

By Senator Bracy

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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 below which the court is required to impose a
5 nonstate prison sanction under certain circumstances;
6 amending s. 921.002, F.S.; providing that a sentencing
7 judge's decision regarding sentencing is guided by the
8 computed recommended sentencing range, from the lowest
9 permissible sentence to the highest recommended prison
10 sentence; requiring a trial court judge to explain
11 departures above the highest recommended prison
12 sentence established by the Criminal Punishment Code
13 and to specify his or her reasons for imposing the
14 higher sentence; deleting a limitation on sentence
15 appeals to cases in which the sentence imposed is
16 lower than the lowest permissible sentence or sentence
17 appeals under other specified circumstances; amending
18 s. 921.0024, F.S.; increasing the minimum number of
19 sentence points for a state prison sanction; revising
20 the calculation of the lowest permissible sentence;
21 requiring a calculation of the highest recommended
22 prison sentence; providing a recommended range for
23 sentencing; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

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

29 775.082 Penalties; applicability of sentencing structures;

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30 mandatory minimum sentences for certain reoffenders previously
31 released from prison.—

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

42 Section 2. Present paragraphs (f), (g), and (h) of
43 subsection (1) of section 921.002, Florida Statutes, are
44 amended, present paragraph (i) of that subsection is
45 redesignated as paragraph (j), and new paragraphs (f) and (h)
46 are added to that subsection, to read:

47 921.002 The Criminal Punishment Code.—The Criminal
48 Punishment Code shall apply to all felony offenses, except
49 capital felonies, committed on or after October 1, 1998.

50 (1) The provision of criminal penalties and of limitations
51 upon the application of such penalties is a matter of
52 predominantly substantive law and, as such, is a matter properly
53 addressed by the Legislature. The Legislature, in the exercise
54 of its authority and responsibility to establish sentencing
55 criteria, to provide for the imposition of criminal penalties,
56 and to make the best use of state prisons so that violent
57 criminal offenders are appropriately incarcerated, has
58 determined that it is in the best interest of the state to

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

61 (f) The sentence imposed by the sentencing judge is guided
62 by the computed recommended sentencing range, which is from the
63 lowest permissible sentence to the highest recommended prison
64 sentence, under the code.

65 (g) Departures below the lowest permissible sentence
66 established by the code must be articulated in writing by the
67 trial court judge and made only when circumstances or factors
68 reasonably justify the mitigation of the sentence. The level of
69 proof necessary to establish facts that support a departure from
70 the lowest permissible sentence is a preponderance of the
71 evidence.

72 (h) Departures above the highest recommended prison
73 sentence established by the code must be explained by the trial
74 court judge on the record at the time of the sentencing. The
75 trial court judge's explanation must specify his or her reasons
76 for imposing the higher sentence.

77 (i) ~~(g)~~ The trial court judge may impose a sentence up to
78 and including the statutory maximum for any offense, including
79 an offense that is before the court due to a violation of
80 probation or community control.

81 ~~(h) A sentence may be appealed on the basis that it departs~~
82 ~~from the Criminal Punishment Code only if the sentence is below~~
83 ~~the lowest permissible sentence or as enumerated in s.~~
84 ~~924.06(1).~~

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

87 921.0024 Criminal Punishment Code; worksheet computations;

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88 scoresheets.-

89 (2) The lowest permissible sentence is the minimum sentence
90 that may be imposed by the trial court, absent a valid reason
91 for departure. The lowest permissible sentence is any nonstate
92 prison sanction in which the total sentence points equals or is
93 less than 52 ~~44~~ points, unless the court determines within its
94 discretion that a prison sentence, ~~which may be up to the~~
95 ~~statutory maximums for the offenses committed,~~ is appropriate.
96 When the total sentence points exceed 52 ~~exceeds 44~~ points, the
97 lowest permissible sentence in prison months is ~~shall be~~
98 calculated by subtracting 36 ~~28~~ points from the total sentence
99 points and decreasing the remaining total by 25 percent. When
100 the total sentence points exceed 52 points, the highest
101 recommended prison sentence in prison months is calculated by
102 subtracting 36 points from the total sentence points and
103 increasing the remaining total by 25 percent. The total sentence
104 points are ~~shall be~~ calculated ~~only~~ as a means of determining
105 the recommended sentencing range, which is from the lowest
106 permissible sentence to the highest recommended prison sentence.
107 The permissible range for sentencing is ~~shall be~~ the lowest
108 permissible sentence up to and including the statutory maximum,
109 as defined in s. 775.082, for the primary offense and any
110 additional offenses before the court for sentencing. The
111 sentencing court may impose such sentences concurrently or
112 consecutively. However, any sentence to state prison must exceed
113 1 year. If the lowest permissible sentence under the code
114 exceeds the statutory maximum sentence as provided in s.
115 775.082, the sentence required by the code must be imposed. If
116 the total sentence points are greater than or equal to 363, the

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117 court may sentence the offender to life imprisonment. An
118 offender sentenced to life imprisonment under this section is
119 not eligible for any form of discretionary early release, except
120 executive clemency or conditional medical release under s.
121 947.149.

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