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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
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The Committee on Criminal Justice (Bracy) recommended the following:

1           **Senate Amendment to Amendment (423494) (with title**  
2 **amendment)**

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4           Between lines 2067 and 2068  
5 insert:

6           Section 8. Present subsection (11) of section 775.082,  
7 Florida Statutes, is redesignated as subsection (12), and a new  
8 subsection (11) is added to that section, to read:

9           775.082 Penalties; applicability of sentencing structures;  
10 mandatory minimum sentences for certain reoffenders previously



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11 released from prison.-

12 (11) If a defendant is sentenced for a primary offense of  
13 possession of a controlled substance committed on or after  
14 October 1, 2017, and if the total sentence points pursuant to s.  
15 921.0024 are 60 points or fewer, the court must sentence the  
16 offender to a nonstate prison sanction. However, if the court  
17 makes written findings that a nonstate prison sanction could  
18 present a danger to the public, the court may sentence the  
19 offender to a state correctional facility pursuant to this  
20 section. As used in this subsection, the term "possession of a  
21 controlled substance" means possession of a controlled substance  
22 in violation of s. 893.13, but does not include possession with  
23 intent to sell, manufacture, or deliver a controlled substance  
24 or possession of a controlled substance in violation of s.  
25 893.135.

26 Section 9. Section 921.0026, Florida Statutes, is amended  
27 to read:

28 921.0026 Mitigating circumstances.—This section applies to  
29 any felony offense, except any capital felony, committed on or  
30 after October 1, 1998.

31 (1) A downward departure from the lowest permissible  
32 sentence, as calculated according to the total sentence points  
33 pursuant to s. 921.0024, is prohibited unless there are  
34 circumstances or factors that reasonably justify the downward  
35 departure. Mitigating factors to be considered include, but are  
36 not limited to, those listed in subsection (2). The imposition  
37 of a sentence below the lowest permissible sentence is subject  
38 to appellate review under chapter 924, but the extent of  
39 downward departure is not subject to appellate review.



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40 (2) Mitigating circumstances under which a departure from  
41 the lowest permissible sentence is reasonably justified include,  
42 but are not limited to:

43 (a) The departure results from a legitimate, uncoerced plea  
44 bargain.

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

47 (c) The capacity of the defendant to appreciate the  
48 criminal nature of the conduct or to conform that conduct to the  
49 requirements of law was substantially impaired.

50 (d) For an offense committed on or after October 1, 1998,  
51 but before October 1, 2017, the defendant requires specialized  
52 treatment for a mental disorder that is unrelated to substance  
53 abuse or addiction or for a physical disability, and the  
54 defendant is amenable to treatment.

55 (e) For an offense committed on or after October 1, 2017,  
56 the defendant requires specialized treatment for an addiction, a  
57 mental disorder, or a physical disability, and the defendant is  
58 amenable to treatment.

59 ~~(f)(e)~~ The need for payment of restitution to the victim  
60 outweighs the need for a prison sentence.

61 ~~(g)(f)~~ The victim was an initiator, willing participant,  
62 aggressor, or provoker of the incident.

63 ~~(h)(g)~~ The defendant acted under extreme duress or under  
64 the domination of another person.

65 ~~(i)(h)~~ Before the identity of the defendant was determined,  
66 the victim was substantially compensated.

67 ~~(j)(i)~~ The defendant cooperated with the state to resolve  
68 the current offense or any other offense.



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69        (k)~~(j)~~ The offense was committed in an unsophisticated  
70 manner and was an isolated incident for which the defendant has  
71 shown remorse.

72        (l)~~(k)~~ At the time of the offense the defendant was too  
73 young to appreciate the consequences of the offense.

74        (m)~~(l)~~ The defendant is to be sentenced as a youthful  
75 offender.

76        (n)~~(m)~~ For an offense committed on or after October 1,  
77 1998, but before October 1, 2017, the defendant's offense is a  
78 nonviolent felony, the defendant's Criminal Punishment Code  
79 scoresheet total sentence points under s. 921.0024 are 60 points  
80 or fewer, and the court determines that the defendant is  
81 amenable to the services of a postadjudicatory treatment-based  
82 drug court program and is otherwise qualified to participate in  
83 the program as part of the sentence. Except as provided in this  
84 paragraph, the defendant's substance abuse or addiction,  
85 including intoxication at the time of the offense, is not a  
86 mitigating factor for an offense committed on or after October  
87 1, 1998, but before October 1, 2017, and does not, under any  
88 circumstance, justify a downward departure from the permissible  
89 sentencing range ~~For purposes of this paragraph, the term~~  
90 ~~"nonviolent felony" has the same meaning as provided in s.~~  
91 ~~948.08(6).~~

92        (o)~~(n)~~ The defendant was making a good faith effort to  
93 obtain or provide medical assistance for an individual  
94 experiencing a drug-related overdose.

