more of
192 the following circumstances were present:

193 1. The offense involved multiple victims or multiple
194 incidents per victim;

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

197 3. The defendant used position or status to facilitate the
198 commission of the offense, including positions of trust,
199 confidence, or fiduciary relationship; or

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

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

205 (p) The defendant is not amenable to rehabilitation or
206 supervision, as evidenced by an escalating pattern of criminal
207 conduct, which is a progression from nonviolent to violent
208 crimes, a progression of increasingly violent crimes, or a
209 pattern of increasingly serious criminal activity.

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

212 (r) The primary offense is scored at offense level 7 or
213 higher, and the defendant has been convicted of one more offense



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214 that scored, or would have scored, at an offense level 8 or
215 higher.

216 (s) The defendant has an extensive unscorable juvenile
217 record.

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

221 Section 5. Subsection (1) of section 924.06, Florida
222 Statutes, is amended to read:

223 924.06 Appeal by defendant.—

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

225 (a) A final judgment of conviction when probation has not
226 been granted under chapter 948, except as provided in subsection

227 (3) ~~.~~

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

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

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

231 (e) A sentence imposed under s. 921.0024 of the Criminal
232 Punishment Code which exceeds the statutory maximum penalty
233 provided in s. 775.082 for an offense at conviction, or the
234 consecutive statutory maximums for offenses at conviction,
235 unless otherwise provided by law.

236 (f) A sentence imposed outside the range authorized by s.
237 921.0024(3).

238 Section 6. Subsection (1) of section 924.07, Florida
239 Statutes, is amended to read:

240 924.07 Appeal by state.—

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

242 (a) An order dismissing an indictment or information or any



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243 count thereof or dismissing an affidavit charging the commission
244 of a criminal offense, the violation of probation, the violation
245 of community control, or the violation of any supervised
246 correctional release.

247 (b) An order granting a new trial.

248 (c) An order arresting judgment.

249 (d) A ruling on a question of law when the defendant is
250 convicted and appeals from the judgment. Once the state's cross-
251 appeal is instituted, the appellate court shall review and rule
252 upon the question raised by the state regardless of the
253 disposition of the defendant's appeal.

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

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

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

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

260 (i) A sentence imposed below the lowest permissible
261 sentence established by the Criminal Punishment Code under
262 chapter 921.

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

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

266 (l) An order or ruling suppressing evidence or evidence in
267 limine at trial.

268 (m) An order withholding adjudication of guilt in violation
269 of s. 775.08435.

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



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272 Section 7. For the purpose of incorporating the amendments
273 made by this act to sections 924.06 and 924.07, Florida
274 Statutes, in references thereto, subsection (3) of section
275 958.04, Florida Statutes, is reenacted to read:

276 958.04 Judicial disposition of youthful offenders.—

277 (3) The provisions of this section shall not be used to
278 impose a greater sentence than the permissible sentence range as
279 established by the Criminal Punishment Code pursuant to chapter
280 921 unless reasons are explained in writing by the trial court
281 judge which reasonably justify departure. A sentence imposed
282 outside of the code is subject to appeal pursuant to s. 924.06
283 or s. 924.07.

284
285 ===== T I T L E A M E N D M E N T =====

286 And the title is amended as follows:

287 Delete line 9

288 and insert:

289 requiring validation of per diem rates; amending s.
290 921.002, F.S.; specifying requirements for sentencing
291 and appeals of sentences for offenses committed on or
292 after a certain date; authorizing upward departures of
293 sentences under certain circumstances; amending s.
294 921.0024, F.S.; providing applicability; creating
295 requirements for permissible sentences for nonstate
296 prison sanctions and state prison sanctions;
297 authorizing a judge to depart from the guidelines
298 under certain circumstances; prohibiting departure
299 sentences under certain circumstances; creating s.
300 921.00261, F.S.; providing applicability; defining the



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301 term "upward departure sentence"; specifying
302 requirements for imposing an upward departure
303 sentence; providing a circumstance under which a
304 sentence is subject to appellate review; providing
305 aggravating circumstances under which an upward
306 departure sentence is reasonably justified; amending
307 s. 924.06, F.S.; authorizing a defendant to appeal a
308 sentence outside a specified range; amending s.
309 924.07, F.S.; authorizing the state to appeal a
310 sentence outside a specified range; reenacting s.
311 958.04(3), F.S., relating to judicial disposition of
312 youthful offenders, to incorporate the amendments made
313 to ss. 924.06 and 924.07, F.S, in references thereto;
314 providing an