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LEGISLATIVE ACTION

Senate

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House

The Committee on Criminal Justice (Bracy) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 921.0026, Florida Statutes, is amended
to read:

921.0026 Mitigating circumstances.—Except as otherwise
provided in this section, this section applies to any felony
offense, except any capital felony, committed on or after
October 1, 1998.



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11 (1) A downward departure from the lowest permissible
12 sentence, as calculated according to the total sentence points
13 pursuant to s. 921.0024, is prohibited unless there are
14 circumstances or factors that reasonably justify the downward
15 departure. Mitigating factors to be considered include, but are
16 not limited to, those listed in subsection (2). The imposition
17 of a sentence below the lowest permissible sentence is subject
18 to appellate review under chapter 924, but the extent of
19 downward departure is not subject to appellate review.

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

23 (a) The departure results from a legitimate, uncoerced plea
24 bargain.

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

27 (c) The capacity of the defendant to appreciate the
28 criminal nature of the conduct or to conform that conduct to the
29 requirements of law was substantially impaired.

30 (d) For an offense committed on or after October 1, 1998,
31 but before July 1, 2019, the defendant requires specialized
32 treatment for a mental disorder that is unrelated to substance
33 abuse or addiction or for a physical disability, and the
34 defendant is amenable to treatment.

35 (e) For an offense committed on or after July 1, 2019, the
36 defendant requires specialized treatment for a mental disorder,
37 a substance addiction that predates the date of the offense, or
38 a physical disability, and the defendant is amenable to
39 treatment.



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

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

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

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

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

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

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

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

57 ~~(n)(m)~~ For an offense committed on or after October 1,
58 1998, but before July 1, 2019, the defendant's offense is a
59 nonviolent felony, the defendant's Criminal Punishment Code
60 scoresheet total sentence points under s. 921.0024 are 60 points
61 or fewer, and the court determines that the defendant is
62 amenable to the services of a postadjudicatory treatment-based
63 drug court program and is otherwise qualified to participate in
64 the program as part of the sentence. Except as provided in this
65 paragraph, the defendant's substance abuse or addiction,
66 including intoxication at the time of the offense, is not a
67 mitigating factor for an offense committed on or after October
68 1, 1998, but before July 1, 2019, and does not, under any



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69 circumstance, justify a downward departure from the permissible
70 sentencing range. For purposes of this paragraph, the term
71 "nonviolent felony" has the same meaning as provided in s.
72 948.08(6).

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

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

81 Section 2. For the purpose of incorporating the amendment
82 made by this act to section 921.0026, Florida Statutes, in
83 references thereto, paragraph (c) of subsection (1) of section
84 775.08435, Florida Statutes, is reenacted to read:

85 775.08435 Prohibition on withholding adjudication in felony
86 cases.—

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

89 (c) A third degree felony that is a crime of domestic
90 violence as defined in s. 741.28, unless:

91 1. The state attorney requests in writing that adjudication
92 be withheld; or

93 2. The court makes written findings that the withholding of
94 adjudication is reasonably justified based on circumstances or
95 factors in accordance with s. 921.0026.

96 Section 3. For the purpose of incorporating the amendment
97 made by this act to section 921.0026, Florida Statutes, in a



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98 reference thereto, subsection (3) of section 921.002, Florida
99 Statutes, is reenacted to read:

100 921.002 The Criminal Punishment Code.—The Criminal
101 Punishment Code shall apply to all felony offenses, except
102 capital felonies, committed on or after October 1, 1998.

103 (3) A court may impose a departure below the lowest
104 permissible sentence based upon circumstances or factors that
105 reasonably justify the mitigation of the sentence in accordance
106 with s. 921.0026. The level of proof necessary to establish
107 facts supporting the mitigation of a sentence is a preponderance
108 of the evidence. When multiple reasons exist to support the
109 mitigation, the mitigation shall be upheld when at least one
110 circumstance or factor justifies the mitigation regardless of
111 the presence of other circumstances or factors found not to
112 justify mitigation. Any sentence imposed below the lowest
113 permissible sentence must be explained in writing by the trial
114 court judge.

115 Section 4. For the purpose of incorporating the amendment
116 made by this act to section 921.0026, Florida Statutes, in a
117 reference thereto, subsection (1) of section 921.00265, Florida
118 Statutes, is reenacted to read:

119 921.00265 Recommended sentences; departure sentences;
120 mandatory minimum sentences.—This section applies to any felony
121 offense, except any capital felony, committed on or after
122 October 1, 1998.

123 (1) The lowest permissible sentence provided by
124 calculations from the total sentence points pursuant to s.
125 921.0024(2) is assumed to be the lowest appropriate sentence for
126 the offender being sentenced. A departure sentence is prohibited



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127 unless there are mitigating circumstances or factors present as
128 provided in s. 921.0026 which reasonably justify a departure.

129 Section 5. This act shall take effect July 1, 2019.

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131 ===== T I T L E A M E N D M E N T =====

132 And the title is amended as follows:

133 Delete everything before the enacting clause

134 and insert:

135 A bill to be entitled

136 An act relating to mitigating circumstances in
137 sentencing; amending s. 921.0026, F.S.; revising the
138 mitigating circumstances under which a departure from
139 the lowest permissible sentence is reasonably
140 justified; authorizing mitigation of the lowest
141 permissible sentence when a defendant requires
142 specialized treatment for a certain substance
143 addiction and is amenable to treatment; making
144 technical changes; reenacting ss. 775.08435(1)(c),
145 921.002(3), and 921.00265(1), F.S., relating to the
146 prohibition on withholding adjudication in felony
147 cases, the Criminal Punishment Code, and recommended
148 and departure sentences, respectively, to incorporate
149 the amendment made to s. 921.0026, F.S., in references
150 thereto; providing an effective date.