

26 | reason for departure.

27 | (b)1. For offenses committed on or after October 1, 1998,
28 | and before October 1, 2018, the lowest permissible sentence is
29 | any nonstate prison sanction in which the total sentence points
30 | equals or is less than 44 points, unless the court determines
31 | within its discretion that a prison sentence, which may be up to
32 | the statutory maximums for the offenses committed, is
33 | appropriate. When the total sentence points exceeds 44 points,
34 | the lowest permissible sentence in prison months shall be
35 | calculated by subtracting 28 points from the total sentence
36 | points and decreasing the remaining total by 25 percent.

37 | 2. For offenses committed on or after October 1, 2018, the
38 | lowest permissible sentence is any nonstate prison sanction in
39 | which the total sentence points equals or is less than 52
40 | points, unless the court determines within its discretion that a
41 | prison sentence, which may be up to the statutory maximums for
42 | the offenses committed, is appropriate. When the total sentence
43 | points exceeds 52 points, the lowest permissible sentence in
44 | prison months shall be calculated by subtracting 36 points from
45 | the total sentence points and decreasing the remaining total by
46 | 25 percent.

47 | (c) The total sentence points shall be calculated only as
48 | a means of determining the lowest permissible sentence. The
49 | permissible range for sentencing shall be the lowest permissible
50 | sentence up to and including the statutory maximum, as defined

51 in s. 775.082, for the primary offense and any additional
52 offenses before the court for sentencing. The sentencing court
53 may impose such sentences concurrently or consecutively.
54 However, any sentence to state prison must exceed 1 year. If the
55 lowest permissible sentence under the code exceeds the statutory
56 maximum sentence as provided in s. 775.082, the sentence
57 required by the code must be imposed. If the total sentence
58 points are greater than or equal to 363, the court may sentence
59 the offender to life imprisonment. An offender sentenced to life
60 imprisonment under this section is not eligible for any form of
61 discretionary early release, except executive clemency or
62 conditional medical release under s. 947.149.

63 Section 2. For the purpose of incorporating the amendment
64 made by this act to section 921.0024, Florida Statutes, in a
65 reference thereto, subsection (10) of section 775.082, Florida
66 Statutes, is reenacted to read:

67 775.082 Penalties; applicability of sentencing structures;
68 mandatory minimum sentences for certain reoffenders previously
69 released from prison.—

70 (10) If a defendant is sentenced for an offense committed
71 on or after July 1, 2009, which is a third degree felony but not
72 a forcible felony as defined in s. 776.08, and excluding any
73 third degree felony violation under chapter 810, and if the
74 total sentence points pursuant to s. 921.0024 are 22 points or
75 fewer, the court must sentence the offender to a nonstate prison

76 | sanction. However, if the court makes written findings that a
77 | nonstate prison sanction could present a danger to the public,
78 | the court may sentence the offender to a state correctional
79 | facility pursuant to this section.

80 | Section 3. For the purpose of incorporating the amendment
81 | made by this act to section 921.0024, Florida Statutes, in a
82 | reference thereto, subsection (1) of section 921.00241, Florida
83 | Statutes, is reenacted to read:

84 | 921.00241 Prison diversion program.—

85 | (1) Notwithstanding s. 921.0024 and effective for offenses
86 | committed on or after July 1, 2009, a court may divert from the
87 | state correctional system an offender who would otherwise be
88 | sentenced to a state facility by sentencing the offender to a
89 | nonstate prison sanction as provided in subsection (2). An
90 | offender may be sentenced to a nonstate prison sanction if the
91 | offender meets all of the following criteria:

92 | (a) The offender's primary offense is a felony of the
93 | third degree.

94 | (b) The offender's total sentence points score, as
95 | provided in s. 921.0024, is not more than 48 points, or the
96 | offender's total sentence points score is 54 points and 6 of
97 | those points are for a violation of probation, community
98 | control, or other community supervision, and do not involve a
99 | new violation of law.

