

By Senator Bracy

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1 A bill to be entitled
2 An act relating to sentencing; amending s. 921.002,
3 F.S.; specifying requirements for sentencing and
4 appeals of sentences for offenses committed on or
5 after a certain date; authorizing upward departures of
6 sentences under certain circumstances; amending s.
7 921.0024, F.S.; providing applicability; creating
8 requirements for permissible sentences for nonstate
9 prison sanctions and state prison sanctions;
10 authorizing a judge to depart from the guidelines
11 under certain circumstances; prohibiting departure
12 sentences under certain circumstances; creating s.
13 921.00261, F.S.; providing applicability; defining the
14 term "upward departure sentence"; specifying
15 requirements for imposing an upward departure
16 sentence; providing a circumstance under which a
17 sentence is subject to appellate review; providing
18 aggravating circumstances under which an upward
19 departure sentence is reasonably justified; amending
20 s. 924.06, F.S.; authorizing a defendant to appeal a
21 sentence outside a specified range; amending s.
22 924.07, F.S.; authorizing the state to appeal a
23 sentence outside a specified range; reenacting s.
24 958.04(3), F.S., relating to judicial disposition of
25 youthful offenders, to incorporate the amendments made
26 to ss. 924.06 and 924.07, F.S, in references thereto;
27 providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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31 Section 1. Present paragraphs (g), (h), and (i) of
32 subsection (1) of section 921.002, Florida Statutes, are
33 redesignated as paragraphs (h), (i), and (k), respectively, new
34 paragraphs (g) and (j) are added to that subsection, present
35 paragraphs (g) and (h) of that subsection are amended, present
36 subsection (4) of that section is redesignated as subsection
37 (5), and a new subsection (4) is added to that section, to read:

38 921.002 The Criminal Punishment Code.—The Criminal
39 Punishment Code shall apply to all felony offenses, except
40 capital felonies, committed on or after October 1, 1998.

41 (1) The provision of criminal penalties and of limitations
42 upon the application of such penalties is a matter of
43 predominantly substantive law and, as such, is a matter properly
44 addressed by the Legislature. The Legislature, in the exercise
45 of its authority and responsibility to establish sentencing
46 criteria, to provide for the imposition of criminal penalties,
47 and to make the best use of state prisons so that violent
48 criminal offenders are appropriately incarcerated, has
49 determined that it is in the best interest of the state to
50 develop, implement, and revise a sentencing policy. The Criminal
51 Punishment Code embodies the principles that:

52 (g) An upward departure sentence, as defined in s.
53 921.00261, must be articulated in writing by the trial court
54 judge and made only when circumstances or factors reasonably
55 justify such sentence. The level of proof necessary to establish
56 facts that support an upward departure sentence is a
57 preponderance of the evidence.

58 (h) ~~(g)~~ Except as provided in s. 921.0024(3), the trial

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59 court judge may impose a sentence up to and including the
60 statutory maximum for any offense, including an offense that is
61 before the court due to a violation of probation or community
62 control.

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

68 (j) A sentence for an offense committed on or after October
69 1, 2017, may be appealed on the basis that it departs from the
70 Criminal Punishment Code if the sentence is below the lowest
71 permissible sentence provided in s. 921.0024(3); is outside the
72 range authorized by s. 921.0024(3); or is as enumerated in s.
73 924.06(1).

74 (4) As provided in s. 921.00261, a court may impose an
75 upward departure sentence based upon circumstances or factors
76 that reasonably justify the aggravation of the sentence. The
77 level of proof necessary to establish facts supporting an upward
78 departure sentence is a preponderance of the evidence. When
79 multiple reasons exist to support an upward departure sentence,
80 such sentence shall be upheld when at least one circumstance or
81 factor justifies such sentence regardless of the presence of
82 other circumstances or factors found not to justify such
83 sentence. Any upward departure sentence must be explained in
84 writing by the trial court judge.

