

By Senator Bracy

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1 A bill to be entitled
2 An act relating to criminal sentencing; amending s.
3 921.002, F.S.; providing that the sentencing
4 guidelines of the Criminal Punishment Code are
5 recommendations for sentencing and are not mandatory;
6 revising provisions concerning departures from
7 recommended sentences; amending ss. 921.0024,
8 921.0026, and 921.00265, F.S.; conforming provisions
9 to changes made by the act; providing an effective
10 date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 921.002, Florida Statutes, is amended to
15 read:

16 921.002 The Criminal Punishment Code.—The Criminal
17 Punishment Code shall apply to all felony offenses, except
18 capital felonies, committed on or after October 1, 1998.

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

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30 principles that:

31 (a) Sentencing is neutral with respect to race, gender, and
32 social and economic status.

33 (b) The primary purpose of sentencing is to punish the
34 offender. Rehabilitation is a desired goal of the criminal
35 justice system but is subordinate to the goal of punishment.

36 (c) The penalty imposed is commensurate with the severity
37 of the primary offense and the circumstances surrounding the
38 primary offense.

39 (d) The severity of the sentence increases with the length
40 and nature of the offender's prior record.

41 (e) The sentence imposed by the sentencing judge reflects
42 the length of actual time to be served, shortened only by the
43 application of incentive and meritorious gain-time as provided
44 by law, and may not be shortened if the defendant would
45 consequently serve less than 85 percent of his or her term of
46 imprisonment as provided in s. 944.275(4)(b)3. The provisions of
47 chapter 947, relating to parole, shall not apply to persons
48 sentenced under the Criminal Punishment Code.

49 (f) Departures below the lowest ~~permissible~~
50 recommended ~~established~~ by the code must be articulated in
51 writing by the trial court judge and made only when
52 circumstances or factors reasonably justify the mitigation of
53 the sentence due to a mitigating circumstance of a kind, or to a
54 degree, not adequately taken into consideration in the
55 formulation of the code. The level of proof necessary to
56 establish facts that support a departure from the lowest
57 recommended ~~permissible~~ sentence is a preponderance of the
58 evidence.

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59 (g) The trial court judge may impose a sentence above the
60 highest sentence recommended by the code when circumstances or
61 factors reasonably justify the aggravation of the sentence due
62 to an aggravating circumstance of a kind, or to a degree, not
63 adequately taken into consideration in the formulation of the
64 code ~~impose a sentence up to and including the statutory maximum~~
65 for any offense, including an offense that is before the court
66 due to a violation of probation or community control.

67 (h) A sentence may be appealed on the basis that it departs
68 from the Criminal Punishment Code only if the sentence is below
69 the lowest recommended ~~permissible~~ sentence or as enumerated in
70 s. 924.06(1).

71 (i) Use of incarcerative sanctions is prioritized toward
72 offenders convicted of serious offenses and certain offenders
73 who have long prior records, in order to maximize the finite
74 capacities of state and local correctional facilities.

75 (2) When a defendant is before the court for sentencing for
76 more than one felony and the felonies were committed under more
77 than one version or revision of the former sentencing guidelines
78 or the code, each felony shall be sentenced under the guidelines
79 or the code in effect at the time the particular felony was
80 committed. This subsection does not apply to sentencing for any
81 capital felony.

82 (3) A court may impose a departure below the lowest
83 recommended ~~permissible~~ sentence based upon circumstances or
84 factors that reasonably justify the mitigation of the sentence
85 in accordance with s. 921.0026. The level of proof necessary to
86 establish facts supporting the mitigation of a sentence is a
87 preponderance of the evidence. When multiple reasons exist to

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88 support the mitigation, the mitigation shall be upheld when at
89 least one circumstance or factor justifies the mitigation
90 regardless of the presence of other circumstances or factors
91 found not to justify mitigation. Any sentence imposed below the
92 lowest recommended ~~permissible~~ sentence must be explained in
93 writing by the trial court judge.

94 (4) (a) The Department of Corrections shall report on trends
95 in sentencing practices and sentencing score thresholds and
96 provide an analysis on the sentencing factors considered by the
97 courts and shall submit this information to the Legislature by
98 October 1 of each year.

99 (b) The Criminal Justice Estimating Conference, with the
100 assistance of the Department of Corrections, shall estimate the
101 impact of any proposed change to the Criminal Punishment Code on
102 future rates of incarceration and on the prison population. The
103 Criminal Justice Estimating Conference shall base its
104 projections on historical data concerning sentencing practices
105 which have been accumulated by the Department of Corrections and
106 other relevant data from other state agencies and records of the
107 Department of Corrections which disclose the average time served
108 for offenses covered by any proposed changes to the Criminal
109 Punishment Code.

