

1 A bill to be entitled
2 An act relating to criminal sentencing; amending s.
3 775.082, F.S.; increasing the number of sentence
4 points that require a nonstate sanction in certain
5 circumstances; amending s. 921.002, F.S.; requiring
6 findings for sentences above the maximum sentence
7 recommended under the Criminal Punishment Code;
8 removing the authority of a judge to impose a sentence
9 up to and including the statutory maximum for a
10 violation of probation or community control; deleting
11 a provision limiting appeals of sentences to
12 circumstances in which the sentence is lower than the
13 lowest permissible sentence or other specified
14 circumstances; amending s. 921.0024, F.S.; increasing
15 the minimum number of sentence points for the a state
16 prison sanction; revising the calculation of the
17 lowest permissible sentence in prison months;
18 providing an effective date.

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20 Be It Enacted by the Legislature of the State of Florida:

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

24 775.082 Penalties; applicability of sentencing structures;
25 mandatory minimum sentences for certain reoffenders previously

26 | released from prison.—

27 | (10) If a defendant is sentenced for an offense committed
 28 | on or after July 1, 2009, which is a third degree felony but not
 29 | a forcible felony as defined in s. 776.08, and excluding any
 30 | third degree felony violation under chapter 810, and if the
 31 | total sentence points pursuant to s. 921.0024 are 44 ~~22~~ points
 32 | or fewer, the court must sentence the offender to a nonstate
 33 | prison sanction. However, if the court makes written findings
 34 | that a nonstate prison sanction could present a danger to the
 35 | public, the court may sentence the offender to a state
 36 | correctional facility pursuant to this section.

37 | Section 2. Paragraphs (f), (g), and (h) of subsection (1)
 38 | of section 921.002, Florida Statutes, are amended to read:

39 | 921.002 The Criminal Punishment Code.—The Criminal
 40 | Punishment Code shall apply to all felony offenses, except
 41 | capital felonies, committed on or after October 1, 1998.

42 | (1) The provision of criminal penalties and of limitations
 43 | upon the application of such penalties is a matter of
 44 | predominantly substantive law and, as such, is a matter properly
 45 | addressed by the Legislature. The Legislature, in the exercise
 46 | of its authority and responsibility to establish sentencing
 47 | criteria, to provide for the imposition of criminal penalties,
 48 | and to make the best use of state prisons so that violent
 49 | criminal offenders are appropriately incarcerated, has
 50 | determined that it is in the best interest of the state to

51 develop, implement, and revise a sentencing policy. The Criminal
52 Punishment Code embodies the principles that:

53 (f) Departures below the lowest permissible sentence or
54 above the recommended maximum sentence established by the code
55 must be articulated in writing by the trial court judge and made
56 only when circumstances or factors reasonably justify the
57 mitigation or enhancement of the sentence. The level of proof
58 necessary to establish facts that support a departure from the
59 lowest permissible or maximum recommended sentence is a
60 preponderance of the evidence.

61 ~~(g) The trial court judge may impose a sentence up to and~~
62 ~~including the statutory maximum for any offense, including an~~
63 ~~offense that is before the court due to a violation of probation~~
64 ~~or community control.~~

65 ~~(h) A sentence may be appealed on the basis that it~~
66 ~~departs from the Criminal Punishment Code only if the sentence~~
67 ~~is below the lowest permissible sentence or as enumerated in s.~~
68 ~~924.06(1).~~

69 Section 3. Subsection (2) of section 921.0024, Florida
70 Statutes, is amended to read:

71 921.0024 Criminal Punishment Code; worksheet computations;
72 scoresheets.—

73 (2) The lowest permissible sentence is the minimum
74 sentence that may be imposed by the trial court, absent a valid
75 reason for departure. The lowest permissible sentence is any

76 nonstate prison sanction in which the total sentence points
77 equals or is less than 52 ~~44~~ points, unless the court determines
78 within its discretion that a prison sentence, which may be up to
79 the statutory maximums for the offenses committed, is
80 appropriate. When the total sentence points exceeds 52 ~~44~~
81 points, the lowest permissible sentence in prison months shall
82 be calculated by subtracting 36 ~~28~~ points from the total
83 sentence points and decreasing the remaining total by 25
84 percent. The recommended sentence length in state prison months
85 may be increased by up to, and including, 25 percent or
86 decreased by up to, and including, 25 percent, at the discretion
87 of the court. ~~The total sentence points shall be calculated only~~
88 ~~as a means of determining the lowest permissible sentence. The~~
89 ~~permissible range for sentencing shall be the lowest permissible~~
90 ~~sentence up to and including the statutory maximum, as defined~~
91 ~~in s. 775.082, for the primary offense and any additional~~
92 ~~offenses before the court for sentencing. The sentencing court~~
93 ~~may impose such sentences concurrently or consecutively.~~
94 ~~However,~~ Any sentence to state prison must exceed 1 year. If the
95 lowest permissible sentence under the code exceeds the statutory
96 maximum sentence as provided in s. 775.082, the sentence
97 required by the code must be imposed. If the total sentence
98 points are greater than or equal to 363, the court may sentence
99 the offender to life imprisonment. An offender sentenced to life
100 imprisonment under this section is not eligible for any form of

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101 | discretionary early release, except executive clemency or
102 | conditional medical release under s. 947.149.

103 | Section 4. This act shall take effect July 1, 2019.