95        (3) As used in subsection (2), the term "nonviolent felony"  
96 has the same meaning as provided in s. 948.08 ~~Except as provided~~  
97 ~~in paragraph (2) (m), the defendant's substance abuse or~~



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98 ~~addiction, including intoxication at the time of the offense, is~~  
99 ~~not a mitigating factor under subsection (2) and does not, under~~  
100 ~~any circumstances, justify a downward departure from the~~  
101 ~~permissible sentencing range.~~

102 Section 10. Subsection (7) of section 948.01, Florida  
103 Statutes, is amended to read:

104 948.01 When court may place defendant on probation or into  
105 community control.—

106 (7) (a) Notwithstanding s. 921.0024 and effective for  
107 offenses committed on or after July 1, 2009, the sentencing  
108 court may place the defendant into a postadjudicatory treatment-  
109 based drug court program if the defendant's Criminal Punishment  
110 Code scoresheet total sentence points under s. 921.0024 are 60  
111 points or fewer, the offense is a nonviolent felony, the  
112 defendant is amenable to substance abuse treatment, and the  
113 defendant otherwise qualifies under s. 397.334(3). The  
114 satisfactory completion of the program shall be a condition of  
115 the defendant's probation or community control. ~~As used in this~~  
116 ~~subsection, the term "nonviolent felony" means a third degree~~  
117 ~~felony violation under chapter 810 or any other felony offense~~  
118 ~~that is not a forcible felony as defined in s. 776.08.~~

119 (b) Notwithstanding s. 921.0024 and effective for offenses  
120 committed on or after October 1, 2017, the sentencing court must  
121 place the defendant into a postadjudicatory treatment-based drug  
122 court program, into residential drug treatment, or on drug  
123 offender probation if the defendant's Criminal Punishment Code  
124 scoresheet total sentence points under s. 921.0024 are 60 points  
125 or fewer, the offense is a nonviolent felony, the defendant is  
126 amenable to substance abuse treatment, the defendant's criminal



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127 behavior is related to substance abuse or addiction, and the  
128 defendant otherwise qualifies under s. 397.334(3). The  
129 satisfactory completion of the program must be a condition of  
130 the defendant's probation or community control.

131 (c) ~~(b)~~ In order to be placed in a postadjudicatory  
132 treatment-based drug court program under paragraph (a) or  
133 paragraph (b), the defendant must be fully advised of the  
134 purpose of the program, and the defendant must agree to enter  
135 the program. The original sentencing court shall relinquish  
136 jurisdiction of the defendant's case to the postadjudicatory  
137 drug court program until the defendant is no longer active in  
138 the program, the case is returned to the sentencing court due to  
139 the defendant's termination from the program for failure to  
140 comply with the terms thereof, or the defendant's sentence is  
141 completed.

142 (d) As used in this subsection, the term "nonviolent  
143 felony" means a third degree felony violation under chapter 810  
144 or any other felony offense that is not a forcible felony as  
145 defined in s. 776.08.

146 Section 11. For the purpose of incorporating the amendment  
147 made by this act to section 921.0026, Florida Statutes, in  
148 references thereto, paragraphs (b) and (c) of subsection (1) of  
149 section 775.08435, Florida Statutes, are reenacted to read:

150 775.08435 Prohibition on withholding adjudication in felony  
151 cases.—

152 (1) Notwithstanding the provisions of s. 948.01, the court  
153 may not withhold adjudication of guilt upon the defendant for:

154 (b) A second degree felony offense unless:

155 1. The state attorney requests in writing that adjudication



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156 be withheld; or

157         2. The court makes written findings that the withholding of  
158 adjudication is reasonably justified based on circumstances or  
159 factors in accordance with those set forth in s. 921.0026.

160

161 Notwithstanding any provision of this section, no adjudication  
162 of guilt shall be withheld for a second degree felony offense if  
163 the defendant has a prior withholding of adjudication for a  
164 felony that did not arise from the same transaction as the  
165 current felony offense.

166         (c) A third degree felony offense if the defendant has a  
167 prior withholding of adjudication for a felony offense that did  
168 not arise from the same transaction as the current felony  
169 offense unless:

170             1. The state attorney requests in writing that adjudication  
171 be withheld; or

172             2. The court makes written findings that the withholding of  
173 adjudication is reasonably justified based on circumstances or  
174 factors in accordance with those set forth in s. 921.0026.