110 (c) In order to produce projects that are either required
111 by law or requested by the Legislature to assist the Legislature
112 in making modifications to the Criminal Punishment Code, the
113 Department of Corrections is authorized to collect and evaluate
114 Criminal Punishment Code scoresheets from each of the judicial
115 circuits after sentencing. ~~Beginning in 1999,~~ By October 1 of
116 each year, the Department of Corrections shall provide an annual

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117 report to the Legislature that shows the rate of compliance of
118 each judicial circuit in providing scoresheets to the
119 department.

120 Section 2. Paragraph (b) of subsection (1) and subsections
121 (2), (3), and (4) of section 921.0024, Florida Statutes, are
122 amended to read:

123 921.0024 Criminal Punishment Code; worksheet computations;
124 scoresheets.—

125 (1)

126 (b) WORKSHEET KEY:

127 Legal status points are assessed when any form of legal status
128 existed at the time the offender committed an offense before the
129 court for sentencing. Four (4) sentence points are assessed for
130 an offender's legal status.

131 Community sanction violation points are assessed when a
132 community sanction violation is before the court for sentencing.
133 Six (6) sentence points are assessed for each community sanction
134 violation and each successive community sanction violation,
135 unless any of the following apply:

136 1. If the community sanction violation includes a new
137 felony conviction before the sentencing court, twelve (12)
138 community sanction violation points are assessed for the
139 violation, and for each successive community sanction violation
140 involving a new felony conviction.

141 2. If the community sanction violation is committed by a
142 violent felony offender of special concern as defined in s.
143 948.06:

144 a. Twelve (12) community sanction violation points are
145 assessed for the violation and for each successive violation of

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146 felony probation or community control where:

147 I. The violation does not include a new felony conviction;
148 and

149 II. The community sanction violation is not based solely on
150 the probationer or offender's failure to pay costs or fines or
151 make restitution payments.

152 b. Twenty-four (24) community sanction violation points are
153 assessed for the violation and for each successive violation of
154 felony probation or community control where the violation
155 includes a new felony conviction.

156
157 Multiple counts of community sanction violations before the
158 sentencing court shall not be a basis for multiplying the
159 assessment of community sanction violation points.

160
161 Prior serious felony points: If the offender has a primary
162 offense or any additional offense ranked in level 8, level 9, or
163 level 10, and one or more prior serious felonies, a single
164 assessment of thirty (30) points shall be added. For purposes of
165 this section, a prior serious felony is an offense in the
166 offender's prior record that is ranked in level 8, level 9, or
167 level 10 under s. 921.0022 or s. 921.0023 and for which the
168 offender is serving a sentence of confinement, supervision, or
169 other sanction or for which the offender's date of release from
170 confinement, supervision, or other sanction, whichever is later,
171 is within 3 years before the date the primary offense or any
172 additional offense was committed.

173
174 Prior capital felony points: If the offender has one or more

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175 prior capital felonies in the offender's criminal record, points
176 shall be added to the subtotal sentence points of the offender
177 equal to twice the number of points the offender receives for
178 the primary offense and any additional offense. A prior capital
179 felony in the offender's criminal record is a previous capital
180 felony offense for which the offender has entered a plea of nolo
181 contendere or guilty or has been found guilty; or a felony in
182 another jurisdiction which is a capital felony in that
183 jurisdiction, or would be a capital felony if the offense were
184 committed in this state.

185
186 Possession of a firearm, semiautomatic firearm, or machine gun:
187 If the offender is convicted of committing or attempting to
188 commit any felony other than those enumerated in s. 775.087(2)
189 while having in his or her possession: a firearm as defined in
190 s. 790.001(6), an additional eighteen (18) sentence points are
191 assessed; or if the offender is convicted of committing or
192 attempting to commit any felony other than those enumerated in
193 s. 775.087(3) while having in his or her possession a
194 semiautomatic firearm as defined in s. 775.087(3) or a machine
195 gun as defined in s. 790.001(9), an additional twenty-five (25)
196 sentence points are assessed.

197
198 Sentencing multipliers:

199
200 Drug trafficking: If the primary offense is drug trafficking
201 under s. 893.135, the subtotal sentence points are multiplied,
202 at the discretion of the court, for a level 7 or level 8
203 offense, by 1.5. The state attorney may move the sentencing

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204 court to reduce or suspend the sentence of a person convicted of
205 a level 7 or level 8 offense, if the offender provides
206 substantial assistance as described in s. 893.135(4).

