The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL:	CS/SB 1030
INTRODUCER:	Criminal Justice Committee and Senator Bracy
SUBJECT:	Mitigating Circumstances in Sentencing
DATE:	April 3, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Fav/CS**
2.	Forbes	Jameson	ACJ	**Recommend: Favorable**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1030 authorizes a court to mitigate (reduce) a Criminal Punishment Code (Code) sentence if the defendant requires specialized treatment for a mental disorder, a substance addiction that predates the offense, or a physical disability, and the defendant is amenable to treatment. This mitigating circumstance applies to offenses committed on or after July 1, 2019 (the effective date of the bill).

Current law only authorizes mitigation of a Code sentence based on the defendant requiring specialized treatment for substance addiction if the defendant's offense is a nonviolent felony, the defendant's Code scoresheet total sentence points are 60 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. Further, current law precludes mitigation of a Code sentence based on the defendant requiring specialized treatment for a mental disorder if such disorder is related to substance abuse or addiction. The bill retains these current mitigating circumstances in the law but limits their application to offenses committed on or after October 1, 1998 (the effective date of the Code) but before July 1, 2019.

The Office of Economic and Demographic Research preliminarily estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds). See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Criminal Punishment Code

The Criminal Punishment Code[1] (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10).[2] Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.[3] Generally, the permissible sentencing range under the Code is the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.[4]

Downward Departure Sentences

The "primary purpose" of the Code "is to punish the offender."[5] However, a court may "mitigate" or "depart downward" from the scored lowest permissible sentence under the Code, if the court finds a valid, supported mitigating circumstance for the downward departure and determines the downward departure is appropriate. Section 921.0026(2), F.S., provides a non-exclusive list of mitigating circumstances. For example, s. 958.04, F.S., authorizes a court to sentence certain young adults as a "youthful offender." In lieu of incarceration, the court may place a youthful offender under supervision, on probation, or in a community control program, with or without an adjudication of guilt, under such conditions as the court may lawfully impose for a specified period.[6] A youthful offender sentence is a mitigating circumstance listed in s. 921.0026(2)(l), F.S.

The stated legislative sentencing policy regarding downward departure sentences are that such sentences are "prohibited unless there are circumstances or factors that reasonably justify the downward departure."[7] "The mitigating factors specifically listed by the legislature focus on the

[1] Sections 921.002-921.0027, F.S. *See* chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.
[2] Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.
[3] Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.
[4] If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.
[5] Section 921.002(1)(b), F.S. "Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of punishment." *Id.*
[6] Section 958.04(2)(a), F.S
[7] Section 921.0026(1), F.S.

nature of the crime, the conduct of the defendant or the mental capacity, condition, or attitude of the defendant."[8]

"[T]he list of statutory departure reasons provided in section 921.0026(2) is not exclusive."[9] A court "can impose a downward departure sentence for reasons not delineated in section 921.0026(2), so long as the reason given is supported by competent, substantial evidence and is not otherwise prohibited."[10] Further, "[i]n evaluating a non-statutory mitigator, a court must determine whether the asserted reason for a downward departure is consistent with legislative sentencing policies."[11]

Whether dealing with statutory or nonstatutory mitigating circumstances, the court follows a two-step process to determine if a downward departure sentence is appropriate, unless the court determines in the first step of the process that it cannot depart downward. The first step is to determine if the court "*can* depart, i.e., whether there is a valid legal ground and adequate factual support for that ground in the case pending before it[.]"[12] If the first step is satisfied, the court moves on to the second step, which is for the court to determine if it "*should* depart, i.e., whether departure is indeed the best sentencing option for the defendant in the pending case."[13]

History of Substance Addiction as a Reason for a Downward Departure Sentence

The pre-Code sentencing guidelines provided for the following mitigating circumstance: "The defendant requires specialized treatment for addiction, mental disorder, or physical disability, and the defendant is amenable to treatment."[14]

With the enactment of the Code, this mitigating circumstance was modified.[15] As modified, the mitigating circumstance read: "The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment."[16] The Code also specified that the defendant's "substance abuse or addiction, including intoxication,[17] at the time of the offense" was not a mitigating