100 | (c) The offender has not been convicted or previously

101 convicted of a forcible felony as defined in s. 776.08, but
102 excluding any third degree felony violation under chapter 810.

103 (d) The offender's primary offense does not require a
104 minimum mandatory sentence.

105 Section 4. For the purpose of incorporating the amendment
106 made by this act to section 921.0024, Florida Statutes, in
107 references thereto, subsection (1) and paragraph (m) of
108 subsection (2) of section 921.0026, Florida Statutes, is
109 reenacted to read:

110 921.0026 Mitigating circumstances.—This section applies to
111 any felony offense, except any capital felony, committed on or
112 after October 1, 1998.

113 (1) A downward departure from the lowest permissible
114 sentence, as calculated according to the total sentence points
115 pursuant to s. 921.0024, is prohibited unless there are
116 circumstances or factors that reasonably justify the downward
117 departure. Mitigating factors to be considered include, but are
118 not limited to, those listed in subsection (2). The imposition
119 of a sentence below the lowest permissible sentence is subject
120 to appellate review under chapter 924, but the extent of
121 downward departure is not subject to appellate review.

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

125 (m) The defendant's offense is a nonviolent felony, the

126 defendant's Criminal Punishment Code scoresheet total sentence
 127 points under s. 921.0024 are 60 points or fewer, and the court
 128 determines that the defendant is amenable to the services of a
 129 postadjudicatory treatment-based drug court program and is
 130 otherwise qualified to participate in the program as part of the
 131 sentence. For purposes of this paragraph, the term "nonviolent
 132 felony" has the same meaning as provided in s. 948.08(6).

133 Section 5. For the purpose of incorporating the amendment
 134 made by this act to section 921.0024, Florida Statutes, in a
 135 reference thereto, subsection (1) of section 921.00265, Florida
 136 Statutes, is reenacted to read:

137 921.00265 Recommended sentences; departure sentences;
 138 mandatory minimum sentences.—This section applies to any felony
 139 offense, except any capital felony, committed on or after
 140 October 1, 1998.

141 (1) The lowest permissible sentence provided by
 142 calculations from the total sentence points pursuant to s.
 143 921.0024(2) is assumed to be the lowest appropriate sentence for
 144 the offender being sentenced. A departure sentence is prohibited
 145 unless there are mitigating circumstances or factors present as
 146 provided in s. 921.0026 which reasonably justify a departure.

147 Section 6. For the purpose of incorporating the amendment
 148 made by this act to section 921.0024, Florida Statutes, in a
 149 reference thereto, paragraph (e) of subsection (1) of section
 150 924.06, Florida Statutes, is reenacted to read:

151 924.06 Appeal by defendant.—

152 (1) A defendant may appeal from:

153 (e) A sentence imposed under s. 921.0024 of the Criminal
 154 Punishment Code which exceeds the statutory maximum penalty
 155 provided in s. 775.082 for an offense at conviction, or the
 156 consecutive statutory maximums for offenses at conviction,
 157 unless otherwise provided by law.

158 Section 7. For the purpose of incorporating the amendment
 159 made by this act to section 921.0024, Florida Statutes, in
 160 references thereto, subsections (7) and (8) of section 948.01,
 161 Florida Statutes, are reenacted to read:

162 948.01 When court may place defendant on probation or into
 163 community control.—

164 (7) (a) Notwithstanding s. 921.0024 and effective for
 165 offenses committed on or after July 1, 2009, the sentencing
 166 court may place the defendant into a postadjudicatory treatment-
 167 based drug court program if the defendant's Criminal Punishment
 168 Code scoresheet total sentence points under s. 921.0024 are 60
 169 points or fewer, the offense is a nonviolent felony, the
 170 defendant is amenable to substance abuse treatment, and the
 171 defendant otherwise qualifies under s. 397.334(3). The
 172 satisfactory completion of the program shall be a condition of
 173 the defendant's probation or community control. As used in this
 174 subsection, the term "nonviolent felony" means a third degree
 175 felony violation under chapter 810 or any other felony offense

176 that is not a forcible felony as defined in s. 776.08.