207
208 Law enforcement protection: If the primary offense is a
209 violation of the Law Enforcement Protection Act under s.
210 775.0823(2), (3), or (4), the subtotal sentence points are
211 multiplied by 2.5. If the primary offense is a violation of s.
212 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
213 are multiplied by 2.0. If the primary offense is a violation of
214 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
215 Protection Act under s. 775.0823(10) or (11), the subtotal
216 sentence points are multiplied by 1.5.

217
218 Grand theft of a motor vehicle: If the primary offense is grand
219 theft of the third degree involving a motor vehicle and in the
220 offender's prior record, there are three or more grand thefts of
221 the third degree involving a motor vehicle, the subtotal
222 sentence points are multiplied by 1.5.

223
224 Offense related to a criminal gang: If the offender is convicted
225 of the primary offense and committed that offense for the
226 purpose of benefiting, promoting, or furthering the interests of
227 a criminal gang as defined in s. 874.03, the subtotal sentence
228 points are multiplied by 1.5. If applying the multiplier results
229 in the lowest recommended ~~permissible~~ sentence exceeding the
230 statutory maximum sentence for the primary offense under chapter
231 775, the court may not apply the multiplier and must sentence
232 the defendant to the statutory maximum sentence.

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234 Domestic violence in the presence of a child: If the offender is
235 convicted of the primary offense and the primary offense is a
236 crime of domestic violence, as defined in s. 741.28, which was
237 committed in the presence of a child under 16 years of age who
238 is a family or household member as defined in s. 741.28(3) with
239 the victim or perpetrator, the subtotal sentence points are
240 multiplied by 1.5.

241

242 Adult-on-minor sex offense: If the offender was 18 years of age
243 or older and the victim was younger than 18 years of age at the
244 time the offender committed the primary offense, and if the
245 primary offense was an offense committed on or after October 1,
246 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
247 violation involved a victim who was a minor and, in the course
248 of committing that violation, the defendant committed a sexual
249 battery under chapter 794 or a lewd act under s. 800.04 or s.
250 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
251 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
252 800.04; or s. 847.0135(5), the subtotal sentence points are
253 multiplied by 2.0. If applying the multiplier results in the
254 lowest recommended ~~permissible~~ sentence exceeding the statutory
255 maximum sentence for the primary offense under chapter 775, the
256 court may not apply the multiplier and must sentence the
257 defendant to the statutory maximum sentence.

258

259 (2) The lowest recommended ~~permissible~~ sentence is the
260 recommended minimum sentence that should ~~may~~ be imposed by the
261 recommended ~~permissible~~ sentence is any nonstate prison sanction

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262 in which the total sentence points equals or is less than 44
263 points, unless the court determines within its discretion that a
264 prison sentence, which may be up to the statutory maximums for
265 the offenses committed, is appropriate. When the total sentence
266 points exceeds 44 points, the lowest recommended ~~permissible~~
267 sentence in prison months shall be calculated by subtracting 28
268 points from the total sentence points and decreasing the
269 remaining total by 25 percent. The total sentence points shall
270 be calculated only as a means of determining the lowest
271 recommended ~~permissible~~ sentence. The recommended ~~permissible~~
272 range for sentencing shall be the lowest recommended ~~permissible~~
273 sentence up to and including the statutory maximum, as defined
274 in s. 775.082, for the primary offense and any additional
275 offenses before the court for sentencing. The sentencing court
276 may impose such sentences concurrently or consecutively.
277 However, any sentence to state prison must exceed 1 year. If the
278 lowest recommended ~~permissible~~ sentence under the code exceeds
279 the statutory maximum sentence as provided in s. 775.082, no
280 more than the statutory maximum sentence may ~~required by the~~
281 ~~code must~~ be imposed. If the total sentence points are greater
282 than or equal to 363, the court may sentence the offender to
283 life imprisonment. An offender sentenced to life imprisonment
284 under this section is not eligible for any form of discretionary
285 early release, except executive clemency or conditional medical
286 release under s. 947.149.

287 (3) A single scoresheet shall be prepared for each
288 defendant to determine the recommended ~~permissible~~ range for the
289 sentence that the court may impose, except that if the defendant
290 is before the court for sentencing for more than one felony and

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291 the felonies were committed under more than one version or
292 revision of the guidelines or the code, separate scoresheets
293 must be prepared. The scoresheet or scoresheets must cover all
294 the defendant's offenses pending before the court for
295 sentencing. The state attorney shall prepare the scoresheet or
296 scoresheets, which must be presented to the defense counsel for
297 review for accuracy in all cases unless the judge directs
298 otherwise. The defendant's scoresheet or scoresheets must be
299 approved and signed by the sentencing judge.