175

176 Notwithstanding any provision of this section, no adjudication  
177 of guilt shall be withheld for a third degree felony offense if  
178 the defendant has two or more prior withholdings of adjudication  
179 for a felony that did not arise from the same transaction as the  
180 current felony offense.

181         Section 12. For the purpose of incorporating the amendment  
182 made by this act to section 921.0026, Florida Statutes, in a  
183 reference thereto, subsection (3) of section 921.002, Florida  
184 Statutes, is reenacted to read:



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185           921.002 The Criminal Punishment Code.—The Criminal  
186 Punishment Code shall apply to all felony offenses, except  
187 capital felonies, committed on or after October 1, 1998.

188           (3) A court may impose a departure below the lowest  
189 permissible sentence based upon circumstances or factors that  
190 reasonably justify the mitigation of the sentence in accordance  
191 with s. 921.0026. The level of proof necessary to establish  
192 facts supporting the mitigation of a sentence is a preponderance  
193 of the evidence. When multiple reasons exist to support the  
194 mitigation, the mitigation shall be upheld when at least one  
195 circumstance or factor justifies the mitigation regardless of  
196 the presence of other circumstances or factors found not to  
197 justify mitigation. Any sentence imposed below the lowest  
198 permissible sentence must be explained in writing by the trial  
199 court judge.

200           Section 13. For the purpose of incorporating the amendment  
201 made by this act to section 921.0026, Florida Statutes, in a  
202 reference thereto, subsection (1) of section 921.00265, Florida  
203 Statutes, is reenacted to read:

204           921.00265 Recommended sentences; departure sentences;  
205 mandatory minimum sentences.—This section applies to any felony  
206 offense, except any capital felony, committed on or after  
207 October 1, 1998.

208           (1) The lowest permissible sentence provided by  
209 calculations from the total sentence points pursuant to s.  
210 921.0024(2) is assumed to be the lowest appropriate sentence for  
211 the offender being sentenced. A departure sentence is prohibited  
212 unless there are mitigating circumstances or factors present as  
213 provided in s. 921.0026 which reasonably justify a departure.





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214 Section 14. For the purpose of incorporating the amendment  
215 made by this act to section 948.01, Florida Statutes, in  
216 references thereto, subsection (2) and paragraph (a) of  
217 subsection (4) of section 394.47892, Florida Statutes, are  
218 reenacted to read:

219 394.47892 Mental health court programs.—

220 (2) Mental health court programs may include pretrial  
221 intervention programs as provided in ss. 948.08, 948.16, and  
222 985.345, postadjudicatory mental health court programs as  
223 provided in ss. 948.01 and 948.06, and review of the status of  
224 compliance or noncompliance of sentenced defendants through a  
225 mental health court program.

226 (4) (a) Entry into a postadjudicatory mental health court  
227 program as a condition of probation or community control  
228 pursuant to s. 948.01 or s. 948.06 must be based upon the  
229 sentencing court's assessment of the defendant's criminal  
230 history, mental health screening outcome, amenability to the  
231 services of the program, and total sentence points; the  
232 recommendation of the state attorney and the victim, if any; and  
233 the defendant's agreement to enter the program.

234 Section 15. For the purpose of incorporating the amendment  
235 made by this act to section 948.01, Florida Statutes, in  
236 references thereto, paragraph (a) of subsection (3) and  
237 subsection (5) of section 397.334, Florida Statutes, are  
238 reenacted to read:

239 397.334 Treatment-based drug court programs.—

240 (3) (a) Entry into any postadjudicatory treatment-based drug  
241 court program as a condition of probation or community control  
242 pursuant to s. 948.01, s. 948.06, or s. 948.20 must be based



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243 upon the sentencing court's assessment of the defendant's  
244 criminal history, substance abuse screening outcome, amenability  
245 to the services of the program, total sentence points, the  
246 recommendation of the state attorney and the victim, if any, and  
247 the defendant's agreement to enter the program.

248 (5) Treatment-based drug court programs may include  
249 pretrial intervention programs as provided in ss. 948.08,  
250 948.16, and 985.345, treatment-based drug court programs  
251 authorized in chapter 39, postadjudicatory programs as provided  
252 in ss. 948.01, 948.06, and 948.20, and review of the status of  
253 compliance or noncompliance of sentenced offenders through a  
254 treatment-based drug court program. While enrolled in a  
255 treatment-based drug court program, the participant is subject  
256 to a coordinated strategy developed by a drug court team under  
257 subsection (4). The coordinated strategy may include a protocol  
258 of sanctions that may be imposed upon the participant for  
259 noncompliance with program rules. The protocol of sanctions may  
260 include, but is not limited to, placement in a substance abuse  
261 treatment program offered by a licensed service provider as  
262 defined in s. 397.311 or in a jail-based treatment program or  
263 serving a period of secure detention under chapter 985 if a  
264 child or a period of incarceration within the time limits  
265 established for contempt of court if an adult. The coordinated  
266 strategy must be provided in writing to the participant before  
267 the participant agrees to enter into a treatment-based drug  
268 court program.

