

By Senator Brandes

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1 A bill to be entitled
2 An act relating to sentencing; amending s. 921.0026,
3 F.S.; revising the mitigating circumstances under
4 which a departure from the lowest permissible sentence
5 is reasonably justified; conforming a provision to
6 changes made by the act; reenacting ss.
7 775.08435(1)(b), (c), and (d), 921.002(3), and
8 921.00265(1), F.S., all relating to mitigating
9 circumstances, to incorporate the amendment made to s.
10 921.0026, F.S., in references thereto; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 921.0026, Florida Statutes, is amended
16 to read:

17 921.0026 Mitigating circumstances.—This section applies to
18 any felony offense, except any capital felony, committed on or
19 after October 1, 1998.

20 (1) A downward departure from the lowest permissible
21 sentence, as calculated according to the total sentence points
22 pursuant to s. 921.0024, is prohibited unless there are
23 circumstances or factors that reasonably justify the downward
24 departure. Mitigating factors to be considered include, but are
25 not limited to, those listed in subsection (2). The imposition
26 of a sentence below the lowest permissible sentence is subject
27 to appellate review under chapter 924, but the extent of
28 downward departure is not subject to appellate review.

29 (2) Mitigating circumstances under which a departure from

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30 the lowest permissible sentence is reasonably justified include,
31 but are not limited to:

32 (a) The departure results from a legitimate, uncoerced plea
33 bargain.

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

36 (c) The capacity of the defendant to appreciate the
37 criminal nature of the conduct or to conform that conduct to the
38 requirements of law was substantially impaired.

39 (d) For offenders sentenced on or after October 1, 2020,
40 the defendant requires specialized treatment for substance abuse
41 or addiction, a mental disorder, or a physical disability ~~The~~
42 ~~defendant requires specialized treatment for a mental disorder~~
43 ~~that is unrelated to substance abuse or addiction or for a~~
44 ~~physical disability,~~ and the defendant is amenable to treatment.

45 (e) The need for payment of restitution to the victim
46 outweighs the need for a prison sentence.

47 (f) The victim was an initiator, willing participant,
48 aggressor, or provoker of the incident.

49 (g) The defendant acted under extreme duress or under the
50 domination of another person.

51 (h) Before the identity of the defendant was determined,
52 the victim was substantially compensated.

53 (i) The defendant cooperated with the state to resolve the
54 current offense or any other offense.

55 (j) The offense was committed in an unsophisticated manner
56 and was an isolated incident for which the defendant has shown
57 remorse.

58 (k) At the time of the offense the defendant was too young

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59 to appreciate the consequences of the offense.

60 (l) The defendant is to be sentenced as a youthful
61 offender.

62 (m) The defendant's offense is a nonviolent felony, the
63 defendant's Criminal Punishment Code scoresheet total sentence
64 points under s. 921.0024 are 60 points or fewer, and the
65 defendant is sentenced for the offense on or after October 1,
66 2020 ~~the court determines that the defendant is amenable to the~~
67 ~~services of a postadjudicatory treatment-based drug court~~
68 ~~program and is otherwise qualified to participate in the program~~
69 ~~as part of the sentence.~~ For purposes of this paragraph, the
70 term "nonviolent felony" has the same meaning as provided in s.
71 948.08(6).

72 (n) The defendant was making a good faith effort to obtain
73 or provide medical assistance for an individual experiencing a
74 drug-related overdose.

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

80 Section 2. For the purpose of incorporating the amendment
81 made by this act to section 921.0026, Florida Statutes, in
82 references thereto, paragraphs (b), (c), and (d) of subsection
83 (1) of section 775.08435, Florida Statutes, are reenacted to
84 read:

85 775.08435 Prohibition on withholding adjudication in felony
86 cases.—

87 (1) Notwithstanding the provisions of s. 948.01, the court

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88 may not withhold adjudication of guilt upon the defendant for:

89 (b) A second degree felony offense unless:

90 1. The state attorney requests in writing that adjudication
91 be withheld; or

92 2. The court makes written findings that the withholding of
93 adjudication is reasonably justified based on circumstances or
94 factors in accordance with those set forth in s. 921.0026.

95

96 Notwithstanding any provision of this section, no adjudication
97 of guilt shall be withheld for a second degree felony offense if
98 the defendant has a prior withholding of adjudication for a
99 felony that did not arise from the same transaction as the
100 current felony offense.

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

103 1. The state attorney requests in writing that adjudication
104 be withheld; or

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

108 (d) A third degree felony offense if the defendant has a
109 prior withholding of adjudication for a felony offense that did
110 not arise from the same transaction as the current felony
111 offense unless:

112 1. The state attorney requests in writing that adjudication
113 be withheld; or

114 2. The court makes written findings that the withholding of
115 adjudication is reasonably justified based on circumstances or
116 factors in accordance with those set forth in s. 921.0026.

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118 Notwithstanding any provision of this section, no adjudication
119 of guilt shall be withheld for a third degree felony offense if
120 the defendant has two or more prior withholdings of adjudication
121 for a felony that did not arise from the same transaction as the
122 current felony offense.

123 Section 3. For the purpose of incorporating the amendment
124 made by this act to section 921.0026, Florida Statutes, in a
125 reference thereto, subsection (3) of section 921.002, Florida
126 Statutes, is reenacted to read:

127 921.002 The Criminal Punishment Code.—The Criminal
128 Punishment Code shall apply to all felony offenses, except
129 capital felonies, committed on or after October 1, 1998.

130 (3) A court may impose a departure below the lowest
131 permissible sentence based upon circumstances or factors that
132 reasonably justify the mitigation of the sentence in accordance
133 with s. 921.0026. The level of proof necessary to establish
134 facts supporting the mitigation of a sentence is a preponderance
135 of the evidence. When multiple reasons exist to support the
136 mitigation, the mitigation shall be upheld when at least one
137 circumstance or factor justifies the mitigation regardless of
138 the presence of other circumstances or factors found not to
139 justify mitigation. Any sentence imposed below the lowest
140 permissible sentence must be explained in writing by the trial
141 court judge.

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

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146 921.00265 Recommended sentences; departure sentences;
147 mandatory minimum sentences.—This section applies to any felony
148 offense, except any capital felony, committed on or after
149 October 1, 1998.

150 (1) The lowest permissible sentence provided by
151 calculations from the total sentence points pursuant to s.
152 921.0024(2) is assumed to be the lowest appropriate sentence for
153 the offender being sentenced. A departure sentence is prohibited
154 unless there are mitigating circumstances or factors present as
155 provided in s. 921.0026 which reasonably justify a departure.

156 Section 5. This act shall take effect October 1, 2020.