

By Senator Bracy

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1                   A bill to be entitled  
2       An act relating to sentencing; amending s. 921.0024,  
3       F.S.; revising the computation of the lowest  
4       permissible sentence under the Criminal Punishment  
5       Code; reenacting ss. 775.082(10), 921.00241(1),  
6       921.0026(1) and (2)(m), 921.00265(1), 924.06(1)(e),  
7       948.01(7) and (8), 948.06(2)(i) and (j) and (8)(b),  
8       and 948.20(1), F.S., relating to penalties, prison  
9       diversion programs, mitigating circumstances,  
10      recommended sentences, appeals by defendants,  
11      placement on probation or community control,  
12      violations of probation and community control, and  
13      drug offender probation, respectively, to incorporate  
14      the amendment made to s. 921.0024, F.S., in references  
15      thereto; providing an effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19       Section 1. Subsection (2) of section 921.0024, Florida  
20 Statutes, is amended to read:

21       921.0024 Criminal Punishment Code; worksheet computations;  
22 scoresheets.—

23       (2) (a) The lowest permissible sentence is the minimum  
24 sentence that may be imposed by the trial court, absent a valid  
25 reason for departure.

26       (b) For offenses committed on or after October 1, 1998, and  
27 before October 1, 2018, the lowest permissible sentence is any  
28 nonstate prison sanction in which the total sentence points  
29 equals or is less than 44 points, unless the court determines

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30 within its discretion that a prison sentence, which may be up to  
31 the statutory maximums for the offenses committed, is  
32 appropriate. When the total sentence points exceeds 44 points,  
33 the lowest permissible sentence in prison months shall be  
34 calculated by subtracting 28 points from the total sentence  
35 points and decreasing the remaining total by 25 percent.

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

46 (d) The total sentence points shall be calculated only as a  
47 means of determining the lowest permissible sentence. The  
48 permissible range for sentencing shall be the lowest permissible  
49 sentence up to and including the statutory maximum, as defined  
50 in s. 775.082, for the primary offense and any additional  
51 offenses before the court for sentencing. The sentencing court  
52 may impose such sentences concurrently or consecutively.  
53 However, any sentence to state prison must exceed 1 year. If the  
54 lowest permissible sentence under the code exceeds the statutory  
55 maximum sentence as provided in s. 775.082, the sentence  
56 required by the code must be imposed. If the total sentence  
57 points are greater than or equal to 363, the court may sentence  
58 the offender to life imprisonment. An offender sentenced to life

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59 imprisonment under this section is not eligible for any form of  
60 discretionary early release, except executive clemency or  
61 conditional medical release under s. 947.149.

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

66 775.082 Penalties; applicability of sentencing structures;  
67 mandatory minimum sentences for certain reoffenders previously  
68 released from prison.—

69 (10) If a defendant is sentenced for an offense committed  
70 on or after July 1, 2009, which is a third degree felony but not  
71 a forcible felony as defined in s. 776.08, and excluding any  
72 third degree felony violation under chapter 810, and if the  
73 total sentence points pursuant to s. 921.0024 are 22 points or  
74 fewer, the court must sentence the offender to a nonstate prison  
75 sanction. However, if the court makes written findings that a  
76 nonstate prison sanction could present a danger to the public,  
77 the court may sentence the offender to a state correctional  
78 facility pursuant to this section.

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

83 921.00241 Prison diversion program.—

84 (1) Notwithstanding s. 921.0024 and effective for offenses  
85 committed on or after July 1, 2009, a court may divert from the  
86 state correctional system an offender who would otherwise be  
87 sentenced to a state facility by sentencing the offender to a

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88 nonstate prison sanction as provided in subsection (2). An  
89 offender may be sentenced to a nonstate prison sanction if the  
90 offender meets all of the following criteria:

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

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

99 (c) The offender has not been convicted or previously  
100 convicted of a forcible felony as defined in s. 776.08, but  
101 excluding any third degree felony violation under chapter 810.

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

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

109 921.0026 Mitigating circumstances.—This section applies to  
110 any felony offense, except any capital felony, committed on or  
111 after October 1, 1998.

112 (1) A downward departure from the lowest permissible  
113 sentence, as calculated according to the total sentence points  
114 pursuant to s. 921.0024, is prohibited unless there are  
115 circumstances or factors that reasonably justify the downward  
116 departure. Mitigating factors to be considered include, but are

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117 not limited to, those listed in subsection (2). The imposition  
118 of a sentence below the lowest permissible sentence is subject  
119 to appellate review under chapter 924, but the extent of  
120 downward departure is not subject to appellate review.

