

By the Committee on Criminal Justice; and Senator Bracy

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1 A bill to be entitled

2 An act relating to mitigating circumstances in
3 sentencing; amending s. 921.0026, F.S.; revising the
4 mitigating circumstances under which a departure from
5 the lowest permissible sentence is reasonably
6 justified; authorizing mitigation of the lowest
7 permissible sentence when a defendant requires
8 specialized treatment for a certain substance
9 addiction and is amenable to treatment; making
10 technical changes; reenacting ss. 775.08435(1)(c),
11 921.002(3), and 921.00265(1), F.S., relating to the
12 prohibition on withholding adjudication in felony
13 cases, the Criminal Punishment Code, and recommended
14 and departure sentences, respectively, to incorporate
15 the amendment made to s. 921.0026, F.S., in references
16 thereto; providing an effective date.

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

19
20 Section 1. Section 921.0026, Florida Statutes, is amended
21 to read:

22 921.0026 Mitigating circumstances.—Except as otherwise
23 provided in this section, this section applies to any felony
24 offense, except any capital felony, committed on or after
25 October 1, 1998.

26 (1) A downward departure from the lowest permissible
27 sentence, as calculated according to the total sentence points
28 pursuant to s. 921.0024, is prohibited unless there are
29 circumstances or factors that reasonably justify the downward

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30 departure. Mitigating factors to be considered include, but are
31 not limited to, those listed in subsection (2). The imposition
32 of a sentence below the lowest permissible sentence is subject
33 to appellate review under chapter 924, but the extent of
34 downward departure is not subject to appellate review.

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

38 (a) The departure results from a legitimate, uncoerced plea
39 bargain.

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

42 (c) The capacity of the defendant to appreciate the
43 criminal nature of the conduct or to conform that conduct to the
44 requirements of law was substantially impaired.

45 (d) For an offense committed on or after October 1, 1998,
46 but before July 1, 2019, the defendant requires specialized
47 treatment for a mental disorder that is unrelated to substance
48 abuse or addiction or for a physical disability, and the
49 defendant is amenable to treatment.

50 (e) For an offense committed on or after July 1, 2019, the
51 defendant requires specialized treatment for a mental disorder,
52 a substance addiction that predates the date of the offense, or
53 a physical disability, and the defendant is amenable to
54 treatment.

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

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

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

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

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

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

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

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

72 (n)~~(m)~~ For an offense committed on or after October 1,
73 1998, but before July 1, 2019, the defendant's offense is a
74 nonviolent felony, the defendant's Criminal Punishment Code
75 scoresheet total sentence points under s. 921.0024 are 60 points
76 or fewer, and the court determines that the defendant is
77 amenable to the services of a postadjudicatory treatment-based
78 drug court program and is otherwise qualified to participate in
79 the program as part of the sentence. Except as provided in this
80 paragraph, the defendant's substance abuse or addiction,
81 including intoxication at the time of the offense, is not a
82 mitigating factor for an offense committed on or after October
83 1, 1998, but before July 1, 2019, and does not, under any
84 circumstance, justify a downward departure from the permissible
85 sentencing range. For purposes of this paragraph, the term
86 "nonviolent felony" has the same meaning as provided in s.
87 948.08(6).

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

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

96 Section 2. For the purpose of incorporating the amendment
97 made by this act to section 921.0026, Florida Statutes, in
98 references thereto, paragraph (c) of subsection (1) of section
99 775.08435, Florida Statutes, is reenacted to read:

100 775.08435 Prohibition on withholding adjudication in felony
101 cases.—

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

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

106 1. The state attorney requests in writing that adjudication
107 be withheld; or

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

111 Section 3. For the purpose of incorporating the amendment
112 made by this act to section 921.0026, Florida Statutes, in a
113 reference thereto, subsection (3) of section 921.002, Florida
114 Statutes, is reenacted to read:

115 921.002 The Criminal Punishment Code.—The Criminal
116 Punishment Code shall apply to all felony offenses, except

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117 capital felonies, committed on or after October 1, 1998.

118 (3) A court may impose a departure below the lowest
119 permissible sentence based upon circumstances or factors that
120 reasonably justify the mitigation of the sentence in accordance
121 with s. 921.0026. The level of proof necessary to establish
122 facts supporting the mitigation of a sentence is a preponderance
123 of the evidence. When multiple reasons exist to support the
124 mitigation, the mitigation shall be upheld when at least one
125 circumstance or factor justifies the mitigation regardless of
126 the presence of other circumstances or factors found not to
127 justify mitigation. Any sentence imposed below the lowest
128 permissible sentence must be explained in writing by the trial
129 court judge.

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

134 921.00265 Recommended sentences; departure sentences;
135 mandatory minimum sentences.—This section applies to any felony
136 offense, except any capital felony, committed on or after
137 October 1, 1998.

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

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