85 Section 2. Present subsections (3) through (7) of section
86 921.0024, Florida Statutes, are redesignated as subsections (4)
87 through (8), respectively, and a new subsection (3) is added to

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88 that section, to read:

89 921.0024 Criminal Punishment Code; worksheet computations;
90 scoresheets.-

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

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

96 (c) The lowest permissible sentence is any nonstate prison
97 sanction in which the total sentence points equal or are less
98 than 44 points. The trial court may increase the total sentence
99 points by up to, and including, 25 percent. If the total
100 sentence points exceed 44 points as a result of this increase,
101 the court may not impose a state prison sentence that is longer
102 than the lowest permissible sentence in prison months calculated
103 pursuant to paragraph (d).

104 (d) If the total sentence points exceed 44 points, the
105 lowest permissible sentence in prison months shall be calculated
106 by subtracting 28 points from the total sentence points and
107 decreasing the remaining total by 25 percent. The total sentence
108 points shall be calculated only as a means of determining the
109 lowest permissible sentence. The trial court may impose
110 sentences under this subsection or s. 921.00261 concurrently or
111 consecutively. However, any sentence to state prison must exceed
112 1 year. If the lowest permissible sentence in prison months
113 exceeds the statutory maximum sentence as provided in s.
114 775.082, the lowest permissible sentence in prison months must
115 be imposed. If the total sentence points are greater than or
116 equal to 363, the court may sentence the offender to life

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117 imprisonment. An offender sentenced to life imprisonment under
118 this subsection is not eligible for any form of discretionary
119 early release, except executive clemency or conditional medical
120 release under s. 947.149. This subsection does not supersede any
121 requirement in subsection (1) to impose a statutory maximum
122 sentence.

123 (e) The trial court may impose a state prison sentence that
124 does not vary upward by more than 25 percent from the lowest
125 permissible sentence in prison months calculated pursuant to
126 paragraph (d). However, no sentence imposed pursuant to this
127 paragraph may exceed the statutory maximum sentence as provided
128 in s. 775.082.

129 (f) Except as provided in s. 921.00261, the trial court may
130 not impose a sentence that varies upward by more than 25 percent
131 from the lowest permissible sentence in prison months calculated
132 pursuant to paragraph (d). The permissible range for sentencing
133 for an upward departure sentence imposed by the court pursuant
134 to s. 921.00261 is the lowest permissible sentence up to and
135 including the statutory maximum, as provided in s. 775.082, for
136 the primary offense and any additional offense before the court
137 for sentencing.

138 Section 3. Section 921.00261, Florida Statutes, is created
139 to read:

140 921.00261 Upward departure sentence; aggravating
141 circumstances.—

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

144 (b) The sentence imposed pursuant to s. 921.0024(3)(d) or
145 (3)(e) is assumed to be appropriate for the offender. A sentence

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146 that the trial court is authorized to impose pursuant to s.
147 921.0024(3) is not an upward departure sentence. As used in this
148 section, the term "upward departure sentence" means a state
149 prison sentence that varies upward by more than 25 percent from
150 the lowest permissible sentence in prison months calculated
151 pursuant to s. 921.0024(3) (d).

152 (c) The trial court may impose an upward departure sentence
153 only if the sentence is accompanied by a written statement from
154 the court specifying the reasons for the departure, filed within
155 7 days after the date of sentencing. A written transcription of
156 orally stated reasons for this departure is permissible if it is
157 filed by the court within 7 days after the date of sentencing.

158 (d) The imposition of a split sentence of incarceration
159 followed by community control or probation does not by itself
160 constitute an upward departure. For the purpose of determining
161 the maximum sentence authorized by law, any community control
162 portion of a split sentence does not constitute a term of
163 imprisonment.

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

166 (2) An upward departure sentence is discouraged unless
167 there are circumstances or factors that reasonably justify the
168 departure. Aggravating circumstances to be considered include,
169 but are not limited to, those listed in subsection (3). The
170 failure of the trial court to impose a sentence within the range
171 authorized by s. 921.0024(3) is subject to appellate review
172 under chapter 924, but the extent of the departure from such
173 range is not subject to appellate review.

