

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 Committee on Criminal Justice

BILL: SB 552

INTRODUCER: Senators Brandes and Perry

SUBJECT: Sentencing

DATE: December 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 552 amends s. 775.082(10), F.S., which authorizes a court to sentence certain nonviolent felony offenders to a nonstate prison sanction, to increase total sentence points applicable to prison diversion under this subsection from 22 points or fewer to 44 points or fewer. This change, which is applicable to certain offenders sentenced on or after October 1, 2020, expands the pool of offenders who may be eligible for prison diversion under s. 775.082(10), F.S.

If a jury makes written findings that a nonstate prison sanction could present a danger to the public, the court may impose a prison sentence. In the case of a defendant who qualifies for prison diversion but pleads guilty or nolo contendere, the prison diversion may apply if the defendant consents to the court determining whether sentencing him or her to a nonstate prison sanction could present a danger to the public, and the court does not make such finding. However, if the court does make such written finding, the court may sentence the defendant to prison.

The Legislature's 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).

The effective date of the bill is October 1, 2020.

II. Present Situation:

Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code¹ (Code) as “Florida’s primary sentencing policy.”² Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).³ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.⁴ Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. The lowest permissible sentence is any nonstate prison sanction in which 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.

Absent mitigation,⁵ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.⁶ However, if the offender’s offense has a mandatory minimum term that is greater than the scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.⁷ Further, some offenders may qualify for prison diversion under various sections of the Florida Statutes.⁸

Prison Diversion (s. 775.082(10), F.S.)

Section 775.082(10), F.S., provides that, if a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony as defined in s. 776.08, F.S.,⁹ and excluding any third degree felony violation under ch. 810, F.S., and if the total sentence points pursuant to s. 921.0024, F.S. (of the Code), are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction.

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 *Florida’s Criminal Punishment Code: A Comparative Assessment* (September 2018), Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf (last visited on Nov. 6, 2019).

³ 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.

⁴ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

⁵ The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

⁶ 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.

⁷ Fla. R. Crim. P. 3.704(d)(26).

⁸ See e.g., s. 775.082(10), F.S. (prison diversion for an offender whose offense is a nonviolent third degree felony and whose total sentence points are 22 points or fewer); s. 921.00241, F.S. (diversion into a Department of Corrections’ prison diversion program for certain nonviolent third degree felony offenders); and s. 948.01, F.S. (diversion into a postadjudicatory treatment-based drug court program for certain nonviolent felony offenders).

⁹ Section 776.08, F.S., defines a “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

This subsection further states that, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to s. 775.082, F.S.¹⁰

III. Effect of Proposed Changes:

The bill amends s. 775.082(10), F.S., which authorizes a court to sentence certain nonviolent felony offenders to a nonstate prison sanction, to increase total sentence points applicable to prison diversion under this subsection from 22 points or fewer to 44 points or fewer. This change, which is applicable to certain offenders sentenced on or after October 1, 2020, expands the pool of offenders who may be eligible for prison diversion under s. 775.082(10), F.S.¹¹

If a jury makes written findings that a nonstate prison sanction could present a danger to the public, the court may impose a prison sentence. In the case of a defendant who qualifies for prison diversion but pleads guilty or nolo contendere, the prison diversion may apply if the defendant consents to the court determining whether sentencing him or her to a nonstate prison sanction could present a danger to the public, and the court does not make such finding. However, if the court does make such written finding, the court may sentence the defendant to prison.

The effective date of the bill is October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁰ However, in *Brown v. State*, 260 So. 3d 147, 151 (Fla. 2018), the Florida Supreme Court held that “for a court to impose any sentence above a nonstate prison sanction when section 775.082(10) applies, a jury must make the dangerousness finding.”

¹¹ In addition to offenders whose offense was committed on or after October 1, 2020, and who are sentenced after that date, the bill should apply to offenders whose offense was committed before October 1, 2020, the effective date of the bill, provided sentence is imposed on or after October 1, 2020.

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 Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds). The EDR provided the following information relevant to its estimate:

Per DOC, in FY 17-18, 3,788 admissions fell between the 22 and 44 points thresholds where a third degree violation was committed that was not a forcible felony (excluding Chapter 810), with incarceration rates for this group at 10.1% in FY 17-18. It should be noted that while prison sentences dropped for those below 22 points following prior legislation requiring a nonstate prison sanction, from a high of 6.4% in FY 10-11 (offense prior to passage of 22-point diversion) to 1.3% in FY 17-18 (offense after passage of 22-point diversion), it does not mean that the same declines will occur for this new cohort.

Without knowing decision making of the jury and the court moving forward, the prison bed impact cannot be quantified. However, given the large numbers of offenders admitted to prison between 22 and 44 points, even a small decrease in prison sentences would have a significant impact on admissions and the resulting prison population.¹²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹² The EDR's preliminary estimate is on file with the Senate Committee on Criminal Justice.

VIII. Statutes Affected:

This bill substantially amends section 775.082 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