269 Section 16. For the purpose of incorporating the amendment  
270 made by this act to section 948.01, Florida Statutes, in a  
271 reference thereto, paragraph (a) of subsection (5) of section



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272 910.035, Florida Statutes, is reenacted to read:

273 910.035 Transfer from county for plea, sentence, or  
274 participation in a problem-solving court.-

275 (5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.-

276 (a) For purposes of this subsection, the term "problem-  
277 solving court" means a drug court pursuant to s. 948.01, s.  
278 948.06, s. 948.08, s. 948.16, or s. 948.20; a military veterans'  
279 and servicemembers' court pursuant to s. 394.47891, s. 948.08,  
280 s. 948.16, or s. 948.21; a mental health court program pursuant  
281 to s. 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16;  
282 or a delinquency pretrial intervention court program pursuant to  
283 s. 985.345.

284 Section 17. For the purpose of incorporating the amendment  
285 made by this act to section 948.01, Florida Statutes, in a  
286 reference thereto, paragraph (c) of subsection (1) of section  
287 921.187, Florida Statutes, is reenacted to read:

288 921.187 Disposition and sentencing; alternatives;  
289 restitution.-

290 (1) The alternatives provided in this section for the  
291 disposition of criminal cases shall be used in a manner that  
292 will best serve the needs of society, punish criminal offenders,  
293 and provide the opportunity for rehabilitation. If the offender  
294 does not receive a state prison sentence, the court may:

295 (c) Place the offender on probation with or without an  
296 adjudication of guilt pursuant to s. 948.01.

297 Section 18. For the purpose of incorporating the amendment  
298 made by this act to section 948.01, Florida Statutes, in a  
299 reference thereto, section 943.04352, Florida Statutes, is  
300 reenacted to read:



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301           943.04352 Search of registration information regarding  
302 sexual predators and sexual offenders required when placement on  
303 misdemeanor probation.—When the court places a defendant on  
304 misdemeanor probation pursuant to ss. 948.01 and 948.15, the  
305 public or private entity providing probation services must  
306 conduct a search of the probationer's name or other identifying  
307 information against the registration information regarding  
308 sexual predators and sexual offenders maintained by the  
309 Department of Law Enforcement under s. 943.043. The probation  
310 services provider may conduct the search using the Internet site  
311 maintained by the Department of Law Enforcement. Also, a  
312 national search must be conducted through the Dru Sjodin  
313 National Sex Offender Public Website maintained by the United  
314 States Department of Justice.

315  
316 ===== T I T L E   A M E N D M E N T =====

317 And the title is amended as follows:

318           Delete line 2537

319 and insert:

320           provisions; amending s. 775.082, F.S.; requiring that  
321 a court sentence a defendant who is convicted of a  
322 primary offense of possession of a controlled  
323 substance committed on or after a specified date to a  
324 nonstate prison sanction under certain circumstances;  
325 defining the term "possession of a controlled  
326 substance"; amending s. 921.0026, F.S.; revising the  
327 mitigating circumstances under which a departure from  
328 the lowest permissible sentence is reasonably  
329 justified; making technical changes; amending s.



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330 948.01, F.S.; requiring a sentencing court to place  
331 certain defendants who commit an offense on or after a  
332 specified date into a postadjudicatory treatment-based  
333 drug court program, into residential drug treatment,  
334 or on drug offender probation; making technical  
335 changes; reenacting ss. 775.08435(1)(b) and (c),  
336 921.002(3), and 921.00265(1), F.S., relating to the  
337 prohibition on withholding adjudication in felony  
338 cases, the Criminal Punishment Code, and recommended  
339 and departure sentences, respectively, to incorporate  
340 the amendment made to s. 921.0026, F.S., in references  
341 thereto; reenacting ss. 394.47892(2) and (4)(a),  
342 397.334(3)(a) and (5), 910.035(5)(a), 921.187(1)(c),  
343 and 943.04352, F.S., relating to mental health court  
344 programs, treatment-based drug court programs,  
345 transfer for participation in a problem-solving court,  
346 offender probation with or without adjudication of  
347 guilt, and court placement of a defendant on  
348 misdemeanor probation, respectively, to incorporate  
349 the amendment made to s. 948.01, F.S., in references  
350 thereto; reenacting ss. 39.806(1)(d), 63.089(4)(b),