300 (4) The Department of Corrections, in consultation with the
301 Office of the State Courts Administrator, state attorneys, and
302 public defenders, must develop and submit the revised Criminal
303 Punishment Code scoresheet to the Supreme Court for approval by
304 June 15 of each year, as necessary. Upon the Supreme Court's
305 approval of the revised scoresheet, the Department of
306 Corrections shall produce and provide sufficient copies of the
307 revised scoresheets by September 30 of each year, as necessary.
308 Scoresheets must include item entries for the scoresheet
309 preparer's use in indicating whether any prison sentence imposed
310 includes a mandatory minimum sentence or the sentence imposed
311 was a downward departure from the lowest recommended ~~permissible~~
312 sentence under the Criminal Punishment Code.

313 Section 3. Section 921.0026, Florida Statutes, is amended
314 to read:

315 921.0026 Mitigating circumstances.—This section applies to
316 any felony offense, except any capital felony, committed on or
317 after October 1, 1998.

318 (1) A downward departure from the lowest recommended
319 ~~permissible~~ sentence, as calculated according to the total

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320 sentence points pursuant to s. 921.0024, is prohibited unless
321 there are circumstances or factors that reasonably justify the
322 downward departure. Mitigating factors to be considered include,
323 but are not limited to, those listed in subsection (2). The
324 imposition of a sentence below the lowest recommended
325 ~~permissible~~ sentence is subject to appellate review under
326 chapter 924, but the extent of downward departure is not subject
327 to appellate review.

328 (2) Mitigating circumstances under which a departure from
329 the lowest recommended ~~permissible~~ sentence is reasonably
330 justified include, but are not limited to:

331 (a) The departure results from a legitimate, uncoerced plea
332 bargain.

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

335 (c) The capacity of the defendant to appreciate the
336 criminal nature of the conduct or to conform that conduct to the
337 requirements of law was substantially impaired.

338 (d) The defendant requires specialized treatment for a
339 mental disorder that is unrelated to substance abuse or
340 addiction or for a physical disability, and the defendant is
341 amenable to treatment.

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

344 (f) The victim was an initiator, willing participant,
345 aggressor, or provoker of the incident.

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

348 (h) Before the identity of the defendant was determined,

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349 the victim was substantially compensated.

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

352 (j) The offense was committed in an unsophisticated manner
353 and was an isolated incident for which the defendant has shown
354 remorse.

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

357 (l) The defendant is to be sentenced as a youthful
358 offender.

359 (m) The defendant's offense is a nonviolent felony, the
360 defendant's Criminal Punishment Code scoresheet total sentence
361 points under s. 921.0024 are 60 points or fewer, and the court
362 determines that the defendant is amenable to the services of a
363 postadjudicatory treatment-based drug court program and is
364 otherwise qualified to participate in the program as part of the
365 sentence. For purposes of this paragraph, the term "nonviolent
366 felony" has the same meaning as provided in s. 948.08(6).

367 (n) The defendant was making a good faith effort to obtain
368 or provide medical assistance for an individual experiencing a
369 drug-related overdose.

370 (3) Except as provided in paragraph (2)(m), the defendant's
371 substance abuse or addiction, including intoxication at the time
372 of the offense, is not a mitigating factor under subsection (2)
373 and does not, under any circumstances, justify a downward
374 departure from the recommended ~~permissible~~ sentencing range.

375 Section 4. Section 921.00265, Florida Statutes, is amended
376 to read:

377 921.00265 Recommended sentences; departure sentences;

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378 mandatory minimum sentences.—This section applies to any felony
379 offense, except any capital felony, committed on or after
380 October 1, 1998.

381 (1) The lowest recommended ~~permissible~~ sentence provided by
382 calculations from the total sentence points pursuant to s.
383 921.0024(2) is assumed to be the lowest appropriate sentence for
384 the offender being sentenced. A departure sentence is
385 discouraged ~~prohibited~~ unless there are mitigating circumstances
386 or factors present as provided in s. 921.0026 which reasonably
387 justify a departure.

388 (2) A sentence that decreases an offender's sentence below
389 the lowest recommended ~~permissible~~ sentence is a departure
390 sentence and must be accompanied by a written statement by the
391 sentencing court delineating the reasons for the departure,
392 filed within 7 days after the date of sentencing. A written
393 transcription of reasons stated orally at sentencing for
394 departure from the lowest recommended ~~permissible~~ sentence is
395 permissible if it is filed by the court within 7 days after the
396 date of sentencing.

397 (3) Any offender who is sentenced to a departure sentence
398 or any offender who is subject to a minimum mandatory sentence
399 must have the departure sentence and any minimum mandatory
400 sentence so noted on the sentencing scoresheet.

401 Section 5. This act shall take effect July 1, 2017.