

By Senator Bracy

11-00302B-18

2018866__

1 A bill to be entitled
2 An act relating to sentencing; amending s. 775.082,
3 F.S.; revising the threshold of assessed sentence
4 points below which a court must sentence nonviolent
5 felony offenders who commit certain offenses on or
6 after a specified date to a nonstate prison sanction;
7 providing an exception; amending s. 921.0024, F.S.;
8 revising the computation of the lowest permissible
9 sentence under the Criminal Punishment Code for
10 certain offenses; reenacting ss. 921.00241(1),
11 921.0026(1) and (2)(m), 921.00265(1), 924.06(1)(e),
12 948.01(7) and (8), 948.06(2)(i) and (j) and (8)(b),
13 and 948.20(1), F.S., relating to prison diversion
14 programs, mitigating circumstances, recommended
15 sentences, appeals by defendants, placement on
16 probation or into community control, violations of
17 probation and community control, and drug offender
18 probation, respectively, to incorporate the amendment
19 made to s. 921.0024, F.S., in references thereto;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsection (10) of section 775.082, Florida
25 Statutes, is amended to read:

26 775.082 Penalties; applicability of sentencing structures;
27 mandatory minimum sentences for certain reoffenders previously
28 released from prison.—

29 (10) If a defendant is sentenced for an offense committed

11-00302B-18

2018866__

30 on or after October 1, 2018 ~~July 1, 2009~~, which is a third
31 degree felony but not a forcible felony as defined in s. 776.08,
32 and excluding any third degree felony violation under chapter
33 810, and if the total sentence points pursuant to s. 921.0024
34 are 44 ~~22~~ points or fewer, the court must sentence the offender
35 to a nonstate prison sanction. However, if the jury makes
36 findings, or the defendant waives the right to a jury trial and
37 the court makes written findings, that a nonstate prison
38 sanction could present a danger to the public, the court may
39 sentence the offender to a state correctional facility pursuant
40 to this section.

41 Section 2. Subsection (2) of section 921.0024, Florida
42 Statutes, is amended to read:

43 921.0024 Criminal Punishment Code; worksheet computations;
44 scoresheets.—

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

48 (b) For offenses committed on or after October 1, 1998, and
49 before October 1, 2018, the lowest permissible sentence is any
50 nonstate prison sanction in which the total sentence points
51 equals or is less than 44 points, unless the court determines
52 within its discretion that a prison sentence, which may be up to
53 the statutory maximums for the offenses committed, is
54 appropriate. When the total sentence points exceeds 44 points,
55 the lowest permissible sentence in prison months shall be
56 calculated by subtracting 28 points from the total sentence
57 points and decreasing the remaining total by 25 percent.

58 (c) For offenses committed on or after October 1, 2018, the

11-00302B-18

2018866__

59 lowest permissible sentence is any nonstate prison sanction in
60 which the total sentence points equal or are fewer than 52
61 points, unless the court determines within its discretion that a
62 prison sentence, which may be up to the statutory maximums for
63 the offenses committed, is appropriate. When the total sentence
64 points exceed 52 points, the lowest permissible sentence in
65 prison months shall be calculated by subtracting 36 points from
66 the total sentence points and decreasing the remaining total by
67 25 percent.

68 (d) The total sentence points shall be calculated only as a
69 means of determining the lowest permissible sentence. The
70 permissible range for sentencing shall be the lowest permissible
71 sentence up to and including the statutory maximum, as defined
72 in s. 775.082, for the primary offense and any additional
73 offenses before the court for sentencing. The sentencing court
74 may impose such sentences concurrently or consecutively.
75 However, any sentence to state prison must exceed 1 year. If the
76 lowest permissible sentence under the code exceeds the statutory
77 maximum sentence as provided in s. 775.082, the sentence
78 required by the code must be imposed. If the total sentence
79 points are greater than or equal to 363, the court may sentence
80 the offender to life imprisonment. An offender sentenced to life
81 imprisonment under this section is not eligible for any form of
82 discretionary early release, except executive clemency or
83 conditional medical release under s. 947.149.