174 (3) Aggravating circumstances under which an upward

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175 departure sentence is reasonably justified include, but are not
176 limited to:

177 (a) The departure results from a legitimate, uncoerced plea
178 bargain.

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

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

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

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

193 (f) The defendant occupied a leadership role in a criminal
194 organization.

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

197 (h) The defendant knew the victim was a law enforcement
198 officer at the time of the offense, the offense was a violent
199 offense, and that status is not an element of the primary
200 offense.

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

203 (j) The victim was especially vulnerable due to age or

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204 physical or mental disability.

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

208 (l) The victim suffered extraordinary physical or emotional
209 trauma or permanent physical injury or was treated with
210 particular cruelty.

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

213 (n) The offense resulted in substantial economic hardship
214 to the victim and consisted of an illegal act or acts committed
215 by means of concealment, guile, or fraud to obtain money or
216 property, to avoid payment or loss of money or property, or to
217 obtain business or professional advantage, when two or more of
218 the following circumstances were present:

219 1. The offense involved multiple victims or multiple
220 incidents per victim;

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

223 3. The defendant used position or status to facilitate the
224 commission of the offense, including positions of trust,
225 confidence, or fiduciary relationship; or

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

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

231 (p) The defendant is not amenable to rehabilitation or
232 supervision, as evidenced by an escalating pattern of criminal

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233 conduct, which is a progression from nonviolent to violent
 234 crimes, a progression of increasingly violent crimes, or a
 235 pattern of increasingly serious criminal activity.

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

238 (r) The primary offense is scored at offense level 7 or
 239 higher, and the defendant has been convicted of one more offense
 240 that scored, or would have scored, at an offense level 8 or
 241 higher.

242 (s) The defendant has an extensive unscorable juvenile
 243 record.

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

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

249 924.06 Appeal by defendant.—

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

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

253 (3) ~~.~~

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

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

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

257 (e) A sentence imposed under s. 921.0024 of the Criminal
 258 Punishment Code which exceeds the statutory maximum penalty
 259 provided in s. 775.082 for an offense at conviction, or the
 260 consecutive statutory maximums for offenses at conviction,
 261 unless otherwise provided by law.

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262 (f) A sentence imposed outside the range authorized by s.
263 921.0024(3).

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

266 924.07 Appeal by state.—

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

268 (a) An order dismissing an indictment or information or any
269 count thereof or dismissing an affidavit charging the commission
270 of a criminal offense, the violation of probation, the violation
271 of community control, or the violation of any supervised
272 correctional release.

273 (b) An order granting a new trial.

274 (c) An order arresting judgment.

275 (d) A ruling on a question of law when the defendant is
276 convicted and appeals from the judgment. Once the state's cross-
277 appeal is instituted, the appellate court shall review and rule
278 upon the question raised by the state regardless of the
279 disposition of the defendant's appeal.

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

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

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

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

286 (i) A sentence imposed below the lowest permissible
287 sentence established by the Criminal Punishment Code under
288 chapter 921.

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

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

292 (l) An order or ruling suppressing evidence or evidence in
293 limine at trial.

294 (m) An order withholding adjudication of guilt in violation
295 of s. 775.08435.

296 (n) A sentence imposed outside the range authorized by s.
297 921.0024(3).

298 Section 6. For the purpose of incorporating the amendments
299 made by this act to sections 924.06 and 924.07, Florida
300 Statutes, in references thereto, subsection (3) of section
301 958.04, Florida Statutes, is reenacted to read:

302 958.04 Judicial disposition of youthful offenders.—

303 (3) The provisions of this section shall not be used to
304 impose a greater sentence than the permissible sentence range as
305 established by the Criminal Punishment Code pursuant to chapter
306 921 unless reasons are explained in writing by the trial court
307 judge which reasonably justify departure. A sentence imposed
308 outside of the code is subject to appeal pursuant to s. 924.06
309 or s. 924.07.

310 Section 7. This act shall take effect October 1, 2017.