[8] *State v. Chestnut*, 718 So.2d 312, 313 (Fla. 5th DCA 1999).
[9] *State v. Stephenson*, 973 So.2d 1259, 1263 (Fla. 5th DCA 2008) (citation omitted).
[10] *State v. Henderson*, 108 So.3d 1137, 1140 (Fla. 5th DCA 2013) (citation omitted).
[11] *State v. Knox*, 990 So.2d 665, 669 (Fla. 5th DCA 2008).
[12] *Banks v. State*, 732 So.2d 1065, 1067 (Fla. 1999)(emphasis provided by the court).
[13] *Id.* (emphasis provided by the court) (footnote omitted).
[14] Section 921.0016, F.S. (1996). In 1993, the Legislature codified this mitigating factor which was created by the Florida Supreme Court in 1987. Chapter 93-406, s. 13, L.O.F.; *Barbera v. State*, 505 So.2d 413 (Fla. 1987). In *Barbera*, the court was persuaded that intoxication and drug dependency could mitigate a sentence because the defense of intoxication could be used by a jury to justify convicting a defendant of a lesser offense. In 1999, the Legislature eliminated the voluntary intoxication defense. Chapter 99-174, L.O.F.; s. 775.051, F.S.
[15] Chapter 97-194, s. 8, L.O.F.
[16] Section 921.0026(2)(d), F.S. (1997).
[17] While s. 775.051, F.S., provides that voluntary intoxication resulting from the consumption, injection, or other use of alcohol or other controlled substances (except those legally prescribed) is not a defense to any offense, this does not necessarily preclude the Legislature from addressing substance abuse or addiction, including intoxication, as a mitigating circumstance. For example, while a defendant may not raise as a defense that the victim was a willing participant in the crime, the Legislature has authorized mitigation of a Code sentence based on this circumstance. Section 921.0026(2)(f), F.S.*; State v. Rife*, 789 So.2d 288 (Fla. 2001).

factor and did "not, under any circumstance, justify a downward departure from the permissible sentencing range."[18]

In 2009, the Legislature created a mitigating circumstance in which substance abuse or addiction could be considered: "The defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 52 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence."[19] The only subsequent change to this mitigating circumstance occurred in 2011 when the Legislature increased total sentence points from 52 points to 60 points.[20] Further, since the 2009 change, the law specifies that, except for this mitigating circumstance, the defendant's substance abuse or addiction, including intoxication, is not a mitigating factor.[21]

III. Effect of Proposed Changes:

The bill amends s. 921.0026, F.S., to authorize a court to mitigate (reduce) a Code sentence if the defendant requires specialized treatment for a mental disorder, a substance addiction that predates the offense, or a physical disability, and the defendant is amenable to treatment. This mitigating circumstance applies to offenses committed on or after July 1, 2019 (the effective date of the bill).

Currently, s. 921.0026(2)(m) and (3), F.S., only authorizes mitigation of a Code sentence based on the defendant requiring specialized treatment for substance addiction if the defendant's offense is a nonviolent felony, the defendant's Code scoresheet total sentence points are 60 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. Further, currently, s. 921.0026(2)(d), F.S., precludes mitigation of a Code sentence based on the defendant requiring specialized treatment for a mental disorder if such disorder is related to substance abuse or addiction. The bill retains these current mitigating circumstances in the law but limits their application to offenses committed on or after October 1, 1998 (the effective date of the Code) but before July 1, 2019.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[18] Section 921.0026(3), F.S. (1997).
[19] Section 921.0026(2)(m), F.S.; ch. 2009-64, s. 2, L.O.F. The term "nonviolent felony" has the same meaning as provided in s. 948.08(6), F.S., which defines "nonviolent felony" as a third degree felony violation of ch. 810, F.S., or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.
[20] Chapter 2011-33, s. 2, L.O.F.
[21] Section 921.0026(3), F.S. Further, while current law provides for a mitigating circumstance based on the defendant requiring specialized treatment for a mental disorder if the defendant is amenable to treatment, that mental disorder cannot be related to substance abuse or addiction. Section 921.0026(2)(d), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of Economic and Demographic Research (EDR) preliminarily estimates that the committee substitute will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds).[22] The Department of Corrections estimates the fiscal impact of this bill to be indeterminate at this time.[23]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 921.0026 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 775.08435, 921.002, and 921.00265.

[22] The EDR estimate is on file with the Senate Committee on Criminal Justice.
[23] The DOC, SB 1030 Agency Analysis, p. 3.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 18, 2019:
The Committee Substitute:

- Specifies that the new mitigating circumstance for substance addiction, a mental disorder, or a physical disability applies to offenses committed on or after July 1, 2019.
- Specifies that the current mitigating circumstances relating to substance addiction, a mental disorder, or a physical disability apply to offenses committed on or after October 1, 1998, but before July 1, 2019.

B. Amendments:

None.