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

11-00302B-18

2018866__

88 921.00241 Prison diversion program.—

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

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

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

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

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

109 Section 4. For the purpose of incorporating the amendment
110 made by this act to section 921.0024, Florida Statutes, in
111 references thereto, subsection (1) and paragraph (m) of
112 subsection (2) of section 921.0026, Florida Statutes, are
113 reenacted to read:

114 921.0026 Mitigating circumstances.—This section applies to
115 any felony offense, except any capital felony, committed on or
116 after October 1, 1998.

11-00302B-18

2018866__

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

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

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

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

141 921.00265 Recommended sentences; departure sentences;
142 mandatory minimum sentences.—This section applies to any felony
143 offense, except any capital felony, committed on or after
144 October 1, 1998.

145 (1) The lowest permissible sentence provided by

11-00302B-18

2018866__

146 calculations from the total sentence points pursuant to s.
147 921.0024(2) is assumed to be the lowest appropriate sentence for
148 the offender being sentenced. A departure sentence is prohibited
149 unless there are mitigating circumstances or factors present as
150 provided in s. 921.0026 which reasonably justify a departure.

151 Section 6. For the purpose of incorporating the amendment
152 made by this act to section 921.0024, Florida Statutes, in a
153 reference thereto, paragraph (e) of subsection (1) of section
154 924.06, Florida Statutes, is reenacted to read:

155 924.06 Appeal by defendant.—

156 (1) A defendant may appeal from:

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

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

166 948.01 When court may place defendant on probation or into
167 community control.—

168 (7) (a) Notwithstanding s. 921.0024 and effective for
169 offenses committed on or after July 1, 2009, the sentencing
170 court may place the defendant into a postadjudicatory treatment-
171 based drug court program if the defendant's Criminal Punishment
172 Code scoresheet total sentence points under s. 921.0024 are 60
173 points or fewer, the offense is a nonviolent felony, the
174 defendant is amenable to substance abuse treatment, and the

11-00302B-18

2018866__

175 defendant otherwise qualifies under s. 397.334(3). The
176 satisfactory completion of the program shall be a condition of
177 the defendant's probation or community control. As used in this
178 subsection, the term "nonviolent felony" means a third degree
179 felony violation under chapter 810 or any other felony offense
180 that is not a forcible felony as defined in s. 776.08.

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

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

11-00302B-18

2018866__

204 so orders after the victim is given his or her right to provide
205 testimony or written statement to the court as provided in s.
206 921.143.

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

216 (c) The Department of Corrections may establish designated
217 and trained mental health probation officers to support
218 individuals under supervision of the mental health court
219 program.

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

225 948.06 Violation of probation or community control;
226 revocation; modification; continuance; failure to pay
227 restitution or cost of supervision.—

228 (2)

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

11-00302B-18

2018866__

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

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

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

242 d. The court determines that the offender is amenable to
243 the services of a postadjudicatory treatment-based drug court
244 program;

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

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

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

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

11-00302B-18

2018866__

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

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

274 c. The court determines that the offender is amenable to
275 the services of a postadjudicatory mental health court program,
276 including taking prescribed medications, or a military veterans
277 and servicemembers court program;

278 d. The court explains the purpose of the program to the
279 offender and the offender agrees to participate; and

280 e. The offender is otherwise qualified to participate in a
281 postadjudicatory mental health court program under s.
282 394.47892(4) or a military veterans and servicemembers court
283 program under s. 394.47891.

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

11-00302B-18

2018866__

291 offender's sentence is completed.

292 (8)

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

296 1. Felony probation or community control related to the
297 commission of a qualifying offense committed on or after the
298 effective date of this act;

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

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

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

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

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

318 Section 9. For the purpose of incorporating the amendment
319 made by this act to section 921.0024, Florida Statutes, in a

11-00302B-18

2018866__

320 reference thereto, subsection (1) of section 948.20, Florida
321 Statutes, is reenacted to read:

322 948.20 Drug offender probation.—

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

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