177 (b) The defendant must be fully advised of the purpose of
178 the program, and the defendant must agree to enter the program.
179 The original sentencing court shall relinquish jurisdiction of
180 the defendant's case to the postadjudicatory drug court program
181 until the defendant is no longer active in the program, the case
182 is returned to the sentencing court due to the defendant's
183 termination from the program for failure to comply with the
184 terms thereof, or the defendant's sentence is completed.

185 (8)(a) Notwithstanding s. 921.0024 and effective for
186 offenses committed on or after July 1, 2016, the sentencing
187 court may place the defendant into a postadjudicatory mental
188 health court program if the offense is a nonviolent felony, the
189 defendant is amenable to mental health treatment, including
190 taking prescribed medications, and the defendant is otherwise
191 qualified under s. 394.47892(4). The satisfactory completion of
192 the program must be a condition of the defendant's probation or
193 community control. As used in this subsection, the term
194 "nonviolent felony" means a third degree felony violation under
195 chapter 810 or any other felony offense that is not a forcible
196 felony as defined in s. 776.08. Defendants charged with
197 resisting an officer with violence under s. 843.01, battery on a
198 law enforcement officer under s. 784.07, or aggravated assault
199 may participate in the mental health court program if the court
200 so orders after the victim is given his or her right to provide

201 testimony or written statement to the court as provided in s.
 202 921.143.

203 (b) The defendant must be fully advised of the purpose of
 204 the mental health court program, and the defendant must agree to
 205 enter the program. The original sentencing court shall
 206 relinquish jurisdiction of the defendant's case to the
 207 postadjudicatory mental health court program until the defendant
 208 is no longer active in the program, the case is returned to the
 209 sentencing court due to the defendant's termination from the
 210 program for failure to comply with the terms thereof, or the
 211 defendant's sentence is completed.

212 (c) The Department of Corrections may establish designated
 213 and trained mental health probation officers to support
 214 individuals under supervision of the mental health court
 215 program.

216 Section 8. For the purpose of incorporating the amendment
 217 made by this act to section 921.0024, Florida Statutes, in
 218 references thereto, paragraphs (i) and (j) of subsection (2) and
 219 paragraph (b) of subsection (8) of section 948.06, Florida
 220 Statutes, are reenacted to read:

221 948.06 Violation of probation or community control;
 222 revocation; modification; continuance; failure to pay
 223 restitution or cost of supervision.—

224 (2)

225 (i)1. Notwithstanding s. 921.0024 and effective for

226 offenses committed on or after July 1, 2009, the court may order
227 the defendant to successfully complete a postadjudicatory
228 treatment-based drug court program if:

229 a. The court finds or the offender admits that the
230 offender has violated his or her community control or probation;

231 b. The offender's Criminal Punishment Code scoresheet
232 total sentence points under s. 921.0024 are 60 points or fewer
233 after including points for the violation;

234 c. The underlying offense is a nonviolent felony. As used
235 in this subsection, the term "nonviolent felony" means a third
236 degree felony violation under chapter 810 or any other felony
237 offense that is not a forcible felony as defined in s. 776.08;

238 d. The court determines that the offender is amenable to
239 the services of a postadjudicatory treatment-based drug court
240 program;

241 e. The court has explained the purpose of the program to
242 the offender and the offender has agreed to participate; and

243 f. The offender is otherwise qualified to participate in
244 the program under the provisions of s. 397.334(3).

245 2. After the court orders the modification of community
246 control or probation, the original sentencing court shall
247 relinquish jurisdiction of the offender's case to the
248 postadjudicatory treatment-based drug court program until the
249 offender is no longer active in the program, the case is
250 returned to the sentencing court due to the offender's

251 termination from the program for failure to comply with the
252 terms thereof, or the offender's sentence is completed.