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

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

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

136 921.00265 Recommended sentences; departure sentences;  
137 mandatory minimum sentences.—This section applies to any felony  
138 offense, except any capital felony, committed on or after  
139 October 1, 1998.

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

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

150 924.06 Appeal by defendant.—

151 (1) A defendant may appeal from:

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

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

161 948.01 When court may place defendant on probation or into  
162 community control.—

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

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

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

184 (8) (a) Notwithstanding s. 921.0024 and effective for  
185 offenses committed on or after July 1, 2016, the sentencing  
186 court may place the defendant into a postadjudicatory mental  
187 health court program if the offense is a nonviolent felony, the  
188 defendant is amenable to mental health treatment, including  
189 taking prescribed medications, and the defendant is otherwise  
190 qualified under s. 394.47892(4). The satisfactory completion of  
191 the program must be a condition of the defendant's probation or  
192 community control. As used in this subsection, the term  
193 "nonviolent felony" means a third degree felony violation under  
194 chapter 810 or any other felony offense that is not a forcible  
195 felony as defined in s. 776.08. Defendants charged with  
196 resisting an officer with violence under s. 843.01, battery on a  
197 law enforcement officer under s. 784.07, or aggravated assault  
198 may participate in the mental health court program if the court  
199 so orders after the victim is given his or her right to provide  
200 testimony or written statement to the court as provided in s.  
201 921.143.

202 (b) The defendant must be fully advised of the purpose of  
203 the mental health court program, and the defendant must agree to

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204 enter the program. The original sentencing court shall  
205 relinquish jurisdiction of the defendant's case to the  
206 postadjudicatory mental health court program until the defendant  
207 is no longer active in the program, the case is returned to the  
208 sentencing court due to the defendant's termination from the  
209 program for failure to comply with the terms thereof, or the  
210 defendant's sentence is completed.

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

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

220 948.06 Violation of probation or community control;  
221 revocation; modification; continuance; failure to pay  
222 restitution or cost of supervision.—

223 (2)

224 (i)1. Notwithstanding s. 921.0024 and effective for  
225 offenses committed on or after July 1, 2009, the court may order  
226 the defendant to successfully complete a postadjudicatory  
227 treatment-based drug court program if:

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

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



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

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

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

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

244 2. After the court orders the modification of community  
245 control or probation, the original sentencing court shall  
246 relinquish jurisdiction of the offender's case to the  
247 postadjudicatory treatment-based drug court program until the  
248 offender is no longer active in the program, the case is  
249 returned to the sentencing court due to the offender's  
250 termination from the program for failure to comply with the  
251 terms thereof, or the offender's sentence is completed.

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

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

259 b. The underlying offense is a nonviolent felony. As used  
260 in this subsection, the term "nonviolent felony" means a third  
261 degree felony violation under chapter 810 or any other felony

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262 offense that is not a forcible felony as defined in s. 776.08.  
263 Offenders charged with resisting an officer with violence under  
264 s. 843.01, battery on a law enforcement officer under s. 784.07,  
265 or aggravated assault may participate in the mental health court  
266 program if the court so orders after the victim is given his or  
267 her right to provide testimony or written statement to the court  
268 as provided in s. 921.143;

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

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

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

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

287 (8)

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

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

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

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

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

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

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

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

317 948.20 Drug offender probation.—

318 (1) If it appears to the court upon a hearing that the  
319 defendant is a chronic substance abuser whose criminal conduct

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320 is a violation of s. 893.13(2)(a) or (6)(a), or other nonviolent  
321 felony if such nonviolent felony is committed on or after July  
322 1, 2009, and notwithstanding s. 921.0024 the defendant's  
323 Criminal Punishment Code scoresheet total sentence points are 60  
324 points or fewer, the court may either adjudge the defendant  
325 guilty or stay and withhold the adjudication of guilt. In either  
326 case, the court may also stay and withhold the imposition of  
327 sentence and place the defendant on drug offender probation or  
328 into a postadjudicatory treatment-based drug court program if  
329 the defendant otherwise qualifies. As used in this section, the  
330 term "nonviolent felony" means a third degree felony violation  
331 under chapter 810 or any other felony offense that is not a  
332 forcible felony as defined in s. 776.08.

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