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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2019	.	
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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.