253 (j)1. Notwithstanding s. 921.0024 and effective for
254 offenses committed on or after July 1, 2016, the court may order
255 the offender to successfully complete a postadjudicatory mental
256 health court program under s. 394.47892 or a military veterans
257 and servicemembers court program under s. 394.47891 if:

258 a. The court finds or the offender admits that the
259 offender has violated his or her community control or probation;

260 b. The underlying offense is a nonviolent felony. As used
261 in this subsection, the term "nonviolent felony" means a third
262 degree felony violation under chapter 810 or any other felony
263 offense that is not a forcible felony as defined in s. 776.08.
264 Offenders charged with resisting an officer with violence under
265 s. 843.01, battery on a law enforcement officer under s. 784.07,
266 or aggravated assault may participate in the mental health court
267 program if the court so orders after the victim is given his or
268 her right to provide testimony or written statement to the court
269 as provided in s. 921.143;

270 c. The court determines that the offender is amenable to
271 the services of a postadjudicatory mental health court program,
272 including taking prescribed medications, or a military veterans
273 and servicemembers court program;

274 d. The court explains the purpose of the program to the
275 offender and the offender agrees to participate; and

276 e. The offender is otherwise qualified to participate in a
 277 postadjudicatory mental health court program under s.
 278 394.47892(4) or a military veterans and servicemembers court
 279 program under s. 394.47891.

280 2. After the court orders the modification of community
 281 control or probation, the original sentencing court shall
 282 relinquish jurisdiction of the offender's case to the
 283 postadjudicatory mental health court program until the offender
 284 is no longer active in the program, the case is returned to the
 285 sentencing court due to the offender's termination from the
 286 program for failure to comply with the terms thereof, or the
 287 offender's sentence is completed.

288 (8)

289 (b) For purposes of this section and ss. 903.0351,
 290 948.064, and 921.0024, the term "violent felony offender of
 291 special concern" means a person who is on:

292 1. Felony probation or community control related to the
 293 commission of a qualifying offense committed on or after the
 294 effective date of this act;

295 2. Felony probation or community control for any offense
 296 committed on or after the effective date of this act, and has
 297 previously been convicted of a qualifying offense;

298 3. Felony probation or community control for any offense
 299 committed on or after the effective date of this act, and is
 300 found to have violated that probation or community control by

301 committing a qualifying offense;

302 4. Felony probation or community control and has
303 previously been found by a court to be a habitual violent felony
304 offender as defined in s. 775.084(1)(b) and has committed a
305 qualifying offense on or after the effective date of this act;

306 5. Felony probation or community control and has
307 previously been found by a court to be a three-time violent
308 felony offender as defined in s. 775.084(1)(c) and has committed
309 a qualifying offense on or after the effective date of this act;
310 or

311 6. Felony probation or community control and has
312 previously been found by a court to be a sexual predator under
313 s. 775.21 and has committed a qualifying offense on or after the
314 effective date of this act.

315 Section 9. For the purpose of incorporating the amendment
316 made by this act to section 921.0024, Florida Statutes, in a
317 reference thereto, subsection (1) of section 948.20, Florida
318 Statutes, is reenacted to read:

319 948.20 Drug offender probation.—

320 (1) If it appears to the court upon a hearing that the
321 defendant is a chronic substance abuser whose criminal conduct
322 is a violation of s. 893.13(2)(a) or (6)(a), or other nonviolent
323 felony if such nonviolent felony is committed on or after July
324 1, 2009, and notwithstanding s. 921.0024 the defendant's
325 Criminal Punishment Code scoresheet total sentence points are 60

326 | points or fewer, the court may either adjudge the defendant
327 | guilty or stay and withhold the adjudication of guilt. In either
328 | case, the court may also stay and withhold the imposition of
329 | sentence and place the defendant on drug offender probation or
330 | into a postadjudicatory treatment-based drug court program if
331 | the defendant otherwise qualifies. As used in this section, the
332 | term "nonviolent felony" means a third degree felony violation
333 | under chapter 810 or any other felony offense that is not a
334 | forcible felony as defined in s. 776.08.

335 | Section 10. This act shall take effect October 1, 2018.